

**0907840 [2010] RRTA 176 (28 February 2010)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	0907840
<b>DIAC REFERENCE(S):</b>	CLF2009/101943
<b>COUNTRY OF REFERENCE:</b>	Korea, Republic Of
<b>TRIBUNAL MEMBER:</b>	Robert Wilson
<b>DATE:</b>	28 February 2010
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Korea, Republic Of, (South Korea, hereinafter referred to as Korea) first arrived in Australia [in] February 1997 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] August 2009. The delegate decided to refuse to grant the visa [in] September 2009 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations for the grant of a Protection visa
4. The applicant applied to the Tribunal [in] September 2009 for review of the delegate's decision.
5. 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**

6. 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.
7. 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of 'refugee'**

9. 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.

10. 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.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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**

19. The Tribunal has before it the Department's file, CLF2009/101943, 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, including its file, 0907840.
20. The first hearing [in] November 2009 was adjourned without taking evidence.
21. The applicant next appeared before the Tribunal [in] December 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Korean and English languages.
22. That hearing was adjourned and the applicant was invited back to another hearing to be held [in] December 2009, to provide comments orally to the Tribunal. The applicant did not respond to the hearing invitation, or attend the hearing.
23. The applicant attended a rescheduled hearing [in] January 2010. The Tribunal hearing was conducted with the assistance of an interpreter in the Korean and English languages.
24. The applicant was represented in relation to the review by his registered migration agent.

#### ***Application for a Protection visa dated [in] August 2009***

25. The applicant, a single Christian male, was born on [date deleted: s.431(2)] in [Country A] His citizenship at birth was South Korean. He can speak, read, and write Korean, English, and basic Mandarin. He lived in New Zealand [from] December 1995 [to] December 1996. He has a South Korea passport, and he has never had, or used, any other passport or travel document. The applicant referred to his Statutory Declaration, attached (reproduced below).

#### ***Statutory Declaration declared on 12 August 2009***

26. The essential part of the document has been reproduced below.

##### **Citizenship**

1. I am a citizen of South Korea. I do not have citizenship of any other country. I do not have a right to reside in any other country.

##### **Why I left South Korea**

2. I left South Korea in 1996 as I feared being kidnapped and killed. My father accrued a large unpaid debt which placed my life in danger.

3. In about 1995 my father borrowed money from some people in South Korea to invest in a [business] in [Country A].

4. I believe the debt was owed to a finance institution, however am unsure.
5. I am not sure of the size of the debt.
6. My father sold our family home in Seoul in 1995 to repay the debt, however has been unable to repay the whole debt to this day.
7. As a result of my father selling the family home I had nowhere to live in South Korea.
8. I fled to Australia with my mother in 1996.
9. My father fled to [Country A] where he had invested in a [business] and used it to try and service the debt.
10. In 2000 my father borrowed more money from the same people he borrowed from previously and also borrowed money from other people to service the existing debt and to invest further in his [business] to generate further income. I do not know who those people are.
11. My father has been trying to repay the debt to this day, however is unable to as the debt is too high.
12. The people who were owed the debt by my father have threatened my grandparents on my father side continuously since about 2000 demanding my father repay the debt.
13. The people owed the debt came to the [factory] in [town], Seoul owned by my grandfather on my father's side and demanded repayment of the debt. They threatened to break things in the factory and told my grandparents that they would kidnap and kill me if the debt was not settled. They have come to the factory many times since 2000 making such threats against my life and the factory.
14. I believe the people owed the debt increased their intimidation and threats against my grandparents since 2000 as they realised my father was having difficulty servicing the debt.
15. My father and mother stopped travelling to South Korea as frequently from 2000 as the threats were becoming very severe. When my father did travel to South Korea he did so secretly, not telling many family members so as to avoid being harmed.
16. My grandfather and grandmother told me that in about late 2004 the people owed the debt came to the [factory], picked up several [items] and destroyed it. They repeated their threats, "where is your son and grandson (the applicant) to repay the debt."
17. In about 2004 my grandparents on my mother and father's side told me not to return to South Korea as I will be kidnapped and killed by the people my father owes the outstanding debt to.
18. The people owed the debt came to the factory again several times each year, every year until the present time threatening to kidnap me and kill me unless my father repays the debt.

**Who I think will harm/mistreat me if I was forced to go to South Korea**

19. The people owed the debt by my father will kidnap me and kill me.
20. I have a drug addiction to heroin for which I am currently being treated in [Location 1]. The police and military personnel will arrest me for having this addiction.

### **What I fear may happen if I go back to South Korea**

21. I will be kidnapped and killed by the people my father's owes the debt to in South Korea unless the debt is repaid.

22. I will also be arrested by the police and incarcerated in prison as I have a drug addiction. Having a drug addiction in South Korea is a violation of South Korean law.

### **Why I think I will be harmed / mistreated if I was to go back to South Korea**

23. I am unable to return to South Korea as my father borrowed money from people in South Korea which remains outstanding. I will be kidnapped and killed if the debt is not serviced.

24. I am also unable to return to South Korea as I have a drug addiction. I have needle marks on both arms. The authorities will arrest me and incarcerate me in prison.

25. I will also not receive treatment for my heroin addiction in South Korea as such treatments and withdrawal programs do not exist in South Korea.

26. As I have outstanding compulsory military service to do in South Korea I will be required to undergo medical testing and will test positive to prohibited substances. I will be incarcerated in prison for the addiction.

### **Why I think the South Korean authorities will not protect me if I am forced to go back to South Korea**

27. I will not be protected by the authorities as I have a drug addiction and have therefore violated South Korean law. I will be arrested and imprisoned.

28. My father also has not returned to South Korea to make a life for himself there as the authorities will not protect him from the people to whom he owes the debt.

### **Entry to Australia**

29. After my father sold the family home to try and repay the debt my mother and I caught a plane to Australia in 1996. I enrolled in school at [education provider and location].

30. When I reached the age of 18 my mother left Australia and returned to [Country A] to live with my father.

31. I remained in Australia from that time where I reside at the present time.

### ***The interview held before the Department [in] September 2009***

27. The following is a summary, but not a transcript, of the interview between the applicant and the Department of Immigration held [in] September 2009.

28. The applicant's agent was present.

29. The delegate said that the applicant left Korea and [Country A] because of a debt that his father owed. That is, the applicant's father left Korea with his family and went to [Country A] because of a debt. The delegate asked whether the applicant had a right of residence in [Country A]. The applicant said that his only citizenship is in South Korea. The delegate

confirmed that if he were to be deported, he would be going to South Korea. He felt that he does not want to go to South Korea as he feels that he would be in danger of the people that his father owes money to. The applicant said that he felt this during the times that he had gone back to South Korea.

30. The delegate said that the applicant had gone back to South Korea six times in ten years and he has come to Australia seven times in the last ten years. The applicant asked whether it included [Country A]. The delegate said that it just meant coming back to Australia, so he could have gone to [Country A] at some stage.
31. The delegate said that he came to Australia for the last time in February 2007. That was the seventh entry into Australia. His first entry into Australia was February 1997. So there were ten years where the applicant went backwards and forwards.
32. The delegate asked when the applicant's father incurred the debt. The delegate agreed it was some time ago. The father did not say what year. It was, however, before 1997. The parents and grandparents and everyone knows it. His father is still alive and living in [Country A]
33. The delegate asked whether anyone was chasing the applicant's father in [Country A]. The applicant said he did not know about [Country A]. No-one knew that he was in [Country A] and that is why they cannot chase it up. He said he doubted that these people would move into [Country A].
34. The delegate asked whether there was any other reason the applicant was seeking protection. The applicant said he was not sure whether the following fitted into the category. He has been in Australia since he was 12 years old, in 1997. He spent part of his formative years in Australia, and he has been growing here since he was young. His culture is more likely to fit into the Australian culture than the Korean culture.
35. Also, if he went back to South Korea, he has to join the military service. All South Koreans have to attend, it is compulsory. He feels that going to military service is that he could not associate well with Korean people, as he has been here for so long. He is getting treated in Australia as well. He really fears that if he goes back he will be really sick. He has doctor's letters as well.
36. The delegate said that as his agent has probably explained to him, there are two things. The protection is through the UN Convention and there are a number of grounds there, and a debt like this does not come under the UN Convention, as it is a personal matter. If it were the South Korean government or perhaps some powerful group was persecuting him, then it may be a different matter. If the people are criminals it is unlikely that they will come under the convention. However, in terms of him being in Australia since he was 12 or 13, and he has been here [number deleted: s.431(2)] years, the applicant can, depending on what decision the delegate makes, and if he appeals to the Refugee Review Tribunal, and it turns it down, then the applicant can apply for ministerial intervention on humanitarian grounds.
37. The applicant said he is also seeing a psychologist. The delegate said that would be useful for humanitarian grounds. It is not much point in going into the debt as such, said the delegate.

38. The applicant said when he visits South Korea, his cousins and so on, say not to visit South Korea as some people are looking for him. They are coming to his grandparents house. They have been to the factory.
39. The delegate asked whether they were criminals. The applicant said he did not know exactly who they are. They may not be criminals, but probably people who lend the money, and some organizations or institutions. The delegate said he did not know the law in Korea but normally if someone starts harassing someone who is not responsible for the debt, then there must be a point at which one could go to the police and say, its not my debt.
40. The applicant said his grandparents told him this, but as a son, he has some responsibility for this. That is why his family try to keep him out of South Korea. He said that he could be responsible for this, as he is his (father's) son. The delegate said he still thinks there would be a limit from what he has read, as to how they can legally pursue him. It is a legal claim. And he does not think that it comes under the UN Convention.
41. The applicant asked what he meant by illegal. Did he mean that he does not have a document, or paper. The delegate said even if the applicant's father owes a debt to these people legally, although he does not have any information that he has any responsibility for the debt, but if they push too hard against him or some other family member, then he would be entitled to go to the police about it.
42. The applicant said that they cannot do anything about his grandparents, but he, as the son, will be held responsible for the debt. The delegate said he is not sure if that is the case from what he has read. He said that is not the information he has on Korea. Secondly, what possible use would it be if he goes back and has no money? The worst that could happen is that they would bankrupt him. Also, this debt is also a minimum of twelve years old, and may be much older. So, it is really a matter for the applicant's father. The delegate said that he cannot find any Convention grounds at this stage.
43. The delegate said he is not doubting the existence of the debt. He does not have any information to say the applicant is responsible for it. The applicant asked whether he should find it out, as that is what he had heard. The delegate said that could be useful later. But even if he did, it is only a commercial debt. The delegate said the humanitarian grounds means that he cannot apply directly, but he has to go through the Protection visa process. The delegate confirmed it would have to be the RRT, and then a request on humanitarian grounds. The delegate said on the surface it appears more suitable as a humanitarian consideration, however, it depends on the Minister, and whether he wants to exercise his discretion.
44. The applicant said his guarantor is a church minister. He said he saw a person like himself who had been in Australia for seven years who is in exactly the same situation, as he is, and he saw a psychologist. He was told that he was too 'encultured' into Australia, and he got a visa. He has already seen two people about that. The delegate said be careful about taking advice like that, and he would be better off taking advice from his agent.
45. The agent said that he had advised on this matter.
46. The applicant said he can live in Australia. The delegate asked whether he had a police check. The agent said that it had not come back yet. The delegate said this is one thing that would be relevant if he has any convictions here, as it is taken into account how serious they were.



The delegate said he did not have any criminal records in Australia. The delegate said that is useful, if he did not have any criminal record.

47. The delegate said as it stands he cannot see any grounds, but he asked the agent to make any submissions if he wanted to.
48. The applicant said that he just wants to stay in Australia to finish his studies, he does not want a permanent visa. He said when he goes back to South Korea he will have to attend the army military service. He cannot travel to another country because he has to extend his army service. The delegate said there was nothing wrong from the Australian government's point of view for a person to do military service. The applicant said, if trying to apply for military intervention, he needs to get a visa so he can study in Australia. He said he needs to do that. The delegate said he did not want to make any assumptions about what might happen down the track. However, today there are pretty much no grounds for him to be granted a Protection visa unless there is something new that he could come up with.
49. The solicitor said he did not have anything further.
50. The applicant asked if he were to go for the Ministerial intervention, whether he had to go through the RRT first. The applicant was advised that he did. The solicitor said that he had advised already that was an option. The delegate said the RRT cannot make any decision on humanitarian visas either. However, the applicant can make mention of the information. The delegate said if the applicant were to be refused by the RRT, without pre-judging what might happen, the applicant might apply for Ministerial intervention.
51. The delegate referred to matters concerning the RRT.
52. The applicant mentioned another matter. He referred to four Chinese people in [Location 1]. They are still in there. The applicant and some others at [Location 1] saw the four Chinese people lodging fraudulent documents to Immigration, and telling lies to Immigration. The applicant and the others told Immigration that the Chinese people were telling untruths. Regarding one of the Chinese people, the applicant and his friends found out his real name, and that he had come to Australia before, and they told Immigration. Immigration found out that the Chinese person was lying, and his visa was refused, and he was to go back to China. In any event, these four people stole their passports, phone numbers and all details, the applicant's parent's phone number and everything, by beating the applicant and his friends, and then locking them in a room, and they had to kneel down. This was in [Location 1]. The applicant got a report, the case number, and everything. The applicant's friend tried to go to Court about it as well. They stole all of their passports. The Chinese people took the passports and took the applicant's parent's phone numbers, and called South Korea and China and said, if these people get off at the South Korean airport, just get him and kill him. The applicant said he had evidence, and the file number, and everything. The delegate said this was not a Convention matter and he does not have any evidence of that, apart from what the applicant had just said. The applicant asked what would happen if he had the evidence.
53. The delegate said this is a criminal matter, dealing with individuals, and it happened here. The delegate said just because someone claims they will do something in Korea, the Korean authorities...(the applicant intervened). The applicant asked what if the Chinese people have photocopies of the applicant's and his friends IDs in their rooms, and so on. The delegate said he did not want to go into details about things like that, but, generally, firstly it is a criminal matter, and not a Convention refugee matter. Secondly, they are talking about

things that happened in Australia with consequences in Korea. Thirdly, they are not Korean citizens, so they would have to be part of some extremely powerful network to be operating in a country like that. So, on the surface it would be just kind of threats that people... (the applicant intervened). The applicant said they were trying to get evidence. The delegate said he had no evidence about that. The applicant said that he and his friend were trying to get the evidence. He said they actually have the evidence now. They are trying to raise it up with Immigration or the court, or something. The delegate encouraged him to pursue it but he said that it was not a refugee matter it is potentially a criminal matter.

54. The applicant asked whether if he went back to South Korea if he was in danger... The delegate said that if he returns to South Korea and feels that he is in any danger at all then he should contact the South Korean government. He should say the threats have been made against him by Chinese national, and give their names. He could ask the police here to supply that information to South Korea.
55. The applicant asked what sort of danger would a person need to face to have refugee status. The delegate said that every country has criminals, so the delegate said generally it would have to be the Korean government taking action against him or some other powerful group in Korean, and even then the Korean police system is such that they would have the normal protection that any other citizen would have.
56. The agent said this is not related to the Refugee Convention claim.
57. The delegate said that in order to be sent back the Australian authorities do not have to be satisfied that he will be perfectly safe. The applicant said just that he would be protected in South Korea. The delegate agreed. The delegate said North Korea is a different matter, and we do not seem to send people back there. Also North Koreans have the right to South Korean citizenship.
58. The delegate said he would finish off, and advise the applicant that he had an avenue to pursue further down the track.

***The Department of Immigration's decision dated [in] September 2009***

59. The delegate found that the applicant had not submitted any Convention grounds to support his claim: his submission both in writing and at interview concerned his father's debt, his heroin addiction, and his residence in Australia for the last 12 years. Further, the requirement for military service is not discriminatory. Further, he indicated that country information indicates that the government, through the Police, would provide the same level of protection to the applicant as it would to other citizens in relation to threats of extortion or violence in respect of a family debt. Furthermore, there was no evidence that the applicant would face persecution because of his twelve years of living in Australia, if he returned to South Korea.

***The first hearing before the Tribunal [in] November 2009***

60. The hearing was adjourned.
61. The applicant provided a report from [Dr A], dated [in] October 2009. The essential parts of that report have been reproduced below.

RE: [The applicant], DOB: [date]

This letter is to support [the applicant] who is to appear at the Refugee Review Tribunal to apply for a Visa to remain in Australia.

He has recently commenced on Biodone soln. ( methadone soln.) for treatment of a substance problem. I am his treating doctor at this Clinic.

He attends daily for his medication and is obeying all the rules of the Clinic. He is doing very well in his rehabilitation and needs to remain in treatment for a reasonable period of time. I would suggest this needs to be at least for the next 2 years. He advised me that he has rung Korea and authorities have told him there are no treatment programs like this in his country. For this reason he advises me he is scared to go back to Korea..

### ***Submission made on behalf of the applicant [in] November 2009***

62. The essential parts of the letter from the applicant's solicitor has been reproduced below. The footnotes have not been reproduced.

The following are our submissions in support of our client's application for review.

#### **The applicant's claims**

The applicant is a citizen of the Republic of Korea ("South Korea"). He fears being abducted and killed if he returns to South Korea because he has been linked to an outstanding debt which his father owes. He also fears that he will be seriously harmed by the authorities for his drug addiction.

The applicant's father borrowed heavily in South Korea to invest in a [business] The applicant's family were forced to sell their home in South Korea and repaid part of the debt owed by the applicant's father; however, they have been unable to repay all of the debt.

In 2000, the applicant's father borrowed further funds from the same people to service his existing debt and invest further in the [business]. These funds have not been repaid. The people who are owed the debt have threatened the applicant's grandparents (father's parents) and have ransacked their [factory] because of this debt

The creditors have threatened the applicant's grandparents many times that they will abduct the applicant and kill him if his father does not pay the debt. The applicant believes that the debt is very substantial and that his father is not able to repay this debt.

The applicant currently has a drug addiction. He believes that if he returns to South Korea his health will deteriorate because there is inadequate medical treatment available to people with drug addictions in South Korea. He fears that he will be arrested and imprisoned because of his addiction. We understand that the applicant will hand up a Doctor's certificate at the hearing today in evidence of his drug dependency.

#### **Independent information**

Violence perpetrated by creditors against those who fail to repay their loans is a significant social problem in South Korea. This is confirmed in a report dated 11 April 2007 from the Immigration and Refugee Board of Canada ("IRB Report").' The IRB Report states:

Loan-sharking - the practice of lending money at exorbitant rates of interest - has been a significant problem in South Korea (**Hankyoreh** 23 Oct. 2006; **The Korea Herald** 9 Mar. 2007) since the 1997 Asian financial crisis following which household debt "skyrocketed" (**The Korea Times** 27 Dec. 2005; Peterson Institute 27 Sept. 2005, 12-14; see also Stakelbeck 2005). As the Washington-based Peter G Peterson Institute for International Economics - "a private, non-profit,

non-partisan research institution devoted to the study of international economic policy" (Peterson Institute n.d.) - explains, [i]n the aftermath of the crisis, lenders went from bingeing on corporate lending to bingeing on household lending: South Korean household debt registered the fastest growth in the world, increasing 18 percentage points of GDP in two years .... (ibid. 27 Sept. 2005)

By 2005, South Korean households were an average of USD 27,000 in debt (Stakelbeck 2005). In response to the financial crisis, South Korea repealed its Interest Regulation Act in 1998, eliminating controls on interest rates reportedly to address the country's "urgent economic situation" (**The Korea Herald** 9 Mar. 2007). The move caused interest rates to soar to an annual average rate of 200 percent (ibid.). According to government statistics, 80 percent of those who borrowed money at these rates went bankrupt and did not repay their loans (ibid.). For example, **The Korea Times** reports that the number of people who defaulted on credit card and other loans "ballooned" to 3.72 million people in 2003, up from 2.08 million people in 2000 (27 Dec. 2005).

The government of South Korea enacted legislation in 2002 reportedly to combat the practice of lending money at an excessive rate (**The Korea Herald** 9 Mar. 2007; see also **Hankyoreh** 23 Oct. 2006). The legislation established an interest rate limit for private moneylenders (ibid; **The Korea Herald** 9 Mar. 2007; Korea 26 Aug. 2002) and required that moneylenders officially register their businesses (ibid.). The Act on the Registration of the Moneylending Business and Protection of Consumers governs all moneylending businesses, whether they are registered with the government or not, according to a lawyer in a South Korean law firm (**The Korea Herald** 9 Mar. 2007). However, **although the legal interest rate for private loans is 66 percent** (Korea 29 Dec. 2006; **Hankyoreh** 16 Jan. 2007; **The Korea Times** 16 Jan. 2007), **according to the Korean newspaper the Hankoyreh, lax regulation by the authorities means that the actual annual average interest rate remains at 200 percent (16 Jan. 2007).**

Indeed, according to government estimates reported in the Korean media in 2006, around 5.6 million people borrowed money from private moneylenders at an average interest rate of 200 percent (**Hankyoreh** 16 Jan. 2007; **The Korea Times** 15 Jan. 2007). The outstanding balance owed to private moneylenders in 2006 is estimated to be 796 billion Won (KRW) [approximately CAD 977 million (XE.com 10 April 2007a)], up from 570 billion Won (KRW) [approximately CAD 701 million (ibid. 10 April 2007b)], according to statistics from the National Information Credit Evaluation (NICE) (**The Korea Times** 15 Jan. 2007). The NICE also reports that the number of people borrowing from private moneylenders went from 205,000 a year ago to 325,000 in September 2006, and that the majority of borrowers were in their 20s and 30s (ibid. 9 Jan. 2007).

As several sources explain, people who are unable to meet the conditions of established financial institutions are turning to moneylenders instead (**The Korea Times** 6 April 2006; **Hankyoreh** 23 Oct. 2006; Korea 29 Dec. 2006). **Would-be borrowers refused by banks or other financial institutions because of bad credit ratings tend to use private moneylenders for loans, as do unemployed young adults** (**The Korea Times** 6 April 2006 **Hankyoreh** 23 Oct. 2006; Korea 29 Dec. 2006). The National Police Agency (NPA) also indicates that Koreans who are not considered creditworthy by banks and other financial institutions borrow from private moneylenders when they are short of cash (Korea 29 Dec. 2006). Because the borrowers are such a high credit risk, interest rates are reportedly "murderous," with firms charging one or even two percent daily (**Hankyoreh** 23 Oct. 2006). In addition, **The Korea Times** reports that "many" people, once in debt, also turn to loan sharks to obtain money to pay down their loans (27 Dec. 2005).

There are some 16,000 private moneylenders registered with the South Korean government and a further 40,000 private moneylenders are reportedly operating illegally in the country (**The Korea Times** 15 Jan. 2007). **In addition to charging exorbitant interest rates, illegal private moneylenders, or loan sharks, commonly resort to violence to collect money from recalcitrant debtors, according to the NPA (Korea 29 Dec. 2006).**

Unlawful methods of debt collection are spelled out, among other regulations, in the 2002 Moneylending Registration Act (Korea 26 Aug. 2002). For example, Article 10 of the Act states that moneylenders shall not [translation] "assault or threaten" borrowers in order to collect money

(ibid.). Nor can they [translation] "significantly harm" the private or work life of the borrower by causing [translation] "fear or uneasiness" to either the borrower or people connected to the borrower (ibid.). They likewise cannot visit the borrower, or those connected to the borrower, without just cause (ibid.). Anyone who breaches the prohibitions of the law is subject to a maximum prison term of either three or five years or fines of up to KRW 50 million [approximately CAD 62,000 (XE.com 13 Mar. 2007a)] or KAW 30 million [approximately CAD 37,000 (ibid. 13 Mar. 2007b)], depending on the nature of the offence (Korea 26 Aug. 2002., Art 19).

The NPA has indicated that beginning in January 2007, it is undertaking a three-month special crackdown on loan sharks who engage in violent business practices and who charge illegal interest rates (ibid. 29 Dec. 2006; Newsis 18 Jan. 2007). As part of the crackdown effort, a task force team will provide direction to 235 police stations and 1,236 team members as they investigate [translation] "violence, kidnapping, invasion of private life and so on" and monitor the extent to which criminal groups enter private moneylending markets (Korea 29 Dec. 2006). The police are also setting up call numbers and a Web site through which citizens can report illegal private financing activities (ibid; see also **The Korea Times** 15 Jan. 2007). Moreover, any police officers who excel at apprehending people suspected of loan-sharking will reportedly be rewarded in various ways, for example, by receiving a promotion (Korea 29 Dec. 2006). The crackdown has been advertised to the public by various means throughout South Korea (ibid.). Police managed to arrest at least two private moneylenders in separate incidents for charging and collecting interest higher than the legal limit in violation of the moneylending law (Newsis 19 Jan. 2007; **Kukmin Ilbo** 29 Jan. 2007). **According to the NPA, these loan sharks strive to keep their identities secret, for example by frequently moving their offices, using anonymous phone numbers and making financial transactions using accounts that cannot be traced to them (Korea 29 Dec. 2006). They use various methods to advertise their services such as spam e-mail messages and text messages, and posters on roadside trees and electric poles (ibid.).**

Members of the government are also saying that it needs to do more to protect people from loan sharks (**The Korea Times** 22 Feb. 2007) According to **The Korea Times**, Finance Economy Minister Kwon O-kyu, who is also deputy prime minister, says that a "state-initiated social safety net" is necessary to protect the many Koreans who are indebted to private moneylenders charging extremely high interest rates (22 Feb. 2007). In addition, Vice Finance-Economy Minister Chin Dong-soo was reported as saying that the government must prevent loan sharks from taking advantage of people with low incomes by charging interest rates over the legal limit (**The Korea Times** 22 Feb. 2007). The Ministry of Justice is reporting that the yearly interest rate limit will "likely" be reduced to 40 percent (ibid.).

The report confirms a number of facts which are consistent with the applicant's statement about his fears. These are that:

- The problem of loan sharks is a significant social problem in South Korea, and as such, has been identified by the South Korean government in the 2002 *Moneylending Registration Act*.
- Unemployed young adults are particularly targeted.
- Loan sharks commonly resort to violence to collect money
- Loan sharks keep their identity secret by frequently changing their name and moving premises.

While the South Korean police are attempting respond to this problem, given the above facts, they have not been effective in providing the level of protection needed by the applicant. A report from the Korea Times dated 13 May 2008 ("KT Report") states the following:

Foreign private moneylenders are increasing their presence in the local financial market, boosting their loan services to customers with low credit ratings.

According to the Financial Supervisory Service (FSS), assets of top five foreign moneylenders operating in Korea grew by over 88 percent to 2.8 trillion won at the end of 2007 from a year earlier.

They posted a combined net profit of 272.3 billion won in 2007, up 144 percent from a year ago.

The big five foreign lending agencies are Rush N Cash of Japan; Peninsula Capital of the United States, a unit of Merrill Lynch; Sanwa Money of Japan; GE Real Estate of the United States; and Prime Financial of the United Kingdom, a subsidiary of SC First Bank.

Profits of Rush N Cash account for over half of the big five, the regulatory body noted.

The regulator said foreign moneylenders are attracted to doing business in the country as they can apply higher interest rates on loans than other countries.

By law, private moneylenders cannot apply interest rates of more than 49 percent a year.

"That is still considered high when you compare with other countries such as the United States. Foreign moneylending agencies have been lured by it," said an FSS official.

Also, low entry barriers to the private moneylending market have boosted the number of foreign companies, mostly from Japan, the official said.

Private moneylenders are not required to register with the financial authority. But they need to register with the local city and provincial government offices at which they operate.

**The FSS cannot monitor, inspect or discipline private money lending businesses as local cities and provincial governments have jurisdiction over them. The regulator can inspect firms only at the request of government offices.**

**Given such circumstances, the transparency on the market has been poor with few details having been revealed regarding risks.**

"It's a risky business," said the official...

It is notable that the KT Report alludes to the difficulty of regulating the practices of loan sharks and makes reference to the loan company mentioned by the applicant.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons, USDS report, 2009 reported that abuse against the most vulnerable in society occurred:

"Persons with Disabilities

In April the Anti-Discrimination Against and Remedies for Persons with Disabilities Act (DDA) took effect ... Nevertheless, the hiring of persons with disabilities remained significantly below target levels."

We submit that it is possible for a person with a drug dependence problem can be considered to be disabled by virtue of his or her dependence and that such a person would be likely to suffer significant discrimination in South Korea.

### **Entitlement to protection**

In order to establish an entitlement to protection in Australia, the applicant must demonstrate that he subjectively fears that he will be seriously harmed in South Korea, and that there is an objective basis for his fear.

The fear of being harmed must relate to the reasonably foreseeable future. In our submission the applicant's claimed fear relates to the reasonably foreseeable future.

Finally, the applicant must demonstrate that his fear of harm is Convention related.

#### Subjective fear

Based on the applicant's claims to date we submit that you should accept that the applicant has a well-founded fear that he will be seriously harmed because of his father's failure to repay his debts and because of the applicant's drug dependence.

#### Objective basis for his fear

When assessing whether an objective basis for the applicant's fear exists, the Tribunal is required to determine whether the evidence reveals a real substantial basis for the fear of serious harm. It is not necessary for the applicant to demonstrate that it is more probable than not that he will be harmed, or that there is any certainty that the harm he fears will be realised.

If the applicant is able to demonstrate, that there is a substantial basis for his subjective fear; and further, that his fear of being seriously harmed in South Korea is neither remote or insubstantial or "a farfetched possibility", we submit that the Tribunal is required to accept that the applicant's fear of serious harm is well-founded.

Based on the independent information cited above in relation to the prevalence of violent attacks against those who fail to repay their debts and the inability of the South Korean authorities to provide protection to the victims / potential victims of such violence, we submit that the Tribunal should accept that the visa applicant's fear of being seriously harmed because his father has failed to repay a substantial debt has an objective basis.

**Based on the independent information cited above in relation to the level of discrimination against people with disabilities, we submit that the Tribunal should accept that there is a substantial basis for concluding that the applicant will be subjected to a level of discrimination because of drug dependence that his capacity to subsist will be threatened.**

#### Convention nexus

Given the prevalence of violence against the families of those who default on their loans in South Korea, we submit that people who victims of such violence are capable of being characterized as a particular social group within Korean society. Therefore his claims in this regard are properly characterized as being Convention related.

Given the incidence of discrimination against people with disabilities in South Korea, we submit that the people with disabilities in South Korea are a particular social group within Korean Society. Therefore his claims in this regard are properly characterized as being Convention related.

#### Conclusion

For the above reasons, we submit that you should accept that the applicant has a well founded fear of being seriously harmed in South Korea for a Convention reason and consequently Australia has protection obligation to the applicant.

*The second hearing before the Tribunal held [in] December 2009*

63. This is the resumed hearing held before the Tribunal [in] December 2009.
64. The following is a summary and it is not a transcript.
65. An interpreter was provided for the applicant if he required her services. The applicant said he would prefer to try to answer the questions himself and if he got into any difficulty he would ask the interpreter for assistance.
66. The applicant's then agent assisted him in preparing the documents. The applicant and his then solicitor went through the completed documents together, and the applicant is satisfied that documents 'B', 'C' and the Statutory Declaration reflect his claims. He stated the information in those documents is correct. They still represent his claims for refugee status.
67. However, the applicant wished to add something more to his claims. About one month ago the applicant went to the present solicitor's office and gave information and they said they would send it to the Tribunal. The issue relates to the applicant's medical issues. The Tribunal stated it received a submission from the applicant's solicitor [in] November 2009. There was also something from the doctor. The Tribunal said that it had received that and it is on the file.
68. The applicant started using drugs about two years ago and stopped about one year ago. The applicant corrected that, and he said he started a year and a half ago, and he stopped half a year ago. The applicant attends a clinic once a day. The applicant was addicted to heroin.
69. The Tribunal asked for the applicant's passport. The applicant said that his original passport expired, and he went to request a new one.
70. The applicant's age is [deleted: s.431(2)]. The applicant first arrived in Australia in 1997. He arrived in [location deleted: s.431(2)] where he attended primary school. His mother was with him at that time. The applicant's father came to visit them sometimes from [Country A], but not often.
71. The Tribunal indicated it had a document called 'Movements Details'. It shows the applicant's movements in and out of Australia. The Tribunal said it would work backwards from the last time the applicant arrived in Australia [in] February 2007 having left Australia [in] January 2007. He stated he went to Korea. When he was in Korea the applicant visited both sets of grandparents and his cousins.
72. In the period before that, the applicant left Australia [in] January 2007 and returned [six days later in] January 2007. The applicant said he went to [Country A]. When he went to [Country A] he visited his parents.
73. [In] April 2006 to [a date in] May 2006 he went to [Country A] to visit his parents. The applicant had to renew his application for a Student visa in [Country A] as his Student visa had expired in Australia. He was studying for a Bachelor of Business degree.
74. The applicant departed Australia [in] December 2000 and arrived back [in] January 2001. The applicant thought he had gone to Korea during that period, or [Country A]. The Tribunal said in the applicant's list, showing details of his travel abroad he had indicated that he had gone to South Korea during this period (see folio 27 of the DIAC file) The applicant agreed



with that. He visited and stayed at his grandparents' home. That is on both his mother's and father's side.

75. From [a date in] March 1997 to [date] April 1997 the applicant went to Korea to visit his grandparents.
76. The trip before that was [in] February 1997. The applicant said it could have been to [Country A] to visit his parents. The applicant also said that perhaps from [a date in] March to [date] April 1997 he went to Korea, and on the short trip above he went to [Country A].
77. The applicant said he went to New Zealand for one year in 1996, and flew back to [Country A], or Korea. He is not sure. He is sure he went back to Korea at the end of 1996 after New Zealand, possibly he then came back to Australia and then went to [Country A]. The point is, the applicant flew from New Zealand to Korea and therefore it would not show up on the movements details records relating to travel to and from Australia.
78. The Tribunal said the first date that the applicant arrived in Australia was [in] February 1997. The Tribunal said that the applicant came to Australia and possibly after a couple of days here went to [Country A] The Tribunal suggested it would have been to visit his father as he had come out with his mother. The applicant agreed.
79. The applicant said that he entered and left Korea legally on his own passport in each instance. The Tribunal suggested that the applicant was of no interest to the passport checks or customs. He did not reply.
80. The applicant was asked when the problem with the loan sharks started. That is, when did the problem with the people who lent money to his father start. He said it was when he was in Korea, in primary school, so this was in 1995/94.
81. The Tribunal said the fact that the applicant had gone back to South Korea may indicate that he had no subjective fear. That is, the question is why did he go back if people were going to hurt him. The applicant said when he went to Australia. At his age all other Koreans usually go back to Korea every holiday. When he was young, he was not that interested in knowing how serious the money debt 'thing' was with his parents, and he just really wanted to go back to South Korea. He did not want to be in Australia. He wanted to be back with his friends. He cried many times and he guesses that is why his parents sent him back to Korea, even for one month, because he was really under stress in Australia at a young age. He could not speak English well. He was homesick. When he went back every time he realised his family was telling him these stories. His parents did not want him to really know about these things at that time. The grandparents showed him all the letters, how people came in, and what they did. He just stayed with his grandparents. He could not go and meet his friends where he grew up. He just had to stay in his grandparent's house. His grandparents told him if there was no-one else at home and someone rang the bell he should never open the door because people would be looking for him. So he was scared when he went back. It makes sense, he only went back three or four times in the whole 12 years. All his friends went back at least 20-30 times. They would go every holiday, two or three times per year.
82. The applicant's parents are now living in [Country A]. He does not have any brothers or sisters. His parents live in Port Moresby. The Tribunal asked whether the applicant's father still had a business interest there. The Tribunal asked what had happened to the applicant's factory in Korea. The applicant said that factory is owned by his grandparents. The applicant

said it is no longer running. It is supposed to be, but right now it has been stopped for a month because there have been some problems. His mother told him over the phone what had happened. He thinks that there was some problem with money. He asked his mother why even at this later stage they are still chasing them for the money. His mother said they won't be able to pay the debt. The factory has only stopped temporarily.

83. The Tribunal asked whether the applicant had a passport for [Country A]. He said he didn't think so because his parents organize everything. He can go there anytime. The Tribunal asked what passport the applicant went on when he left Australia. He said it was his South Korean passport. The Tribunal asked what passport he used when he arrived in [Country A]. He said he doesn't use it. He just goes out the gate and his dad will be there. He does not need a passport.
84. The Tribunal asked whether the applicant's parents are citizens of [Country A]. The applicant responded he did not think so. The Tribunal said that they had been living there quite some time now. The applicant agreed and said that they must be permanent, although he is not sure. He has not asked them. The Tribunal asked how long they had been living in [Country A]. The applicant said his dad had been living in [Country A] for 13 years. His mother was with the applicant in Australia until the end of 2002. From 2003 she was in [Country A]. That is, six years.
85. The Tribunal asked whether there is any reason why the applicant could not go and live in [Country A]. He said he could not live there as it is very dangerous, there is nothing he can do there. He said it's extremely dangerous, he can't do anything there. He stays indoors, it is not a place to live in. The reason he goes over is to meet, and be with, his parents. It is not a place to go and live in.
86. The Tribunal asked whether the applicant's parents work in [Country A]. He said they did. The Tribunal asked whether it was not dangerous for them. He said it was. The Tribunal asked whether they had been attacked. He said yes. The Tribunal asked what happened to them. He said that they were attacked by other people in a car. Two people died and two people survived, one was his father. His back, his spinal cord, was injured very badly and up until now there is some problem with it. His left leg is not well. He is very lucky that he can move.
87. The Tribunal asked whether it was an accident, rather than some sort of attack. The applicant said it was an attack. It was an accident attack. The applicant then said it could have been an accident. He said it happened around 1999. The applicant said that he heard that his father had been attacked. These people were bringing guns to his factory in [Country A]. They put a gun to his head sometimes. Things happen. It could be an accident but it will be related to some sort of attack. He was attacked and this accident happened. He was attacked. The applicant heard that his father had been attacked many times.
88. The Tribunal said it appeared to it that the applicant possibly did have a right to go and live in [Country A]. The applicant said he does have a right to go and live in [Country A], but his parents would 'disagree for him to live in [Country A]' because there is nothing he can do other than to sit at home and watch TV because they wouldn't allow him to go outside, even with a car. It is dangerous with a car. He cannot sit in the front seat, as he could be seen from outside. He said he never walked outside the house in [Country A]. He could stay there temporarily, but he cannot really live there.

89. The Tribunal said the applicant lived in New Zealand for a year. He agreed. The applicant said that he was studying there. He was studying Year 6 in Australia (syllabus). Over there it is called Form 1. It is the same as Year 6 in our primary education. He was at [location deleted: s.431(2)] primary school. This is in [location deleted: s.431(2)]. He was there from [a date in] December 1995 to [a date in] December 1996. The Tribunal asked the applicant his status in New Zealand. He said he was a student.
90. The Tribunal asked the applicant whether he had applied for any other visas in Australia whilst he has been here, other than Student visas. He said he was planning to apply for a Permanent visa when he was studying. When he was in Year 10, he could have applied for a Permanent Resident visa at the time. Anyone who came to Australia before they turned 18 and had lived their formative years in Australia could get a Permanent visa. He was just about to apply for it when the law changed. He has now decided to finish university and apply for a Permanent visa. He said that if he finishes his university, he can get a Permanent visa.
91. The applicant has two semesters left before he achieves his university degree. The applicant is studying at [University deleted: s.431(2)].
92. The applicant agreed that he had not been arrested or detained by the Korean authorities.
93. The Tribunal asked the applicant whether he applied for the Protection visa [in] August 2009. He agreed. He was asked why he did not apply straight away when he found out about the difficulties in Korea. He said that he did not need to if he continued with his studies, and graduated, he could get a Permanent visa here. His plan was to live in Australia forever, not to go back at any time. He was to have a good career. That was the best way, or option, for him. The Tribunal asked whether after graduation he would get a permanent visa. He said he could get one within four weeks
94. [Information regarding applicant's immigration history deleted: s.431(2)] His visa had expired. The applicant had been using drugs during this time. The applicant agreed that it was the reason that he had not renewed his visa. He could have renewed it, but he was on drugs and he was out of his mind. If he had extended his visa, everything would have been good, but if he did not, his life was not good. [Immigration history deleted: s.431(2)]. The two sub-major semesters had been completed. This was in early 2008. His Student visa expired and he was waiting to stay till the next semester. He was planning to go to Immigration to renew. However he was affected by drugs. The Tribunal suggested that things were on hold from the end of 08. The applicant agreed. The applicant said if he was from another country he could go back to that country and apply for an Australian visa from there, and then continue university. However, because of his situation he had to stay in Australia, he could not go back to South Korea. If he did, he would have been caught automatically at the airport and sent to the military army service, which is compulsory for all Korean boys. So, as long as he attends university in Australia, he does not have to do military Army service. It can be extended, but if he did not go to university, but if he does not have a visa, if he went back to Korea, he would be caught at the airport. He would not be able to go home or call his grandparents. The Tribunal asked why he would be caught. He said that anyone who has to go to the Army, and they have returned from overseas, they will be caught. The Tribunal said that he was liable between the ages of 18-35 for military service, so anytime that he went back to Korea after 18, he could have been potentially caught. He said yes, but as long as he was extending university, he could extend the military Army service. The last time he went to Korea when he was attending university, he extended

the military service. Even if you are an Australian citizen, they would send you to the Army straight away. That is why he decided to stay legally in Australia and sort something out in the upcoming semester, which was July 2009.

95. The Tribunal asked what had happened to the applicant's grandparents or father regarding the loan sharks. Had any of them been abducted, beaten or killed? He said, not killed. He said there were people coming to his grandparent's house and he has a little cousin and she is in Year 11 in Korea. She was threatened by these people as well. These people coming to his grandparent's house wrecked the furniture. They kept asking where their son is. They said they did not know where he was. They would not stop. They went to the grandparent's factory, and wrecked the machines. They know that even if the applicant's parents had escaped to another country, that the applicant would be at school, so they tried to find him. They have sent a pile of letters to his grandparent's house. The interest on the loan keeps growing.
96. The Tribunal indicated that in the applicant's Statutory Declaration he had stated that people came to the factory and demanded repayment of the debt. They threatened to wreck things in the factory, and kidnap him, if the debt was not settled. The Tribunal said that this is assuming that the applicant was still in Korea.
97. The Tribunal asked who took out the loan, was it his father? He agreed. The collateral was his father's parent's factory.
98. There was a short break in the hearing.
99. The Tribunal asked what the applicant would fear if he were to return to Korea. He said first of all, when he goes back to Korea, he will be sent to military Army service. He said people who grew up overseas, it is very hard for them to associate in, be in the military service. There is all the training and everything, and he is not healthy as well, and physically his body is not healthy, so he could not take it at all. He would get really scared of being there. He does not know what Korea is really like. He has been growing up in Australia. He is almost more close to 'Aussie' than Korean. He is really scared about this. He dreams about this, and gets really scared. Mentally and physically he is not well. Mentally he is very scared about going into military service.
100. The Tribunal asked whether he feared anything else. Most importantly, as he has been using drugs and getting treatment in Australia, the first thing is when he goes back, usually students when they come back from overseas and their visa has expired, especially students in his situation, they check their DNA and everything, and they will know whether he has been using drugs or not. The Tribunal asked how they checked. He said they would check by blood test, and DNA from hair, and because he has marks on his arm. Anyone with these marks on their arms will go to gaol. If anyone uses drugs overseas and comes back to Korea, even if the substances are not in their body anymore, they will be sent to the court and go to gaol. He has seen this happen before in many cases. He is really concerned.
101. When the applicant was in [Location 1], there were South Koreans who were born in North Korea, in [Location 1]. They knew the applicant was getting treated, and they did not like the applicant, and they sent a report to the Consulate (South Korean) that he was using drugs. He said that the people at the Embassy know about it. The Tribunal said that the applicant had not raised this point previously. He said he knew that. He said the people had been sent back to South Korea now and he saw them sending messages to the Korean Consulate saying that

he used drugs. They told him that when he went back to Korea, they would report him as a drug user overseas. He has not seen them doing that, but he has seen them telling the Korean Consulate that he has been using drugs. Even if they did not, he will be sent to court when he returns as he used drugs. Even some people who had used marijuana before in Australia, and they return to South Korea, even if they are caught at the airport, and they find out that they used marijuana he would be sent to gaol for three years.

102. The applicant is getting treatment in Australia at [a clinic] now. In Korea he has been checking all over for treatment. There is no heroin treatment in Korea as heroin does not exist in Korea. From the Korean Health Commission he has checked everything. There is no programme, or Methadone or another drug. Heroin does not exist in Korea, so there is no treatment for it. That is why he is worried. That is why he asked his doctor, [Dr A], who recommended to him that he gets at least one and a half to two years treatment to become normal. So the applicant will face military issues, and drug issues, and he will be sent to gaol. So they know he used drugs, and there is no treatment. He will not be able to get treatment. Or if he goes to gaol, he will not get treated, and if does not go to gaol he will not get treated.
103. The Tribunal asked if there was anything else the applicant feared if he went back. The applicant said a personal thing was that if he goes back, he knows that he did not get educated in Korea. Only when he was very young. His friends and family will not be there in Korea, just his grandparents and cousins. However, he never had a very good relationship with them, and he has been away for ten years or so. He will be very alone, and he will not be able to get a job there because his Korean is not good enough, and he did not finish his university. He is also worried about his parents, although this is not a Protection visa issue. Most importantly, it is the drug. It is a drug thing, it is the most important. If it was not the drug, and the military service, and his parents' debt problem, he would have just gone back to Korea, and applied for a visa or something else, and come back, or gone to university in Korea. But he decided to apply for a Protection visa.
104. The Tribunal said the applicant made the following statement in one of his documents when he was going for a medical exam. The applicant wrote, 'I was on a drug addiction and I am getting a treatment in [Location 1]. There is no such treatment such as methadone or buphernorphine and suboxon within withdrawal programs in S Korea and will be getting an ongoing treatment from clinics outside once I get any visa as well.' The applicant confirmed that treatment was at [a clinic].
105. The Tribunal stated that the applicant told it that he did not like military service for particular reasons. The Tribunal then asked if the applicant had any objection, does he dislike military service for any other reasons. He said if he goes into military service firstly, after the health check, first thing, he will have to take all his clothes off, and on his arm there are big track marks and needle marks, and they will see it, and as soon as they see it, they will send him to the military gaol and the military court. That is the one thing that they will see, his marks, so they will know that he has been using the drugs. That is one thing. If he goes there, because his treatment has not been finished, he is very, very sick without Methadone, and he will not be able to keep going with the military life. That is what he is scared of. Usually people who are overseas for more than ten years do not have to go into the army because they get a visa exception. They will have to find out about the drugs before he joins the Army.

106. The Tribunal asked if he had any other philosophical objection to military service; things like that. The applicant said, 'Like mentally you mean?' The applicant said he guessed not, as he is mentally just not used to Korea.
107. The military in Korea is different to Australia. People die from the training. People beat people up. They hit people. And it was much worse before. It has got better, but they still beat people. Their common sense is totally different to Australia, in Korea, especially in the Army. And the way they treat things in the Army. He is having a lot of trouble there. He will be like a type of reject. If he says he cannot do the training because he is very sick; he will get beaten up. There are people who suicide there and they cannot handle it. He really feels if he goes there he will suicide. He thinks people like him will suicide because he feels like suiciding. He will be there for two years. The training is for two years. It is full-time. He gets holidays like two weeks in six months. If they say because you have been using drugs, and with the track marks and blood tests, and everything, and they say you are unable to go to the army, then everyone who is unable to go to the army goes to gaol for two years. That is the equivalent. That is what they do in Korea. When you decide not to go to the army then you go to gaol.
108. The Tribunal said it wanted to give the applicant some information which the Tribunal may consider would be a reason for confirming the Department of Immigration's decision. The Tribunal says it does this in almost every case. The Tribunal said it will explain the relevance of the information that it gives to the applicant, and the consequences of the information. Overall, if the information that the Tribunal gives to the applicant is not answered, or is not responded to so that it satisfies the Tribunal, then the applicant will not get a Protection visa. The Tribunal said it will invite the applicant to comment on, or respond to the information. It stated that he can respond to the information orally. The Tribunal stated that, for example, at the hearing today, it can say something, and the applicant can say the answer is so and so. The Tribunal said, or, it can give the applicant the information at the hearing today, and he can take the disc home, or to his solicitor's office, and listen to it, and then write, or ask him to write a response on the applicant's behalf after the discussion, and then send it back to the Tribunal. The Tribunal said there is also a third possibility of going about it. The Tribunal can give the applicant the information today, and he can come back in a couple of week's time and answer the Tribunal orally then. The applicant indicated he wanted to come back. That way he can think about it and organize more, and then come back.
109. The Tribunal said he could possibly combine the options, but the trouble that he runs into with that is that he may contradict himself by saying something here, and then thinking about it and suddenly thinking later that there is something else that he should have said, or he should not have said that. And if he sends or writes letters saying something different later then it may not look good. But it may be accepted because it is just a simple mistake, or it might be thought of as 'I should not have said that'.
110. The Tribunal asked if the applicant knew what it meant. He said he did.
111. The Tribunal said that the applicant does have an advisor.
112. The applicant asked the interpreter to interpret what the Tribunal just said.
113. The interpreter interpreted for the applicant. She then advised the Tribunal that she just interpreted from the reasons from the Department's decision, and from then on, and he

understood how he could answer from the Tribunal's information. But he asked if she would say, once more, from the beginning of the Tribunal's previous remarks. The Tribunal did so.

114. The Tribunal said it would go through the information now. The Tribunal said it understood that the applicant was not responding today. The applicant said he would do the second option with his lawyer, and then the third one. He will consult with his lawyer, and then come back. The Tribunal repeated that option as a combination of options two and three, and the applicant said yes.
115. The Tribunal stated that the first piece of information is as follows.
116. The claim regarding the debt and the people pursuing the applicant as well as the heroin addiction and the difficulties he would possibly face if he were to go back to Korea, do not appear to be related to the Convention. That is, the Refugees Convention. The applicant's solicitor has indicated that there may be a particular social group consisting of families of those who default on their loans in South Korea which would, if correct, possibly bring it within the Convention. However, the information that I have relating to the protection of Koreans is as follows.
117. South Korea is one of the world's safest societies. There is the report of the Economist Intelligence Unit's 2008 entitled 'South Korea Risk: Security Risk', 31 March 2008. Also the National Police Agency indicated that beginning in January 2007 it was undertaking a three-month special crackdown on loan sharks engaged in violent business practices and charging illegal interest rates (29 December 2006, *NUWSIS* 18 January 2007). As part of the crackdown effort the task force team will offer direction to 235 police stations, and 1,236 team members as they investigate the issues in relation to this. Police are also setting up call numbers on a website, so that citizens can report illegal financing (See also *The Korea Times* 15 January 2007. Moreover, any police officers who excel at apprehending people suspected of loan sharking, will reportedly be rewarded in various ways, for example, by receiving a promotion (See *Korea* 29 December 2006).
118. Further, Police managed to arrest at least two private money lenders in separate incidents for charging and lending money above legal limits (see *NUWSIS* 19 January 2007). Further, the police have arrested 32 ethnic Koreans from China who are part of a criminal gang called the Yanbian Hei She ring, that operated in Chinatown in Garibong-dong, Guro-gu, Western Seoul' (see 'Police Smash Violet Chinese-Korean Gang' 2007, *Chosun Ilbo*, 27 April 2007).
119. Similarly, *Korea Times* reported in October 2007 that the number of 'gangsters' being watched by authorities had surpassed 10,000 since a nationwide crackdown on organized crime began in the 1990s. Sources have also reported that organized crime groups were being forced into other areas of operations such as drug crimes, following police crackdowns on their regular activities (10,000 Gangsters Under Surveillance in 2007, *Korea Times*, 8 October 2007; and 'Rising drug crimes 2006', the *Korea Herald* 16 June 2006; and 'Threats Highlight Mob Role in Korean Show Business' 2007, *Chosun Ilbo*, 8 February).
120. Furthermore, in a report dated 2001 'BBC monitoring Asia-Pacific' it was noted: 'the police will also provide full protection to anyone who offers information concerning the activities of gangs.' ('Seoul Police to crack down on organized crime' 2001 *BBC Monitoring Asia-Pacific*, 6 December).

121. The Tribunal stated that the relevance of this is that the claims may not be part of the Convention definition, and as such the applicant's application for a Protection visa on those claims would possibly be rejected.
122. The Department of Immigration referred to a claim that the applicant raised about being a resident in Australia for twelve years, and there may be some threats of violence because the applicant had lived here for that long. The Tribunal cannot at this stage, or is having difficulty seeing, the basis of that claim. If it relates to gang extortion, or other activities of a similar kind, then the Tribunal would say that, at this stage that the country information suggests that the police are on top of those issues.
123. Regarding information concerning the police and the judiciary in relation to the last point about being in Australia for twelve years, and also the preceding points about the loan extortion rackets, loan sharking, another piece of information which can be found on the World Bank website, called 'Governance Matters 2008: Worldwide Governance Indicators, 1996-2007: South Korea' 2008, World Bank (website). The various countries of the world were assessed as to how they measured up against the Rule of Law as part of an overall governance indicator, in this case South Korea is of interest. In this regard, the Worldwide Governance Indicators (WGI) research project, covering 212 countries and territories, measures six dimensions of governance from 1996 – 2007. One of those, 'The Rule of Law' measures 'the extent to which agents have confidence in and abide by the rules of society, in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence' The results of the research project are made available on the World Bank website. The 'Rule of Law' results for South Korea were presented in terms of the Percentile Rank and the Governance Score. The results indicate that for the rule of law South Korea was ranked in the 75<sup>th</sup> to 90<sup>th</sup> percentile in 2007, 2005 and 2002; and the 50<sup>th</sup> to 75<sup>th</sup> percentile in 1996, 1998, 2000, and 2003 – 2004.
124. The Tribunal indicated that the above may indicate that South Korea is a reasonably law abiding country and one in which the police and judiciary react responsibly and effectively. The relevance of this is that any unlawful matter which may arise against the applicant can be reported to the police and it would appear on the basis of the country information which the Tribunal has provided, that there is a very good chance that the applicant's complaints will be dealt with appropriately. So, regarding the residence in Australia for twelve years and going back to Korea, this may mean that this claim may not be successful and the applicant's claim for a Protection visa may not ultimately be granted.
125. The next point of information that the Tribunal provided to the applicant relates to the military service in Korea. The first point is as follows.
126. It would appear that military service is a law of general application and is not applied in a discriminatory fashion. That is, it is a law that applies to all people who fall within the parameters who are able to be conscripted into military service. The information that the Tribunal has in relation to military service is that found in website [www.koreatimes.co.kr/www/news/nation/2009/10/113\\_53260.html](http://www.koreatimes.co.kr/www/news/nation/2009/10/113_53260.html) There is a series of other sources including the United Nations 2007, *Committee on the Rights of the Child: Consideration of reports submitted by states parties under Article 8(1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict: Republic of Korea* pages 5 and 7. Also in the Conscience and Peace Tax International 2006, *Briefing paper for the Human Rights Committee Taskforce on the*



*Republic of Korea: Conscientious Objection to Military Service*, Office of the United Nations High Commission for Human Rights website, February.

127. Another reference is 'Major Illnesses that preclude Active Duty and Physical grading criteria' (undated), Military Manpower Administration website.
128. Further, MIMBYUN and Korea Solidarity for Conscientious Objection 2008, 'Korean Government cancelled Alternative Civilian Service: Briefing Paper on Conscientious Objection issues in the Republic of Korea', Solidarity for Peace and Human Rights website pages 5-6.
129. The Tribunal stated that a summary of those reports is as follows:

Available information indicates that South Korea has compulsory military service for male nationals. Reports indicate that when a male reaches 19 years of age they are required to undergo a conscription examination. Reports indicate that individuals are then categorized into one of six or seven grades depending on the outcome of their examination. Available information indicates that those found to have physical or mental 'deficiencies' are exempt from the first three grades of active military service. Individuals who are exempt from active military service may be categorized under supplementary military service, second militia service or may be completely exempt from military service. Supplementary service may require a person to undertake work in the public service and second militia service requires a person to provide military service only in times of war. South Korea does not allow individuals to refuse compulsory military service on the grounds of being a conscientious objector.

130. The Tribunal stated that this indicates that the applicant would be graded, and depending on the results of his examination, he may be able to get an exemption, or be able to work in the public service, or second militia service.
131. The Tribunal further indicated that the applicant did not provide any information or claim that he had any conscientious objection to military service; so that will not be considered. In any event, the law is one of general application. So the relevance of this is that if the applicant were to go back to Korea and he were to enlist for military service, the chances are that there is an opportunity that he may be exempted or he may be given alternative service. Ultimately this may mean that the applicant's claim for a Protection visa may not be successful.
132. The Tribunal stated that the next point of information is that the Tribunal is unaware at the present time that there is any discrimination by the police in providing protection to particular citizens in relation to threats of violence and extortion. This means that the Tribunal may find that the Police would act in a way where access to protection is not discriminatory. This along with other information may exclude the applicant's claims from consideration under the Refugee Convention.
133. The next point of information is that the applicant returned to Korea in 2007, from [a date in] December 2000 to [a date in] January 2001, in 1997, and maybe another trip. So the applicant possibly returned to Korea without incident three or four times. This may indicate that the applicant has no subjective fear of persecution in Korea. The Tribunal noted the applicant's comments during the course of the hearing that initially he just wanted to go back, and other children were allowed to go back, and he was only allowed to go back three or four times. This was during the period that the applicant was in Australia attending school. However, it does indicate that even though the applicant was a child during some stages of

his visits to Korea, his parent's control of his movements at that young age indicate that they had no apparent problem in him going back. He mentioned that there were some steps taken to keeping him safe by keeping him in the house. The Tribunal finds it difficult to accept that a child could stay in the house during his holidays without being in contact with friends, and other groups, and so on. It would appear to be inconsistent at this stage that a person fearing possible kidnapping or some other form of criminal activity against them may go back to a place where they would be putting themselves at risk. The Tribunal repeated that it is difficult to accept that a person would go back to Korea and put themselves at risk. It may be an indication that he did not have, or his parents did not have for him, any subjective fear of being at risk, and they allowed him to go back to Korea. This may mean that the claim of extortion, loan shark activity, trying to kidnap him, and so on may not be correct. It may be something created or manufactured or exaggerated, at least. It may put the applicant's credibility in issue. This may ultimately mean that the applicant would not be provided with a Protection visa.

134. Another piece of information that the Tribunal wishes to give to the applicant is that the applicant's parents have been living in [Country A] for quite some time. The applicant's father has lived there longer than his mother. The applicant indicated that he does have a right to return to [Country A], and live in [Country A]. Given that information, the Tribunal may find that the applicant does have a legal right to return to and reside in [Country A], and that may mean that Australia in those circumstances would not have to provide him with any protection, by granting him a Protection visa. This is because he has the right to live somewhere else. The Tribunal is not entirely convinced that the applicant does not have a [Country A] passport. In circumstances where the applicant has lost his Korean passport the Tribunal cannot check to see whether his Korean passport was stamped for entry and exit from [Country A].
135. Given that the applicant's parents live there ([Country A]) and have for some time, and he has said that he has a right to live there, the Tribunal may find that even if the applicant does not have a passport at present, he could obtain a passport. He could obtain some form of permanent residency or citizenship, as his parents have done so. He could live in [Country A]. The relevance of this is that the Tribunal would not have to consider his claims in relation to Australia, as he could live elsewhere.
136. The final piece of information is that any law in South Korea relating to individuals who have been using drugs, would appear to the Tribunal to be laws of general application, and not applied in a discriminatory fashion against the applicant. As such, it would not invoke the protection of the Refugee Convention. The applicant asked the translator to translate this particular part. She did so.
137. The Tribunal said there is no indication to the Tribunal that the applicant would be treated in any other way to any other person, who may have been a past user of narcotics. This may, in the circumstances, mean that the applicant's claims in relation to drug addiction and past addiction, and having to go back to South Korea, and having to face possible criminal or governmental sanctions, do not come within the Convention definition. The interpreter also interpreted this for the applicant.
138. The Tribunal indicated that other information that the Tribunal is in a report entitled, *'The Current Drug Situation and its Countermeasures in Korea'* dated 17 October 2003. Information is provided on the treatment and punishment of narcotic addicts. The report states that the Act (Act on the Control of Narcotics, etc) 'prescribes for compulsory

hospitalization of narcotic addicts'. The report states that 'Under the Act of control of Narcotics, etc, a drug abuser who turns out to be a drug addict can be subject to compulsory treatment or to punishment. A prosecutor has the discretion to decide whether to take only one option or both. This is in an article by Shin, H. S. 2003, entitled '*The Current Drug Situation and the Countermeasures in Korea*', Legal Research and Training Institute website, 17 October, pages 25 and 33-34. The interpreter interpreted this last piece of information for the applicant.

139. The interpreter interpreted for applicant who asked whether that meant that drug abusers or addicts have to go through these two options, or one or either treatment or punishment, or both treatment and punishment. The Tribunal responded that it is either compulsory treatment or punishment, or both. The applicant asked whether the heroin treatment is available in Korea now, or does he need to ask the question later on. The Tribunal said that in a series of reports which it will not refer to, because of their length, they say that. However, the Tribunal said it would send a list of the references for this particular piece of information. That is, available information indicates that in South Korea individuals who commit drug offences are subject to criminal penalties, and may be subject to compulsory drug treatment. A 2005 report by the United Nations, Asia and Far East Institute indicates that upon the Court's discretion a drug offender may be required to undertake compulsory treatment prior to their imprisonment for a drug offence. The Tribunal said they are talking about compulsory treatment. So it sounds like medical treatment, to the Tribunal. The report states that the compulsory treatment is counted as part of the drug offender's prison sentence according to the 2000 Narcotics Control Act, etc, the period of medical treatment is limited to six months or less and penal provisions apply to drug offenders who refuse medical testing or treatment. The Tribunal said this seems to indicate that there is medical treatment available.
140. The applicant said the medical treatment in Korea, and the drugs that people use in Korea is not heroin, they call it Ice. He knows the treatment is totally different, and there is no way that, even if he gets the treatment, it will be totally pointless and useless for him, because the treatment for heroin is only Methadone and Buprenorphine. That is the only treatment that he needs to take and he has already checked it for long term users, and those things. The Tribunal asked whether the applicant was referring to Diacetylmorphine. He said he was not sure what that was. The Tribunal said if the applicant has the information it has to be provided in writing so the Tribunal can see what it is or a letter from the applicant's solicitor attaching the article. If the applicant is going to come back to the Tribunal and tell it the answers, the Tribunal does not mind this but if he has any documents in support the Tribunal would actually like to see them. At the moment the Tribunal has no reason not to believe the applicant but it does have a responsibility to confirm what he is saying is true. If he could provide the research to the Tribunal it may be useful.
141. The Tribunal said it did have a reference saying that heroin and cocaine are only sporadically seen in the Republic of South Korea and Koreans generally do not use heroin. This agrees with what the applicant is saying, but it does not say that there is no heroin. The applicant said it may be available but there is no treatment. The applicant said he would try to get something in writing. The Tribunal said that would be good.
142. The applicant said even in South Korea, they know that he is using drugs, they will check his arm and they will check his body and they will find out that he has used drugs and he will be charged, and everything. He asked, even though that is what will happen, will he be sent back. The Tribunal said that is what it is saying. It is the information it is giving to the applicant and he can respond by saying he does not agree for the following reasons.

However, it is important that some of the arguments in relation to being a drug addict or having used drugs in the way the applicant has, and the other claims the applicant has made are legal arguments, and something that the applicant's advisor would probably have to assist the applicant with. So there is no example that the Tribunal can give to the applicant. What the Tribunal is basically saying with the compulsory military service is it does not fall into any of the categories. With the drug use, it does not fall into any of the categories.

143. The applicant asked even if it is definite that he will be sent to gaol if he went back to Korea. The Tribunal said all the information has to be assessed and the Tribunal has to listen to the applicant's response before anything can be decided. The Tribunal said that if that law applies equally to everyone who goes to Korea, and not people who are aged between 18 and 35, or people whose parents live in [Country A], or people who are from Korea. If it applies to everyone who goes to Korea then the Tribunal is finding it difficult to see why the applicant would fall under the provisions of the Refugee Convention. The applicant said that he thought if he gets sent to gaol that Australia would protect him from being sent to gaol once he goes back. The Tribunal said he needs to sit down with his solicitor and discuss it with him.
144. The Tribunal said it had no more information or comments to give to the applicant. The Tribunal asked if there was anything else that the applicant wanted to say.
145. The applicant said he wanted to say that he knows other people use drugs, but there is no treatment for heroin and that he may be sent to gaol for five to seven years. However, in Australia if people use heroin, as long as they do not sell or deal, they will be treated in a Methadone clinic and will not be sent to gaol. This is the difference between Korea and Australia. That is why he wants to stay in Australia. He does not want to go to gaol, he wants to be treated. In Korea he will go to gaol, and he will not get any treatment. He stated that in Korea he will not be protected by the country. In Australia he will be more protected. He is getting treatment in the clinic now, and will not be sent to gaol. He said Australia is caring, and so on. The Tribunal said it hears what the applicant is saying and it will all be considered.
146. The Tribunal said it cannot tell the applicant what to do, and he does have a solicitor, and he is there to assist the applicant. The Tribunal said he could ask his solicitor what the basis of the past drug addiction is to the Convention definition of refugee. The Tribunal said it was open to whatever information or response that the applicant has.
147. The Tribunal had a letter prepared for the applicant relating to when the applicant is returned to the Tribunal. The Tribunal said it would give the applicant the letter and arrange for a fax to be sent to the applicant's solicitor. The Tribunal said the applicant had until the date to discuss it with the Tribunal. The Tribunal discussed other options including if the solicitor sent a letter before the hearing.
148. The Tribunal reiterated that it had gone through all the claims that the applicant has made and has provided the information that would indicate that his claims may be rejected. The Tribunal indicated that the law required the Tribunal to do that. The Tribunal indicated that it had to raise the issues with the person so that the person could respond. It is a matter of fairness. The Tribunal said it is the opportunity given to the applicant so that he could think about it, and respond and make his case.

*Letter to the applicant dated 8 December 2009*

149. The Tribunal invited the applicant to a further hearing on 22 December, and also provided a written 'List of References' to some information provided orally to the applicant at the above hearing, held on 8 December 2009.

***Letter from the applicant dated 22 December 2009, and sent on 23 December 2009***

150. The applicant referred to his not attending the hearing on 22 December 2009, without any notice. He stated that he was very ill for a few days

***Letter from the applicant's solicitor dated 24 December 2009, and received at 09 08:18, 24 December 2009***

151. The solicitor referred to the applicant missing the hearing on 22 December 2009 due to illness. He stated 'We are further instructed to request that the Tribunal list this matter for a further hearing to enable the applicant to address the concerns that were raised at the previous hearing.' He stated that if the Tribunal decided not to re-list the matter for a further hearing, he requested the Tribunal provide in writing information that the Tribunal considered could be a reason for affirming the decision under review, and allow the applicant until 18 January 2010 to provide a response. The solicitor then stated that his office was closed from 25 December 2009 until 11 January 2010.

***Notification of the hearing to be held on 11 January 2010***

152. The Tribunal faxed the hearing invitation to the applicant's solicitor, as the applicant's authorised recipient, at 10:32 a.m. on 24 December 2009.
153. The Tribunal emailed the hearing invitation to the applicant at 10:40 a.m. on 24 December 2009.

***Proposed hearing to be held before the Tribunal in the morning of 11 January 2010***

154. The applicant rang to say he was unavailable for the hearing, and requested that it be postponed for a few hours. The Tribunal agreed to 1 p.m. and the applicant then asked that the hearing be changed to the next day. The Tribunal indicated that the 1 p.m. hearing would go ahead. He stated that he would attend.

***The third hearing held before the Tribunal on 11 January 2010***

155. The following is a summary and not a transcript:
156. The applicant's advisor was not present. There were no witnesses.
157. The interpreter said that the applicant did not wish to use the interpreter unless he got stuck with a particular phrase, or word. The applicant said he has been trying to contact his representative. He has been sending e-mails and so on but he has not received any response from him.
158. The Tribunal said it had received his documents which include a letter from [a clinic] and some receipts regarding his treatment.
159. The Tribunal said that in Korea drug use is largely Ice. The Tribunal asked if it was the same Ice as used in America, or Australia. He said it was different, but he was not exactly sure

about what was different. He said Ice, the drug has many (indistinct). The Tribunal suggested it is a type of amphetamine. The applicant agreed. The applicant said the main drugs used in Korea are Ice and Marijuana. The applicant said if you use Marijuana in Korea you would be sent to gaol. Even if you used it overseas, and did not use it in Korea, you would be looking at a gaol term if you were discovered. They sometimes test persons' hair and DNA.

160. The Tribunal asked if the applicant had done any research. He said yes. The Tribunal asked in particular did he have anything relating to their being no treatment for heroin addiction in Korea. The applicant said he did not have any written material but what he brought here today was that in Korea there is one very big organisation, the website is [www.drugfree.or.co.](http://www.drugfree.or.co.), called Korean Drug. The Tribunal said it asked him to bring material in writing. The applicant said there is a counsellor in the centre whose name is Yung Hun Le. The applicant has arranged with him, to call that centre, and to use the interpreter. That person will be able to tell whether it is illegal to have Methadone or Suboxone in the whole country, and they only have psychological counselling treatment for treatment of heroin users. The applicant said he had the number, so he could ring. The Tribunal said the only trouble was that the Tribunal had no idea who he was ringing; it may be his brother, or friend. The applicant said when the person at reception answers, she can interpret and so on. The applicant said it is the biggest organisation in Korea. The Tribunal said you would think that they would have something in writing if that is the case. The applicant said he tried ... it would be O.K. Ring today. The Tribunal said the applicant was missing the point. Having said that it is the biggest place in Korea, and this is the website, however the applicant has no evidence to indicate that the place that he wanted the Tribunal to ring is the place that he said it is. The applicant said he had saved it in his hard drive but he did not really print it. It just says that in Korea the – for heroin these are the treatments in Europe. But in Korea there is - The applicant said it is really hard to find anything in writing on the websites. Otherwise he could ask him to write something down, and fax it to the RRT. The applicant said he would give the Tribunal a number, so the Tribunal could keep it and check it later. He said he would give the Tribunal the website and number. He said we could ring later from the RRT. The Tribunal said if the Tribunal rings someone from the RRT then it may create a problem for the applicant if he goes back. The Tribunal asked whether the applicant had spoken to this person. He said he did. He said it was illegal to have Suboxone, and Methadone, and Buprenorphine, in Korea. This is what the applicant thought as well. They told him there was only psychological treatment available. There are no heroin users in Korea. The applicant told him that he was a Methadone user now. If he goes back to Korea now he would be cut off from the Methadone treatment.
161. The Tribunal said we would move on and it would think about that.
162. The Tribunal asked if the applicant was ready to respond to the information it provided to him last time. He said he was. The applicant said he would answer now. The Tribunal said it had given him the information last time and asked for his responses. The applicant said he thought that Tribunal was going to ask the questions, and he would answer one by one. The Tribunal said no, it gave him all the information and gave him the CD. The applicant said his answer is with a protection visa about why. The applicant used the interpreter. The interpreter said that some of the reasons that he provided for acquiring the refugee visa was that his parents had some loans from loan sharks probably and they were quite badly behaved and they were trying to harm his family including himself. Now he realises that that is not relevant to the category that he is applying for, that is, the visa category.

163. The second reason that he gave the Tribunal was he has lived in Australia for 13 years now and he is pretty much settled here and going back to Korea means that it is quite unsettling and he would have to serve in the Korean army as soon as he got back, to start with. Probably he will get arrested at the airport and straight away he will probably be taken away to the Army. When they do medical examinations they will find out that he was on heroin before. Again it comes back to this drug problem.
164. One more thing he wanted to emphasise is that he has done a lot of research and as a result he has found out that he will never be able to be treated with Methadone and other similar drugs, which means that he will not be able to get any sort of drug substitutes over there. The only thing they can provide is counselling. If he had not been on Methadone to start with at all, it might not have been a huge problem, however since he is already on Methadone treatment and as the documents stated in his letter that it will be extremely dangerous for him to go off Methadone, he is extremely scared about going back to Korea where there will not be any treatment for him. He would like to stay in Australia for a while because he needs a drug substitute treatment here in Australia. In the Tribunal's opinion the refugee visa is not suitable or relevant to him; then he would like to know what sort of visa category is suitable for his case. The Tribunal said he would like the applicant to ask his solicitor that question. He said that was what he was going to ask his solicitor.
165. He said he knew the Protection visa had been refused. The Tribunal said it had not been refused, that was what the Tribunal was investigating.
166. The applicant said his answer was that because of his situation, and he needed some Methadone treatment. In the two years that he is treated he needs to have a visa.
167. The Tribunal said all the questions about what he can do, and what he cannot do, should be directed to his solicitor. The Tribunal said that it suggests that if he has a general enquiry he can ring the Department of Immigration.
168. The Tribunal said its role was to decide the case on the facts before it, on what the applicant tells it. It is not to provide advice to the applicant. The Tribunal said this may sound harsh, but it is not trying to be hard. But this is the function of the Tribunal.
169. The applicant said he is supposed to be answering today, and he thought it might be a little bit hard for him, so he had been trying to contact his solicitor, and he has been sending him emails that perhaps he could go to his office, and have some counselling, and that perhaps they could go to the RRT together, however, there was no response from him. That is why he came to the hearing by himself. That is why he was not ready for it. He was not sure about answering.
170. The Tribunal asked what happened to the applicant before, when he was supposed to come before Christmas. The applicant said at that time he was trying to make contact with his solicitor as well, but he could not get in touch. He said he has been sending an e-mail every fortnight. He said there have been about three e-mails. The Tribunal asked whether he had telephoned the solicitor. The applicant said he had telephoned him once, but he could not get in touch with him at the time.
171. The Tribunal said to the applicant, 'You know that it has been a holiday period over..' The applicant said the receptionist maybe could have told him it was a holiday, or he was away. He did not say anything. The Tribunal said that the applicant's solicitor's firm had sent a

letter to the Tribunal saying that the solicitor will be back today. The applicant said he did not send it to his (the solicitor's) direct mail, he sent it to...

172. The Tribunal asked what do you want to do now? What is the next response? The Tribunal said the applicant had started to say because of his treatment, that he will be getting treatment for two years. The Tribunal asked whether there was anything he wanted to say in relation to that. He said the thing is he cannot get this treatment in Korea. He said perhaps if they had a few minutes he could ring the person at the organisation and ask him to write a letter addressing everything properly, and send it to the RRT. The Tribunal asked would this be in Korean? He said it would be. The applicant said he would ask for interpretation. He asked if they could write English, and doubts if they can.
173. The Tribunal asked if they were ready for that call? The applicant said they are open, yes. The Tribunal asked if he had spoken to them. He said yes. The Tribunal asked whether it was a government organisation. The applicant said 'yes' The Tribunal asked whether he had given them his name. He said 'No.'
174. The applicant handed up a piece of paper with the name of the website on it: [www.drugfree.or.co](http://www.drugfree.or.co).
175. The Tribunal said it may make some enquiries about this. However, if we assume that there are no Methadone or like treatments for heroin addiction in South Korea, the question then is how relevant is that to his claims to be a refugee. The Tribunal said that it would come back to that.
176. The Tribunal asked what else the applicant wanted to say in response to the information it gave to him last time. He said he did not know what to say. The Tribunal asked whether that was in relation to the information it had given to the applicant last time. The applicant said he was sorry but he has been trying to ask his solicitor. He said he could show the Tribunal the e-mails that he had sent. The Tribunal said that is a matter between him and his solicitor. He said he thought he was being very irresponsible. The Tribunal said that there had been a couple of adjournments and one would have expected the applicant to have done something. It may be that the solicitor was away.
177. The Tribunal asked, are you saying that you have nothing else to say today? He said he did not know what was going on here, and it was too hard to answer. The Tribunal said that is why the Tribunal had said he should see his solicitor. The Tribunal indicated that it had said that at the hearing on 8 December. It would appear from 8 December to 11 January, the applicant had not been able to contact the solicitor. The Tribunal asked if that was the case. The applicant said, maybe not from the 8<sup>th</sup>, but maybe a few days after that. He said he knows it is his fault, and he is sorry.
178. The Tribunal asked whether the applicant still had the CD of the hearing. The applicant was asked whether he had given his solicitor a copy. He said he would. The Tribunal said that it had not made a decision in this matter as the applicant knows, this is still a hearing. It is 11th January. The Tribunal will give the applicant one week to respond in writing to the issues that were raised with him, and there will be no more extensions, unless there are some very good reasons. But at this point, there is one week. The Tribunal said it will not be providing any more information to the applicant or his solicitor, as the information has been provided on the CD.



179. The Tribunal stated it provided the CD to the applicant, and the applicant was to go away and discuss it with the solicitor, and then get back today, actually on the 24th December, or whenever it was (*it was the 22<sup>nd</sup>*). However, the first time, the applicant said he could not come. The Tribunal tried the next day and the applicant said he could not come (*this is incorrect*), and then the Tribunal had a hearing set down for this morning, (11 January 2010) and the applicant said he could not come, so the Tribunal moved it to this afternoon (11 January 2010). The Tribunal said the applicant had said that he had nothing ready. The Tribunal said it would give the applicant a week now, and whether he uses his solicitor or not, it is up to the applicant now. The Tribunal stated that the applicant has the address of the solicitor, which is in the city, and the Tribunal suggested that he walk straight up there, after the hearing. The Tribunal suggested that the applicant tell the solicitor that he has one week to respond to the information that the Tribunal provided to him on the last occasion. He said he would do so.

180. The Tribunal said it wanted to give the applicant some more information.

181. The Tribunal reminded the applicant that on the last occasion he was before the Tribunal, the Tribunal spoke about information. The Tribunal said the following:

Last time we were here I told you I might put to you some information that may be the reasons for affirming the Department's decision. I also said that if I do that I must also explain the relevance of the information, and the consequences of the information to you, and invite you to comment on or respond to the information. You may respond to that information orally or in writing. We discussed this last time. We came to an arrangement that were going to work out your response with the assistance of your solicitor and come back and tell the Tribunal. You can do this again this time, but this time it has to be in writing. The applicant has one week to do it. The Tribunal said the extra piece of information that the Tribunal is giving today is as follows:

182. The applicant says there is little use of heroin in Korea and at this point this is possibly right. There was some information last time that it is not in great use.

183. The information that the applicant provided to the Tribunal today is that there is no treatment for heroin addiction by use of drug substitution in South Korea. The applicant said there is no Methadone, and the other two drugs were also illegal. They were not able to be used in Korea. So, the issue then is whether it is a matter that falls within the Convention definition of refugee

184. The Tribunal said, working on the basis of what the applicant said is correct, it will make enquiries. Assuming for the basis of this information that it is correct, this would mean that every heroin addict who was a still using heroin, or who is in recovery and taking Methadone or one of the other two drugs commonly used in this program, coming back to South Korea or even being in South Korea, would not have access to those drugs. That is, they would not have access to Methadone or the other two drugs because the applicant says they are illegal. That would apply to every one who needs those drugs, and not selectively, to particular people using heroin, or who have had problems with heroin, but to everyone. So, again, this should be something that would be something of general application. It is not that the applicant is being discriminated against. It is what happens in South Korea.

185. The applicant said these substances like Methadone and Suboxone, only exist for heroin treatment, and nothing else. The Tribunal said the applicant is not the only heroin user who faces the possibility of going back to Korea. There must be other people who are in that

position. The point is, the rule applies to all those people who fall into that category. The applicant said some people go back to South Korea without getting out of the treatment immediately. They could die, or have a very severe effect, and that is really a trend. He heard from a friend's friend a year ago that a person used the drug in Sydney. He is the same age as the applicant. He used heroin, ice, and many things. He did not get treated. He was using it every day. One day he had to jump on the plane and go back to Korea straight away. After he arrived he had to go to the psychological hospital, and he was locked up because he jumped from the bridge to commit suicide. So many things happened to him the applicant does not know what will happen to him. But these are the sorts of things that happen if some people go back and stop treatment suddenly. The Tribunal said the applicant would not get treated any more badly than anyone else who went back in the same circumstances. It is not related to the Convention, as the Tribunal understands it at the moment. It may, when it has given it more thought. It is not due to the applicant's religion, race, nationality, political opinion or because ownership of a particular social group. In relation to a membership of a political social group, perhaps his solicitor could help him with that, and perhaps the solicitor could put something forward. However, prima facie, it does not look as though this falls within the definition of refugee under the Refugees Convention. The applicant said it does not? The Tribunal said no.

186. The Tribunal said the relevance of that is unless the applicant can provide some information that can convince the Tribunal otherwise... The applicant interrupted. The Tribunal said it had given the applicant one week to respond. The Tribunal said the point is if it does not fall within the Convention, then the applicant would not get a Protection visa for that issue. He may for some other issue, but not for that issue.
187. The applicant said if he gets a written document ready next week, would it make any difference. That is, if he calls the number and they send the fax saying there is no treatment in Korea using Methadone. If he can get that in a written document and signed by the lawyer would it make any difference to the result here? The Tribunal said it will all be considered. However, the Tribunal has to give the applicant the information it has now before it. The Tribunal has not provided any answers or responses. The Tribunal said it was assuming that heroin was not used, and Methadone and the other two drugs were illegal. The applicant said it is illegal in Korea, it does not exist there.
188. The Tribunal asked the applicant what his point was. He said even if he gets the written documents ready next week, because what the Tribunal is saying now the result is, the result you are saying now is, after assuming that there is no Methadone existing in Korea, will it not make any difference, or will it be considered and would there be any chance that. The Tribunal interrupted and asked the applicant to repeat this question. The applicant said even if he can prove that there is no Methadone treatment in Korea, what the Tribunal has just told him is that he won't be treated, he won't get any special treatment, then what difference is there in his case, there would be other people who went back to Korea and could not get the treatment, and he is not the only one. So, how would it affect the outcome, would it make any difference if he could prove there was no such treatment in Korea? Would that make any difference? Would it be a worthwhile exercise? The Tribunal said it would look at that information, and say there was no Methadone treatment in Korea, and ask what happens next. But the Tribunal is saying ultimately it may still lead to the fact, or decision, that he does not fall within the Convention. The applicant asked would the Tribunal consider if he put in written evidence. The Tribunal said please do. The Tribunal said please do so, with the help of his solicitor.

189. The applicant said what he desperately needed at this time, if the protection visa is not relevant in his case, is he cannot go back in the middle of the treatment. He needs to have the two-year treatment to fully recover. The applicant asked if the Tribunal could recommend another type of visa. The Tribunal said it had already answered that, and said it is the answer he would get from his solicitor; or the Department of Immigration.
190. The applicant said he would definitely ask his lawyer, but from all the information that he has gathered so far, everyone was telling him that a protection visa, and under the refugee category, that is the way to go, and that is why he applied for it.
191. The applicant said maybe he has to talk to his lawyer. The Tribunal said for him to talk to his lawyer. The Tribunal said there was an option, which is not a visa, it is that the Minister may, if he put something up, may consider his case. The applicant said that the intervention (indistinct.) The Tribunal said he should discuss it with his lawyer and if the decision goes against him in this Tribunal, the Tribunal can refer it to the Minister, but the Minister does not have to consider it. The Tribunal said it had to tell the applicant these things. All that the Tribunal is telling the applicant is the facts. But then again, that is something that he can talk to his lawyer about. So, there is a further avenue if he is rejected by the Tribunal. The Tribunal may recommend or suggest that the Minister may look at it, but it is not up to the Minister to look at it if he does not want to look at it.
192. The applicant said that although he can only get Methadone prescribed in this country, and not in his country, back in Korea, that is not sufficient reason for him to apply for a refugee status visa. He asked 'Is that what you are telling me today?' The Tribunal said no, the applicant can apply, and say whatever he likes. The Tribunal said that what it has to tell him today is what may be the case. It may not be something that falls within the Convention definition. The Tribunal has to tell him that, so he can respond.
193. The Tribunal and the applicant discussed what the applicant's next steps would be. That is, contact his lawyer, discuss the information provided by the Tribunal, and provide a response. Also the applicant has to discuss with his lawyer the absence of the use of Methadone in Korea and the relationship of that to the Convention. The Tribunal said the letter is due on 18th January. The Tribunal said it has to get the reply within seven days. The Tribunal agreed that it could be faxed in. He said that he thought he could get his lawyer to fax it.
194. The Tribunal asked if there was anything else.
195. The Tribunal said the applicant can get a copy of the CD of this hearing as well, and wrote it on the note for the attendant to provide.
196. The Tribunal confirmed with the applicant that he understood the process, i.e. to provide a response putting his position. The Tribunal reiterated that there has been no decision made. The Tribunal is still open to the applicant's response. The Tribunal said he had to get something to it in writing.

***Letter provided at the hearing, from [a clinic], dated 11 January 2010***

197. The letter has been reproduced below. There were also attachments, including a list of appointments, from 2 September 2009 to 11 January 2010, sometimes with several entries per day; and a receipt for methodone (*sic*) from [the clinic].

This letter is to support [the applicant] in his request for his Visa.

Please see prior letter in this matter.

Today he had to attend this clinic in the am and saw me here.

It is essential (*sic*) he stays on this medication at least for 2 years more and if this medication is stopped immediately it could be very dangerous to his health.

Yours sincerely,

[Dr A]

***Letter dated and faxed on 11 January 2010 from the Tribunal to the applicant's authorised recipient.***

198. The following are the essential parts of the letter.

I am writing about the application for review made by you in relation to a decision to refuse to grant a Protection (Class XA) visa.

The Tribunal has held another hearing with you in this matter today, as per letters to you dated 24 December 2009 and 11 January 2010.

You provided oral responses to some of the information provided to you at the hearing on the last occasion. You have been given a further opportunity to respond in writing by 18 January 2010 to the information provided to you at the hearing on 8 December 2009, and 11 January 2010, if you wish to do so. You were given a copy of the CD of the hearing on 8 December 2009, and obtained a CD of today's hearing, for your consideration and assistance. A decision will be made in this matter after 18 January 2010.

Concerning information spoken about at the hearing on 8 December 2009, the Tribunal indicated that it would provide information as to what options drug abusers have in Korea. In a report entitled, '*The Current Drug Situation and its Countermeasures in Korea*' dated 17 October 2003, information is provided on the treatment and punishment of narcotic addicts. The report states that the Act (Act on the Control of Narcotics, etc) 'prescribes for compulsory hospitalization of narcotic addicts'. The report states that 'Under the Act of control of Narcotics, etc, a drug abuser who turns out to be a drug addict can be subject to compulsory treatment or to punishment. A prosecutor has the discretion to decide whether to take only one option or both (Shin, H. S. 2003, entitled '*The Current Drug Situation and the Countermeasures in Korea*', Legal Research and Training Institute website, 17 October, pages 25 and 33-34).

Further, at the hearing on 8 December 2009, the Tribunal said it did have a reference saying that heroin and cocaine are only sporadically seen in the Republic of South Korea and Koreans generally do not use heroin. This agrees with what you are saying, but it does not say that there is no heroin.

***Requests for extensions of time to provide a response to the Tribunal***

199. Several requests were made for extensions of time, and they were granted.

***Letter dated 18 January 2010 and attachments from the applicant's solicitor***

200. The essential parts of the letter have been reproduced, below.

We refer to the Tribunal's invitation of 11 January 2010 to our client to comment on certain information.

We have attached the following documents which our client relies on for the purpose of these proceedings:

1. Letter from [a clinic] dated 27 October 2009 in relation to the treatment that our client is receiving and the likely duration of this treatment;
2. Letter from [a clinic] dated 11 January 2010 in relation to the duration of our client's treatment and the consequences of this treatment being suspended before it is concluded;
3. Records from [a clinic] which detail the dates on which our client has received methadone and the amount of methadone he received on each occasion;
4. Print out from [www.indro-online.de/koreaS.htm](http://www.indro-online.de/koreaS.htm) in relation the unavailability of Methadone in Korea even for properly regulated pharmaceutical use.

The attached information from [a clinic] confirms that our client is currently receiving regular injections of methadone through [a clinic] to treat his addiction to heroin, this treatment is likely to extend until late 2011 and that should methadone treatment not be made available to our client throughout the next two years, the impact to him could be extremely serious.

The information in relation to the treatment options for drug addicts in Korea that has been cited by the Tribunal is, with respect, quite general and provides no specific details about the treatment options that are available to recovering addicts, importantly, it makes no mention of the use of methadone in Korea as a treatment for addiction The information which we have attached from [www.indro-online.de/koreaS.htm](http://www.indro-online.de/koreaS.htm) suggests that methadone treatment is not available to recovering addicts in Korea.

In the absence of any evidence which contradicts the statements that are made at [www.indro-online.de/koreaS.htm](http://www.indro-online.de/koreaS.htm), we submit that you should accept that the visa applicant would not be able to access methadone treatment in South Korea and, based on the opinion of his treating doctor in Australia, would consequently suffer serious harm as a result.

Our client is in the process of obtaining further information from Korea in relation to his inability to access a methadone program in Korea. We request that the Tribunal allow our client until 1 February 2009 to provide any such information.

201. The first attachment, a letter from [a clinic], dated 27 October 2009, is reproduced below.

RE: [the applicant], DOB: [date]

This letter is to support [the applicant] who is to appear at the Refugee Review Tribunal to apply for a Visa to remain in Australia.

He has recently commenced on Biodone soln. (methadone soln.) for treatment of a substance problem. I am his treating doctor at this Clinic.

He is attending and obeying all the rules of the Clinic. He is doing very well in his rehabilitation and needs to remain in treatment for a reasonable period of time. I would suggest this needs to be at least for the next 2 years. He advised me that he has rung Korea and authorities have told him there are no treatment programs like this in his country. For this reason he advises me he is scared to go back to Korea.

[Dr A]

- 202. The second attachment, a letter from [a clinic], dated 11 January 2010, is the same letter provided at the hearing, see above.
- 203. The third attachment, are the attachments to the letter referred to above.
- 204. The fourth attachment has been reproduced in full, below.

### Korea, South

Methadone is not available on the pharmaceutical market. However, under exceptional circumstances methadone patients seeking to travel to South Korea may get permission to do so. They must contact a Korean embassy or consulate at least three months in advance of the prospective journey and produce the following documents: a transfer report, stating the patient's name and age, the date of travel to and destinations in Korea, the name of the doctor in charge of methadone treatment, diagnosis of disease, duration of treatment, main symptoms of the disease, medication, the prescriber's license number and his/her address. Furthermore applicants are expected to bring a photograph and a copy of their passport. If the embassy or consulate gives approval to travel all necessary documents will be forwarded to the Drugs Directorate of the Ministry of Health which names a hospital or physician. Methadone may then be imported but must be handed over to a local hospital doctor or practitioner on arrival.

**Contact Address:** any embassy or consulate of South Korea

Basic Recommendations re the Plannin.of gavel
Travel Guide Index
Index
Back to Homepage

### *Letter and attachments from the applicant's solicitor, dated 17 February 2010*

- 205. The letter has been copied below, however, the Korean script in the original letter, which has been translated into English, has not been copied.

Dear Sir / Madam,

RE: [The Applicant] (D.O.B [date])  
APPLICATION FOR REVIEW

We have received instructions to provide the following information to the RRT.

- 1. Extract from:

<http://kin.naver.com/knowhow/detail.nhn?d1id=5&docid=544999&gb=6rWt64K01OuplOyCrOuPiA==&enc=utf8&section=kin&rannk=1&sort=0&spg=0>

Methadone maintenance treatment. The methadone maintenance treatment which was developed as a way to treat a drug addict, and is to give proper amount of methadone that is a composite drug, instead of giving some heroine that makes a drug addict feel good. The treatment is a kind of temporary treatment and is far from a comprehensive treatment in the sense that by giving methadone they can avoid any follow-on crime that

can caused by a drug addict. In Korea they found the abuse of methadone, so it is now strictly controlled by law, like any other drugs.

2. Extract from:

[http://www.busanddrugfree.or.kr/hm/info01\\_06.htm](http://www.busanddrugfree.or.kr/hm/info01_06.htm)

6. Methadone

It has been developed as a morphine substitute in Germany during World War II, and been used since 1946. The components are similar to morphine or heroine, but the half-life and remedial effect operating hour (24hrs) are long enough, so it has been used to treat drug-addict treatment for opium; and in 1960s there has been a methadone crisis problem in Korea. Methadone is well absorbed at stomach, so it can be abused for injection method and oral dose, and cause tolerance and dependency. Methadone treatment is the method to treat drug-addict patients in a country where drug addictions associated with opium are widely spread.

We have attached a translation from the following website. It is not possible to print the actual text from the website

<http://blog.naver.com/aourin?Redirect=Log&logNo=80067151591>

The above translations have been prepared by [name deleted: s.431(2)] (NAATI [number]), who is accredited as a translator and interpreter in the Korean language.

Our client has instructed us to provide the following details of the South-Korean drug related association and campaign. We are instructed that this organisation has indicated to the applicant that he could not access effective treatment for his addiction in South Korea.

South Korean drug control/extermination campaign head office

Tel inquiry:

(0011) (82 2) 764-12071761-239812677- 2245

FAX (02)2677-2247

Finally, we have received instructions from our client to provide a further copy of the medical reports that were provided to the Tribunal on 18 January 2010 and to remind the Tribunal that he is currently undertaking the methadone program.

We submit that this information provides compelling evidence that if our client was to return to South Korea, he will not be able to access effective treatment for his addiction. The applicant's treating doctor has indicated without access to a methadone treatment program, the visa applicant may suffer serious health problems.

206. The attached translation from the website

<http://blog.naver.com/aourin?Redirect=Log&logNo=80067151591s>, is as follows.

Dear Sir / Madam,

The strange thing that doesn't exist in my country Aour

<http://blog.naver.com/aourin?Redirect=Log&logNo=80067151591>

The voice of drug users

SungKi Cho

Here is Bangkok, the capital city of Thailand.

About 800 people are gathered from worldwide 80 countries; are discussing seriously.

The Caucasians from, such as, USA, UK, Germany, France, Ukraine, Russia, Sweden, etc. The Orientals from, such as, China, Korea, Philippines, Thailand, Vietnam, etc. The international organizations from such as, WHO, etc

Many people from the West and the East get together and talk about drug problems. Some questions from them:

Does the methadone program exist in Korea?

Do the drug users end up in jails? or treatment facilities?

How many drug users are in Korea?

What are the human-right situations of the drug users of Korea?

Why there isn't any program in Korea that distributes a syringe for taking drug?

Why there isn't any program, while distributing a clean syringe then the diseases would reduce?

Why the Korean Authorities treat the drug users like criminals?

(In other countries there are many cases that the drug users are the target for treatment, not the criminals.)

Questions after questions, but there is no one that can be answered

These things exist almost in foreign countries.

In Thailand, for example, there are the place to distribute syringes, the people who distribute condoms to sex workers, the program that distribute methadone to the drug users who are in jails, etc.

The scholars who protest against the human-rights of the drug users in jails.

The activists.

These things exist for sure.

At least there are several hundred people who rented hotel rooms, discuss and assert these things are important, each country's press deals with those issues.

Even our neighbour, China has the methadone program.

The drug users move up toward the sunny side, rather than staying in shade.

Their numbers are counted; it is getting stronger that the authorities reckon them as the target for treatments, instead of pressing them as criminals.

Does Korea have such things indeed, or not?

it is difficult to find who can answer these questions.

For the last 20 years faced these issues from time to time, but it is quiet in my country. Only heard some news from USA, India, or Spain, etc.

Occasionally meeting with some alcohol-addicts I heard from them such opinion that if you travel to small port town you can easily encounter drug-addicts even in daytime. It isn't, however, a target for press, difficult to find official materials, either.

Is that because there are not many drug-addicts in my country?

Won't the side effects are bigger because of using drugs in shade?

Won't it be necessary the human-right activities for the drug users in my country?



What on earth is going on in my country?

No idea.

Feel heavy for worries.

I could feel better if I can share with any expert for the matter,

Anyhow, I wish that the philosophy of harm reduction - the way of thinking, the approach to tackle the issue - which is a wise method to deal with the drug battle, one of the worldwide matters of concern, is getting deeper and spreads wider.

Date and Time. 20 thru 23 April 2009

Place: the Imperial Queens Park Hotel, Bangkok, Thailand

Written at the place of international harm reduction conference -

207. The other attachment, a letter dated 18 January 2010 and its attachments, have been provided previously, and referred to above.

## **INDEPENDENT COUNTRY INFORMATION**

### **In relation to the material raised by the applicant at the hearing held with the Tribunal on 11 January 2010**

The website [www.drugfree.or.kr](http://www.drugfree.or.kr) and phone number 0011-82-02-2677-2245 both belong to the Korean Association Against Drug Abuse (KAADA). This is a non-profit NGO founded by pharmacists in 1992, which is involved in drug education, prevention, counselling and rehabilitation, according to its website. The website has some information in English at [http://www.drugfree.or.kr/eng/kaada\\_eng\\_index.htm](http://www.drugfree.or.kr/eng/kaada_eng_index.htm), which discusses drug awareness, education, prevention, counselling and rehabilitation. The information addresses neither heroin nor methadone. An email was sent to KAADA on 12 January asking for information on methadone and heroin treatment in South Korea. The email was resent over several days with no response.

The Tribunal researcher called KAADA on 0011-82-2-2677-2245 on 20 January 2010 and spoke to a Mr Lee Dong Eun in English (his English was broken but understandable). Mr Lee advised that:

- Heroin addiction is not common in South Korea (and he does not have much experience in treating addicts);
- Methadone is illegal and buprenorphine is not available (it may be illegal – he was unclear);
- He said that heroin addicts were treated with ‘mental therapy’ When asked if this meant counselling, he said yes.

**The applicant’s advisor presented a document from [www.indro-online.de/koreaS.htm](http://www.indro-online.de/koreaS.htm), on several occasions to the Tribunal. It states:**

Korea, South.

Methadone is not available on the pharmaceutical market. However, under exceptional circumstances methadone patients seeking to travel to South Korea may get permission to do so. They must contact a Korean embassy or consulate at least three months in advance of the prospective journey and produce the following documents: a transfer

report, stating the patient's name and age, the date of travel to and destinations in Korea, the name of the doctor in charge of methadone treatment, diagnosis of disease, duration of treatment, main symptoms of the disease, medication, the prescriber's license number and his/her address. Furthermore applicants are expected to bring a photograph and a copy of their passport. If the embassy or consulate gives approval to travel all necessary documents will be forwarded to the Drugs Directorate of the Ministry of Health which names a hospital or physician. Methadone may then be imported but must be handed over to a local hospital doctor or practitioner on arrival.

Contact Address: any embassy or consulate of South Korea

The website <http://www.indro-online.de/> is that of INDRO - the Institute for the Furtherance of Qualitative Drug Research, Acceptance-Oriented Drug Work, and Rational Drug Policy, an organisation based in Munster, Germany. The website has a section on 'Methadone/Buprenorphine' which contains a 'Methadone Travel Guide: Travel Regulations Effective Around the Globe' which gives information on national regulations for 194 countries in relation to methadone use. The document presented by the applicant's advisor is part of this Travel Guide (Research Response completed 20 January 2010)

## **The websites and information provided in the applicant's solicitor's letter dated 17 February 2010**

### **1|| Do these websites exist?**

#### **First website**

<http://kin.naver.com/knowhow/detail.nhn?d1id=5&dirId=5&docid=544999&gb=6rWt64K01OuplOyCrOuPiA==&enc=utf8&section=kin&rank=1&sort=0&spg=0>

**Result** – This URL does not load – the browser instead opens at the home website <http://kin.naver.com/> (see 2, below).

The URL is probably a “**dynamic URL**” as it contains an internal question mark on the first line, which is generally an indicator that it is a dynamic URL.<sup>1</sup> A dynamic URL is one where the webpage was generated from specific queries to the site's database. In other words, this URL can only be reached by inserting the relevant search term into the Korean search engine at <http://kin.naver.com/> For example, inserting the Korean term for heroin<sup>2</sup> or methadone<sup>3</sup> into the search engine at <http://kin.naver.com/> produces a list of similar URLs (i.e. dynamic URLs which include question marks) in the results list.  
<http://kin.naver.com/knowhow/list.nhn?dirId=0&page=1>

**Second website** [http://www.busandrugfree.or.kr/htm/info01\\_06.htm](http://www.busandrugfree.or.kr/htm/info01_06.htm)

---

<sup>1</sup> For information on dynamic URLs, see 'Dynamic URLs vs. Static URLs' 2006, Webconfs.com <http://www.webconfs.com/dynamic-urls-vs-static-urls-article-3.php> - Accessed 26 February 2010.

<sup>2</sup> 헤로인

<sup>3</sup> 메타돈

**Result.** This website loads successfully and contains the text given by the Applicant.<sup>4</sup> The Google Translation<sup>5</sup> is garbled but similar to that provided by the Applicant.

**Third website** <http://blog.naver.com/aurin?Redirect=Log&logNo=80067151591>

**Result** – This URL does not load. There is an error message (in Korean) saying the site does not exist. Like the first website, this URL may be a “dynamic URL” as it contains an internal question mark. By searching the website using the search term ‘aurin’ (from the URL) the webpage presented by the Applicant was found at <http://blog.naver.com/aurin/80067151591>. Due to protection on the page, Google was unable to translate the text, but the layout of the page and the date at the bottom of the page (20-23 April 2009) indicate that it is probably the same text presented by the Applicant.

## 2] Information about the content of the websites (eg government, NGO, news, blog)

**First website** <http://kin.naver.com/>

The website <http://kin.naver.com/> is a Korean language website with the only English words being “Naver” at the top and “Copyright © NHN Corp. All Rights Reserved” at the bottom.

Naver ([www.naver.com](http://www.naver.com)) is the most popular search engine in South Korea accounting for accounting for 76% of the country’s internet searches in 2009, compared with less than 3% each for Yahoo! and Google.<sup>6</sup>

The website <http://kin.naver.com/> is Naver’s Knowledge Search portal<sup>7</sup>, which, according to *The Economist*:

---

<sup>4</sup> “6. 메사돈계(Methadone)

제2차 세계대전 중에 독일에서 몰핀 대응 마약으로 개발되어 1946년부터 사용되고 있다. 그 성분은 몰핀이나 헤로인과 유사한데 반감기와 약효작용시간(24시간)이 길어 아편제에 의한 마약중독치료에 사용되어 왔으며 1960년대 우리나라에서는 메사돈 파동문제를 야기한바 있다. 메사돈계는 위장흡수가 좋아 주사방법과 경구투여 방법으로도 남용하며 내성과 의존성을 야기한다. 메사돈 치료는 아편계열의 약물중독이 심각하고 널리 퍼져있는 나라에서는 마약중독환자를 치료하기 위해 사용되는 방법이다.”

<sup>5</sup> [Link](#)

<sup>6</sup> ‘Seeking success’ 2009, *The Economist*, 28 February; Kim Tong-hyung 2009, ‘Naver Improves Search, Balks at Google’, *Korea Times*, 28 September.

<sup>7</sup> According to the [Knowledge Search \(지식iN\)](#) link at ‘Knowledge Search’ 2009, Wikipedia, 10 December [http://en.wikipedia.org/wiki/Knowledge\\_Search](http://en.wikipedia.org/wiki/Knowledge_Search) - Accessed 26 February 2010. The link connects to <http://kin.naver.com/>. Note: Wikipedia is a Web-based free-content encyclopaedia which is compiled collaboratively by volunteers. Many Wikipedia articles can be highly reliable, especially in regards to non-controversial historical or factual matters, and Wikipedia uses preventative measures against vandalism, bias and inaccuracy. However, the collaborative nature of Wikipedia makes it vulnerable to contributors with overt or covert agendas, and Wikipedia articles are thus prone to unacknowledged bias.

enables people to ask questions, the answers to which are served up from a database provided by other users. If an answer is incomplete or inaccurate, it can be easily changed, Wikipedia-style, for the benefit of others who ask the same question in future. A points system rewards users who submit questions, provide answers or rate the answers provided by other people.<sup>8</sup>

The website is said to have been the inspiration for Yahoo! Answers.<sup>9</sup>

**Second website** <http://www.busandrugfree.or.kr/>

According to the few English words on this Korean website, this is the Busan City<sup>10</sup> website of the Korean Association Against Drug Abuse (KAADA), which is a non-profit NGO involved in drug education, prevention, counselling and rehabilitation.

**Third website** <http://blog.naver.com/>

This is another Korean language website operated by Naver (see 'First website' above). It seems to be a search engine for blogs. The Applicant's piece came from a blog <http://blog.naver.com/aourin/> It was not possible to gain any information about the blogger as the site resisted attempts to translate it into English.

---

<sup>8</sup> 'Seeking success' 2009, *The Economist*, 28 February. See also <http://koreacrunch.com/archive/naver-search>.

<sup>9</sup> 'Knowledge Search' 2009, Wikipedia, 10 December [http://en.wikipedia.org/wiki/Knowledge\\_Search](http://en.wikipedia.org/wiki/Knowledge_Search) - Accessed 26 February 2010.

<sup>10</sup> A city in South Korea, also called Pusan.

## FINDINGS AND REASONS

208. Having regard to parts of the applicant's photocopied passport, the Tribunal finds that he is a national of the Republic of Korea, and it has assessed his claims accordingly.
209. The applicant used the interpreters provided at the hearings as he required. As he is fluent in English, the applicant sought their assistance only when he had difficulty understanding the Tribunal question, or in expressing something in detail. The applicant had a meaningful opportunity to present arguments and to give evidence.
210. Having regard to the applicant's capacity to give evidence at the hearing, the Tribunal was aware, and took into account his past drug problems, and his ongoing treatment.
211. The applicant's claims may be summarised as follows.
212. The applicant's father had accrued a large unpaid debt in Korea. It became an issue in 1994/95. After the applicant's father sold the family home to try and repay the debt, the applicant and his mother left South Korea in 1996, as he feared being kidnapped and killed. The applicant was a student in New Zealand from December 1995 to [a date in] December 1996. He arrived in Australia in 1997 at the age of [age deleted: s.431(2)]. His father went to [Country A], and has been living there for 13 years. When the applicant was 18, at the end of [year], his mother left Australia, and returned to [Country A] to live with the applicant's father from [year]. The applicant remained in Australia.
213. In 2000 the applicant's father borrowed more money from the same people and from other sources, to service the existing debt and to invest further in his [business] in [Country A], in order to generate further income. He has been trying to repay the debt, however, he is unable to do so, as the debt is too high.
214. The lenders threatened the applicant's grandparents on his father's side, in Korea, continuously from 2000, demanding that the applicant's father repay the debt. The grandparents were told that the applicant would be kidnapped and killed if the debt was not settled. In about 2004 the applicant was told by his grandparents not to return to South Korea. The debt is still outstanding. As the son, the applicant will be held responsible for the debt.
215. The applicant has spent part of his formative years in Australia, and his culture is more likely to fit into the Australian culture than the Korean culture.
216. The applicant has a drug addiction to heroin for which he is currently being treated with Methadone at [a clinic]. The applicant will be required to be on that program for a further two years. Heroin does not exist in Korea, so there is no treatment for it. Methadone and similar drugs are not legal in South Korea, and are not available. As a result, if he returns to South Korea his health will deteriorate because there is inadequate medical treatment available. He fears that he will be arrested and imprisoned because of his addiction.
217. If the applicant were to return to South Korea, he has to join the compulsory Army military service. He could not associate well with Korean people, as he has been in Australia for so long. He is not physically and mentally well enough to exist in the Army for the two years of service that is required. Everyone who is unable to go into the Army, goes to gaol for two years.

218. Because of his outstanding compulsory military service in South Korea, he will be required to undergo medical testing, and he will test positive to prohibited substances. As a result, he fears that if he has to return to Korea, the police and military personnel will arrest him and he will be placed in prison, as having a drug addiction in South Korea is a violation of South Korean law. They will know he used drugs, and there is no treatment. If he goes to gaol, he will not get treatment; and if does not go to gaol, he will still not get treatment for heroin addiction.
219. The applicant discovered the true identity of a person who was at [Location 1] with him, and informed DIAC (the Department). There were four people at [Location 1] who lodged documents with DIAC, and who told lies. The applicant told DIAC that these people were telling untruths. One of the four persons, a person with a false identity, had his visa application refused by DIAC. These four people stole the applicant's passport and details about his parents. They called South Korea and China and said to kill the applicant if he disembarked there
220. Also whilst in [Location 1], there were South Koreans who were born in North Korea. They knew the applicant was getting treated for drugs, and they did not like the applicant, so they sent a report to the Consulate (South Korean) that he was using drugs. The people at the Embassy know about it. These people are now back in South Korea. They told him that when he went back to Korea, they would report him as a drug user overseas.
221. It is claimed that it is possible for a person with a drug dependence problem to be considered to be disabled by virtue of his or her dependence, and that such a person would be likely to suffer significant discrimination in South Korea, and further, that his capacity to subsist will be threatened.
222. The applicant will be very much alone in Korea, and he will not be able to get a job because his Korean is not good enough, and he did not finish university.
223. The Tribunal will now consider the applicant's claims.
224. The applicant's adviser submitted the following:
- Given the prevalence of violence against the families of those who default on their loans in South Korea, we submit that people who are victims of such violence are capable of being characterized as a particular social group within Korean society. Therefore his claims in this regard are properly characterized as being Convention related.
225. Regarding the applicant's claim concerning violence against the families of those who default on their loans in South Korea, the Tribunal accepts that the applicant is a member of the family of his father, who defaulted on his loans in South Korea. The Tribunal also accepts that other family members were also subjected to threats.
226. However, regarding the claim that those who default on loans and are victims of violence are a particular social group, the Tribunal finds that that the shared fear of persecution, by definition, cannot be a characteristic of a particular social group.
227. Further, although it is well established that a family is capable of constituting a particular social group within the meaning of the Convention, this is subject to s.91S of the Act, which provides that the following matters must be disregarded in determining whether a person has

a well-founded fear of being persecuted for reasons of membership of a particular social group that consists of the person's family:

- (a) any fear of persecution, or any persecution, that any other family member has experienced, where the fear or persecution is not for one of the Convention reasons; and
- (b) any fear of persecution, or any persecution, that the applicant or any other family member has experienced, where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in (a) above had never existed.

228. The Tribunal finds that the applicant's father's fear relating to his default on his loans is not Convention related. Having considered the evidence, the Tribunal further finds that the applicant has only been pursued because of his father's default on his loans. Therefore, the applicant who was pursued because he is a member of the family of his father, who was targeted for a non-Convention reason; does not fall within the grounds for persecution covered in the Convention definition. The Tribunal makes this finding.
229. In relation to the claim that as a result of the applicant being in Australia for twelve years, and that he may be mistreated as a result in Korea, the Tribunal accepts the country information on the World Bank website, called 'Governance Matters 2008: Worldwide Governance Indicators, 1996-2007: South Korea' 2008, World Bank (website). In that piece, the various countries of the world were assessed as to how they measured up against the Rule of Law as part of an overall governance indicator. The Worldwide Governance Indicators (WGI) research project, covering 212 countries and territories, measures six dimensions of governance from 1996 – 2007. One of those, 'The Rule of Law' measures 'the extent to which agents have confidence in and abide by the rules of society, in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence' The results of the research project are made available on the World Bank website. The 'Rule of Law' results for South Korea were presented in terms of the Percentile Rank and the Governance Score. The results indicate that for the rule of law South Korea was ranked in the 75<sup>th</sup> to 90<sup>th</sup> percentile in 2007, 2005 and 2002; and the 50<sup>th</sup> to 75<sup>th</sup> percentile in 1996, 1998, 2000, and 2003 – 2004.
230. On the basis of this information, which the Tribunal prefers to the applicant's, the Tribunal finds that South Korea is a reasonably law abiding country and one which its police and judiciary react responsibly and effectively. The Tribunal finds that, as a result, any unlawful matter which may arise against the applicant can be reported to the police and on the basis of the country information which the Tribunal has provided, there is a real chance that the applicant's complaints will be dealt with appropriately.
231. Further, in reaching this conclusion, both regarding this claim and elsewhere in this decision record concerning similar claims, the Tribunal has considered the applicant's adviser's claims that:
- Based on the independent information cited above in relation to the level of discrimination against people with disabilities, we submit that the Tribunal should accept that there is a substantial basis for concluding that the applicant will be subjected to a level of discrimination because of drug dependence that his capacity to subsist will be threatened.
232. The independent information cited by the adviser is as follows:

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons, USDS report, 2009 reported that abuse against the most vulnerable in society occurred:

"Persons with Disabilities

In April the Anti-Discrimination Against and Remedies for Persons with Disabilities Act (DDA) took effect ... Nevertheless, the hiring of persons with disabilities remained significantly below target levels."

We submit that it is possible for a person with a drug dependence problem can be considered to be disabled by virtue of his or her dependence and that such a person would be likely to suffer significant discrimination in South Korea.

233. Firstly, the Tribunal accepts that the Anti-Discrimination Against and Remedies for Persons with Disabilities Act (DDA) took effect as indicated. The Tribunal finds that this is an indication that the Korean government is willing and able to protect persons with disabilities. The Tribunal is unaware of any other reference to discrimination cited by the adviser. The Tribunal finds that the only reference to a sense of discrimination cited in the passage above is that the hiring of persons with disabilities remained significantly below target levels. The Tribunal finds that this country information does not support a claim, in itself, that the applicant is likely to suffer significant discrimination in Korea, as claimed. The Tribunal finds that, as such, there is not a real chance that he would suffer serious harm.
234. With regard to the applicant's adviser's submission that people with disabilities in South Korea are a particular social group within Korean society, the Tribunal accepts for the purposes of this claim, that this is a particular social group. However, the Tribunal finds that discrimination amounting to serious harm can be reported to the authorities, including the police and on the basis of the country information which the Tribunal has provided, and accepts, there is a real chance that the applicant's complaints will be dealt with appropriately. Further, on the information currently before the Tribunal, the Tribunal finds that there is no discrimination by the police in providing protection to particular citizens, such as those that may be considered to be disabled.
235. The next claim relates to the applicant's potential military service in Korea. The information that the Tribunal has in relation to military service is that found in website [www.koreatimes.co.kr/www/news/nation/2009/10/113\\_53260.html](http://www.koreatimes.co.kr/www/news/nation/2009/10/113_53260.html) There is a series of other sources including the United Nations 2007, *Committee on the Rights of the Child: Consideration of reports submitted by states parties under Article 8(1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict: Republic of Korea* pages 5 and 7. Also in the Conscience and Peace Tax International 2006, *Briefing paper for the Human Rights Committee Taskforce on the Republic of Korea: Conscientious Objection to Military Service*, Office of the United Nations High Commission for Human Rights website, February. Another reference is 'Major Illnesses that preclude Active Duty and Physical grading criteria' (undated), Military Manpower Administration website. Furthermore, see MIMBYUN and Korea Solidarity for Conscientious Objection 2008, 'Korean Government cancelled Alternative Civilian Service: Briefing Paper on Conscientious Objection issues in the Republic of Korea', Solidarity for Peace and Human Rights website pages 5-6.
236. The Tribunal accepts as accurate a summary of those reports, as they apply to the applicant, as follows:



Available information indicates that South Korea has compulsory military service for male nationals. Reports indicate that when a male reaches 19 years of age they are required to undergo a conscription examination. Reports indicate that individuals are then categorized into one of six or seven grades depending on the outcome of their examination. Available information indicates that those found to have physical or mental 'deficiencies' are exempt from the first three grades of active military service. Individuals who are exempt from active military service may be categorized under supplementary military service, second militia service or may be completely exempt from military service. Supplementary service may require a person to undertake work in the public service and second militia service requires a person to provide military service only in times of war. South Korea does not allow individuals to refuse compulsory military service on the grounds of being a conscientious objector.

237. The Tribunal finds that the applicant would be graded, and depending on the results of his examination, he may be able to get an exemption, or be able to work in the public service, or second militia service.
238. Further, the applicant did not provide any information or claim that he had any conscientious objection to military service. The Tribunal finds that this is not a case where the applicant claimed to be a conscientious objector to military service (See *SZNYA v MIAC & Anor* [2009] FMCA 1283).
239. As a result, the Tribunal finds that in Korea military service is a law of general application and that the law would not be enforced selectively against the applicant for a Convention reason. Further, having regard to general information before the Tribunal, as well as the information above, the Tribunal finds that the Korean Military Service law is appropriate and adapted to achieving a legitimate national objective, to be ready to defend South Korea.
240. The applicant returned to Korea in 2007, from [a date in] December 2000 to [a date in] January 2001, in 1997, and perhaps another trip. The applicant returned to Korea without incident at least three times. The Tribunal noted the applicant's comments during the course of the hearing that initially he just wanted to go back, and other children were allowed to go back, and he was only allowed to go back three or four times. This was during the period that the applicant was in Australia attending school. However, it does indicate that even though the applicant was a child during some stages of his visits to Korea, his parent's control of his movements at that young age indicate that they had no apparent problem in him going back. He mentioned that there were some steps taken to keep him safe by keeping him in the house. The Tribunal finds it difficult to accept that a child could stay in the house during his holidays without being in contact with friends, and other groups, and so on. It would appear to be inconsistent at this stage that a person fearing possible kidnapping, or some other form of criminal activity against them, may go back to a place where they would be putting themselves at risk. The Tribunal finds that neither the applicant nor his parents had any subjective fear of persecution for him in Korea. This finding is supported by the applicant not lodging a claim for a Protection visa until [a date in] August 2009, despite moving to Australia to avoid the loan sharks in 1997. The Tribunal finds that the applicant's claims relating to extortion, loan shark activity, and persons trying to kidnap him, have no basis. The Tribunal finds that these claims were created, manufactured, or exaggerated, at least. It puts the applicant's credibility in issue.
241. The Tribunal accepts that the applicant has a substance abuse problem with heroin and that he is under the care of [Dr A] at [a clinic] in Sydney. The Tribunal accepts that the applicant has been treated with Methadone, and more recently with Biodone The Tribunal accepts that

there are few heroin addicts in Korea, and that Methadone and similar drugs used for treatment, are not available in Korea and/or are illegal. The Tribunal accepts that this would have a deleterious effect on the applicant's health if he were to return to Korea. In this regard, the Tribunal made the enquiries that the applicant sought at the hearing on 11 January 2010, after the hearing. It confirmed the above findings. As discussed with the applicant at the hearing, it did not make the enquiries at the hearing because of possible dangers involved in inadvertently disclosing the applicant's identity. That research information conducted by the Tribunal is contained in the INDEPENDENT COUNTRY INFORMATION part of this decision record, above. Further, also in reaching the above findings, the Tribunal also accepts the information provided by the applicant in his solicitor's letter dated 17 February 2010, and attachments, except that it cannot attach much weight to the first and third websites, for the reasons discussed in the INDEPENDENT COUNTRY INFORMATION part of this decision record, above. The Tribunal accepts the letters provided by [the clinic]

242. However, the Tribunal finds that the law in South Korea relating to individuals who have been using drugs, including heroin, including penalties and punishment for illegal drug use, are laws of general application, and that the law would not be enforced selectively against the applicant for a Convention reason. The Tribunal finds that enforcement of a generally applicable law does not ordinarily constitute persecution for the purposes of the Convention. Having regard to the following two paragraphs, the Tribunal finds that the laws are appropriate and adapted to achieving legitimate national objectives. In this regard, the Tribunal accepts that Korea has limited problems with heroin use, and that Methadone therefore is not required. However, Methadone patients seeking to travel to South Korea may import Methadone (<http://www.indro-online.de/>) Further, Korea makes allowances in how to treat addicts (*'The Current Drug Situation and its Countermeasures in Korea'*)
243. The Tribunal accepts the report entitled, *'The Current Drug Situation and its Countermeasures in Korea'*, Legal Research and Training Institute website, pages 25 and 33-34, dated 17 October 2003. Information is provided on the treatment and punishment of narcotic addicts. The report states that the Act (Act on the Control of Narcotics, etc) 'prescribes for compulsory hospitalization of narcotic addicts'. The report states that under the Act of control of Narcotics, etc, a drug abuser who turns out to be a drug addict can be subject to compulsory treatment, or to punishment. A prosecutor has the discretion to decide whether to take only one option or both. The Tribunal finds that the applicant will not automatically be placed in gaol, but that the decision will lie with the prosecutor.
244. The Tribunal also accepts the information provided by the applicant himself, as follows.

Methadone is not available on the pharmaceutical market. However, under exceptional circumstances methadone patients seeking to travel to South Korea may get permission to do so. They must contact a Korean embassy or consulate at least three months in advance of the prospective journey and produce the following documents: a transfer report, stating the patient's name and age, the date of travel to and destinations in Korea, the name of the doctor in charge of methadone treatment, diagnosis of disease, duration of treatment, main symptoms of the disease, medication, the prescriber's license number and his/her address. Furthermore applicants are expected to bring a photograph and a copy of their passport. If the embassy or consulate gives approval to travel all necessary documents will be forwarded to the Drugs Directorate of the Ministry of Health which names a hospital or physician. Methadone may then be imported but must be handed over to a local hospital doctor or practitioner on arrival.

Contact Address: any embassy or consulate of South Korea

245. The Tribunal finds that if the applicant were to return to Korea he can seek permission to import Methadone into Korea, for his use as a methadone patient.
246. The Tribunal finds that there is no real chance that the applicant will be persecuted for a Convention reason as a Methadone patient.
247. Regarding the applicant's claims that he has spent part of his formative years in Australia, and his culture is more likely to fit into the Australian culture than the Korean culture, and that he could not associate well with Korean people, the Tribunal finds that the claim is not for reasons of a Convention ground
248. Regarding the North Koreans in the [Location 1] advising the South Korean Consulate that the applicant was using drugs, this is a matter which is factually correct, according to the applicant's own evidence, and he will be discovered to be a drug user at the airport on arrival in Korea, in any event. The Tribunal finds that there is no relevant Convention nexus.
249. Regarding the applicant claiming that four people at [Location 1] called South Korea and China and told them to kill the applicant if he disembarked, the Tribunal finds that this claim does not fall with the Refugees Convention. The Tribunal finds that this is motivated by a criminal purpose. Further, the Tribunal finds that any unlawful matter which may arise against the applicant can be reported to the police and, on the basis of the country information which the Tribunal has provided, there is a real chance that the applicant's complaints will be dealt with appropriately. On the information currently before the Tribunal, the Tribunal finds that there is no discrimination by the police in providing protection to particular citizens, such as those that may be considered to be disabled.
250. The applicant claimed that he will be very much alone in Korea, and he will not be able to get a job there because his Korean is not good enough, and he did not finish his university. The Tribunal does not accept this claim as the applicant spoke Korean up to the age of [age], when he came to Australia Further, he appeared to speak fluent Korean to the interpreter at the hearing, and preferred it when he was having trouble with English. Further, the Tribunal finds that a university education is not a prerequisite to employment. The Tribunal does not accept this claim.
251. As a result of the findings above, the Tribunal is not satisfied the applicant faces a real chance of persecution should he return to Korea now, or in the foreseeable future.
252. Therefore the Tribunal is not satisfied on the evidence before it that the applicant has a well-founded fear of persecution for any Convention related reason.
253. Accordingly, the Tribunal is not satisfied that the applicant is a refugee.
254. As a result of its findings, the applicant's possible right to enter and reside within [Country A] is no longer an issue for the Tribunal.
255. The applicant has requested that the Tribunal refer the case to the Department for consideration by the Minister pursuant to s.417 of Act which gives the Minister a discretion to substitute for a decision of the Tribunal another decision that is more favourable to the applicant, if the Minister thinks that it is in the public interest to do so.

256. The Tribunal has considered the applicant's case and the ministerial guidelines relating to the discretionary power set out in PAM3 'Minister's guidelines on ministerial powers (s345, s351, s391, s417, s454 and s501J)' and will refer the matter to the Department.

### **CONCLUSIONS**

257. 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**

258. 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