

071832368 [2007] RRTA 347 (20 December 2007)

DECISION RECORD

RRT CASE NUMBER: 071832368
DIAC REFERENCE(S): CLF2007/98163
COUNTRY OF REFERENCE: Republic of Korea
TRIBUNAL MEMBER: Gary Ledson
DATE DECISION SIGNED: 20 December 2007
PLACE OF DECISION: Melbourne

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

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

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

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

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

RELEVANT LAW

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

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

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

Definition of 'refugee'

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

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

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

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

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

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

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

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

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

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

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

CLAIMS AND EVIDENCE

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

The applicant is a Republic of Korean national born in the 1980s. The applicant claims to have no other family members, either in Australia or Korea. The applicant currently resides in suburb A and lives with people he describes as his home stay family. The applicant has recently completed his Education and is currently awaiting his results.

The applicant first came to Australia in the 1990s and returned to Korea a number of times. The applicant then returned to Australia in the early 2000s [information about the applicant's visa history deleted in accordance with s.431] as a dependent of his aunt [information deleted: s.431]. In the mid 2000s the applicant was granted a visa which allowed him to stay in Australia until the late 2000s. During this time the applicant returned to Korea a number of times. According to DIAC records the applicant's aunt left Australia in the mid 2000s and has not returned. The applicant lodged an application for a Protection (Class XA) visa.

In his application for a Protection Visa the applicant states the following:

I do not know what happened when I was taken from South Korea. This is because I was too young to understand my situation and also my memories are very vague.

I was brought up by my aunt, person 1, who is my blood mother's (biological mother's) sister.

When I was a child, my blood mother (biological mother) sent me to her sister and since then I lived with my aunt and her family until they abandoned me and left to country B.

However I managed myself well that I am a law abiding citizen and I have never and never will commit a crime under any circumstances.

Australia is my home and I take proud and dignity in that. And also I will be a great asset for Australia.

I spent my juvenile period and adolescence in Australia.

Above all, I have no where else to be but Australia.

When asked what the applicant feared if he went back to Korea, the applicant wrote:

I am an orphan.

I do not have anybody in Korea and any memory of that country, because I was adopted when I was a child by my aunt who has left me.

Therefore I do not have a country to go back.

I believe myself as an Australian and if I go back to Korea, I will be in trouble and great pain.

Consequently I have no future.

I have strong relationships and ties with my Australian friends and my church and I am devoted to my Australian community.

Especially I have an Australian girlfriend who I met for past [number deleted] years [dates deleted] and she will also suffer if I am taken to Korea, which will make me fear as well.

The applicant wrote in responding to the question –Who do you think may harm/mistreat you if you go back? – wrote:

I do not have a country to go back.

I am an orphan and I am stateless because I am abandoned by my family, relatives and country.

My country and real home is Australia.

I do not have a country except Australia.

When asked - why do you think this will happen to you if you go back? – the applicant wrote:

I have been raised up and educated in Australian schools and community.

I was taught and educated about Australian values and Australian beliefs and this makes me a true Australian.

If Australia cannot protect and accept me, I have no country or no home to go back and my life will be in danger.

Therefore I am applying for Protection Visa.

Whether the authorities can protect the applicant if he returns to Korea, the applicant wrote:

I have no memory of Korea.

And If I go back, I fear that I will be treated as an alien.

From my point of view, I am already abandoned by them when I was a child.

So, how can they protect me?

Only Australia can protect me.

In relation to military service obligations, the applicant wrote:

If I am forced to go back to Korea, I will be taken to the Korean National Military Services. I have heard from the Korean community that every man who reaches the age of 20 has to serve in the military service as a compulsory obligation. This will be a great pain and an extreme hardship for me.

The Hearing

The applicant appeared before the Tribunal to give evidence and present arguments. The applicant was not represented by a Migration Agent.

The applicant commenced by verifying his personal details – full name, date of birth, current address- and these were as they appeared in the Protection Visa Application.

The applicant has lived at the current address for the past few years. This home is owned by person 2 and his family and the applicant refers to them as his home stay family. The applicant had previously resided in suburb C, state D. The applicant was moved to city E by his aunt a few years ago as she had told the applicant that city E was a better place than city F to complete his education. The applicant's aunt placed him with this family and then he believed that she had returned to city F. The applicant had attempted to contact his aunt once she returned to city F but he was unable to contact her. The applicant has not seen or heard of his aunt since that time. He believes that his aunt is presently in the country B

Not long after he moved to city E the applicant, whilst trying to contact his aunt, was told by who he thought was his uncle in Korea that, the person he believed was his mother was in fact his aunt and that his biological mother had given him to her to be raised. He is not sure when he was given to his aunt and grew up in her care believing that she was his mother. He has no recollection of these early years and presumed that he was one of a number of siblings living with his mother and father. The applicant has no knowledge of his biological mother, whether she is alive or dead nor whether he has other relatives.

The applicant stated that he was shattered by this news that he had been effectively abandoned by his family. The applicant has attempted to contact his 'siblings' but without success. The only source of emotional support at this time was limited to his home stay family. He had not shared his personal circumstances with his friends for fear of shame and embarrassment.

His knowledge of his arrival in Australia is limited except he came when he was very young and was even not sure of specific dates. His memory is living in Australia with his aunt and her children assuming that they were his real family. He recalls his times at school in city F and city E and has little recall of detail.

The applicant has just completed his education and hopes to study at University. He is aware as a Korean national he will be required to pay substantial fees if he is accepted at University.

The Tribunal then asked the applicant about his return visits to Korea since the mid 1990s. He stated that apart from the most recent visit he is not sure of dates and details as he was very young. He did say that the last visits he has traveled by himself and seems the other times he traveled with his aunt. Up until the last visit he had generally stayed with his uncle, who he had believed was his father.

The last visit to Korea was in the mid 2000s. The applicant returned to Korea seeking a visa to enter country B in the hope of finding his aunt. He stayed with another “uncle” who was, in fact, a friend of his aunt. He did travel to city G, country B and stayed with a friend for about a month, he tried many avenues but he was unable to find his aunt or other family members.

The applicant had no recall of any difficulties with entering or leaving Korea as these matters were dealt with by either his aunt or uncle. The applicant holds a current Korean Passport and this was renewed on his last visit to Korea. His passport expires in the late 2000s

It is only recently that the applicant has worried about visa issues as these were always managed by his family. However over the last twelve months he has given more thought to his situation as he is unlikely to be reunited with his aunt and her family. He has sought advice from members of his religious congregation who had a legal background. This advice was to apply for a student visa but this was impractical as he did not have enough money. He was then advised to apply for a Protection Visa.

The Tribunal then asked the applicant about his aunt. The applicant had not known he was adopted until a few years ago. He had assumed that he was the son of his aunt and uncle and that his cousins were his siblings. When he was moved to city E by his aunt he had no idea of her plans. When his aunt left he assumed that she was returning to city F. He was very depressed about being abandoned by them. He had no knowledge of her current whereabouts and had no knowledge of her visa status whilst she was in Australia He recalled that occasionally his aunt worked in a friend’s restaurant.

The applicant has managed to stay with his home stay family and assumes that his aunt had made some payments for his board in advance. His home stay parents have only asked him to pay for board in the last months. The home stay family has become his de-facto family and through this family he attends a religious place of worship The applicant states that he has become very close to his host stay family and he considers his home stay father as an older brother. He also has managed to make many friends with students from his school.

The applicant has two part time jobs – in his home stay father’s business and in a restaurant. He earns a few hundred dollars per week and he uses this money to pay his board and for living expenses. With his board his home stay family provides him with shelter and food and he pays for any other expenses such as clothes and entertainment.

Again the applicant stated that he has no recall of his biological mother and has no clue as to why his aunt had taken him as her own child to raise. He in fact has not been able to have any discussion with his aunt about his circumstances. Again he confirmed that he had no known relatives in Korea.

The Tribunal then asked the applicant which of the Refugee Convention grounds apply to his situation. He stated that he had read the Primary Decision Record and believed that ‘technically’ he did not satisfy any of the grounds. That there were no grounds of race, religion, nationality, member of a particular social group nor for political opinion He had applied for a Protection Visa on the advice he had received and he believed that this was his only hope of staying in Australia, given his circumstances.

The applicant’s fear of returning to Korea is that he has no family or friends in Korea, that he would have no life and would not know how to make a new life in a country in which he

would be an alien. His only friends are in Australia and his home stay family has become his only known family.

The Tribunal also asked whether the applicant knew if would be required to undertake compulsory national service if he returned to Korea. He stated that he had heard from members of his religious congregation that all males of 20 years of age are required to undertake about 2 years of national service.

The applicant stated that he had not sought any further legal advice about his situation other than that provide by his religious congregation member.

The Tribunal then put to the applicant some brief country information that said in summary that, if he was returned to Korea, the applicant would have the same rights of all Korean citizens and that he should not fear persecution or harm by any person, group of people or government. Also as a Korean citizen he would be able to seek protection from the authorities. In response the applicant stated that he was aware of this but his fear was that if he were required to return to Korea he has got nobody in Korea to help him build a new life. He would feel like and alien, he has no family and no networks.

The applicant concluded that he had no further things to say about his situation.

COUNTRY INFORMATION

The Tribunal researched a range of current documents that examined the constitutional rights of South Korean nationals.

These extracts from US State Department Report for 2006 note in general terms the rights of residents of South Korea:

Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such actions, and the government generally respected these prohibitions in practice. Some human rights groups raised concerns about possible government wiretapping abuse. The Anti-Wiretap Law lays out broad conditions under which the government may monitor telephone calls, mail, and other forms of communication for up to two months in criminal investigations and four months in national security cases. The Ministry of Information and Communication said that between January and June, the government conducted 528 cases of wiretapping, down 11 percent from the 550 cases during the same time period in 2005. Telecommunications companies also reported providing more than 35 percent fewer phone records to law enforcement agencies when compared with last year.

The government continued to require some released prisoners to report regularly to a probation officer under the Social Surveillance Law.

The NSL forbids citizens from listening to North Korean radio in their homes or reading books published in North Korea if the government determines that the action endangers national security or the basic order of democracy in the country (see section 1.d.). However, this prohibition was rarely enforced, and the viewing of North Korean satellite telecasts in private homes is legal.

Freedom of Speech and Press

The law provides for freedom of speech and of the press, and the government generally respected these rights in practice. However, under the NSL, the government may limit the expression of ideas that authorities consider Communist or pro-North Korean (see section 1.d.). Proposals to annul or substantially revise the NSL failed to reach a majority in the National Assembly.

Respect for Political Rights: The Right of Citizens to Change Their Government

The law provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage for all citizens 20 years of age or older.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

Freedom of Assembly

The law provides for freedom of assembly, and the government generally respected this right in practice. The Law on Assembly and Demonstrations prohibits assemblies that are considered likely to undermine public order. The law requires that the police be notified in advance of demonstrations of all types, including political rallies. The police must notify organizers if they consider an event impermissible under this law; however, police routinely approved demonstrations.

Freedom of Association

The law provides for freedom of association, and the government generally respected this right in practice. Associations operated freely, except those deemed by the government to be seeking to overthrow the government.

Freedom of Religion

The law provides for freedom of religion, and the government generally respected this right in practice.

Freedom of Movement within the Country, Foreign Travel, Emigration, and Repatriation

Most citizens could move freely throughout the country; however, government officials had discretion to restrict the movement of some former prisoners and North Korean defectors. While foreign travel generally was unrestricted, the government must approve travel to North Korea.

Worker Rights - The Right of Association

The law provides workers with the right to associate freely. A new law, which took effect in January, allows public servants to organize unions; however, the unions protested the law, as it bans them from taking collective action. In September the Federation of Government Employees submitted an application to the Ministry of Labor for the establishment of a legal union that was subsequently approved.

Discrimination, Societal Abuses, and Trafficking in Persons

The law forbids discrimination on the basis of gender, religion, disability, age, social status, regional origin, national origin, ethnic origin, physical condition or appearance, marital status, pregnancy and child delivery, family status, race, skin color, thought or political opinion, record of any crime for which punishment has been fulfilled, or sexual orientation or medical history, and the government generally respected these provisions. However, traditional attitudes limited opportunities for women, persons with disabilities, and ethnic minorities. While courts have jurisdiction to decide discrimination claims, many of these cases were instead handled by the National Human Rights Commission.

From the Political Handbook of the World: 2007, the following quote from page 674:

‘ ... The constitution sets forth a variety of guarantees, including freedom of press and assembly, the right of habeas corpus, labor’s right to organise and strike against employers, and the prohibition of detention without court order.’

FINDINGS AND REASONS

The applicant is a Korean citizen he has travelled to Australia on a Korean passport. He currently holds a Korean passport that expires in the late 2000s. The Tribunal therefore finds that the applicant is a citizen of The Republic of Korea.

The Tribunal found the applicant to be a highly credible witness and at the hearing observed that he made no attempt to embellish or exaggerate his circumstances beyond what he has described them to be in his visa application.

Given the consistency of the evidence provided at the hearing with that provided in the Visa application and the credibility of the applicant, the Tribunal has no reason to doubt the substance of the applicant's claims about his personal circumstances. Therefore the Tribunal finds that:

- The applicant arrived and lived in Australia in the manner described at the hearing and in the visa application. Namely that he has lived from an early age with his aunt in the belief that she was his mother
- That the applicant has no knowledge of, or the whereabouts of, his biological mother
- That the applicant has spent a large period of his formative years living and being educated in Australia
- The applicant has been abandoned by his only known family, in Australia, in the manner that the applicant has described
- The applicant has no known relatives or friendship networks in Korea.

The applicant has not advanced any argument or evidence that would relate his personal circumstances to the Refugee Convention grounds of race, nationality, religion or political opinion. Further and by his evidence at the Tribunal hearing the applicant acknowledged that he believed that he did not technically meet any of the Refugee Convention grounds.

However, given the issues raised by the applicant in the Protection Visa application and at the hearing the Tribunal accepts that the applicant has strong subjective fears of returning to Korea.

Accordingly the Tribunal has determined to consider the review applicant's claims for the application for a Protection Visa on the grounds of his membership of a Particular Social Group

Whilst the applicant did not himself articulate his membership of a particular social group, the Tribunal has determined that the applicant could be identified as member of a group of Korean nationals returning to Korea after a long absence.

For the claim that an individual's fear of harm or mistreatment comes within the Convention ground of "membership of a particular social group" the particular social group must be cognizable or recognizable.

McHugh J in *Applicant S v MIMA (2004) 217 CLR 387* summarised the issue in broad terms:

To qualify as a particular social group, it is enough that objectively there is an identifiable group of persons with a social presence in a country, set apart from other members of that society, and united by a common characteristic, attribute, activity, belief, interest, goal, aim or principle.

Further, in *Applicant S v MIMA*, Gleeson CJ, Gummow and Kirby JJ stated the following

The determination of whether a group falls within the definition of "particular social group" in Art 1A (2) of the Convention can be summarised as follows. First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large.

Borrowing the language of Dawson J in Applicant A, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". As this Court has repeatedly emphasised, identifying accurately the "particular social group" alleged is vital for the accurate application of the applicable law to the case in hand

Taking this into consideration, the Tribunal finds that 'Korean nationals returning to Korea after a long absence' is a particular social group that can be identifiable by characteristics or attributes common to all members and as such can be distinguishable from society at large.

Having found that this particular social group exists it requires the Tribunal to determine whether because of the applicant's membership of this particular social group the applicant has a well founded fear of being persecuted for reasons of his membership of the group of 'Korean nationals returning to Korea after a long absence'.

In considering this question the Tribunal has referred to available Country Information, in particular the US Dept of State Country Report on Human Rights Practices 2006 (Released March 2007) Republic of Korea and the Political Handbook of the World: 2007. This information collectively indicates to the Tribunal that the applicant would be able to receive the same rights and protections as other Korean nationals. As evidence of this, the applicant at the hearing stated that in his most recent visit to Korea in the mid 2000s, he did not experience any difficulties from the authorities or police. Nor did the applicant advance that he had experienced any difficulties from others in the Korean society. Whilst the applicant has fears of being treated as an alien if he were repatriated to South Korea, the Tribunal finds that this does not amount to serious harm as defined in the Refugees Convention.

The Tribunal does not accept and is not satisfied that the review applicant faces a real chance of serious harm for the essential and significant reason of his membership of a particular social group.

In relation to the requirement of the applicant to satisfy his military obligations if he were to return to Korea, the Tribunal finds that the applicant having to fulfill this obligation in itself will not satisfy a Convention ground. As the following extracts regarding military service requirements in Korea shows, there exists a range of ways in which Korean nationals can fulfill their military service obligations:

In 1995, DFAT obtained information from a senior ROK government official that "although by law the period of National Service is two years, the actual length of service is 26 months." (DFAT 1995)

Likewise, Felix Soh says that

All able-bodied males above the age of 18 are conscripted for varying periods of military service. The term is 26 months for those posted to the army; 28 months for the navy and 30 months for the air force. ... [Y]ouths whose physical-fitness levels do not meet the demanding standards of the armed forces are still required to perform their duty. These are posted to administrative and other jobs within the government, such as traffic marshals, and serve 28 months. Others are sent to private factories to work. Some can choose to perform their national service with international charity and relief agencies. For these youths, their term of service will be 32 months. Those suitably qualified or

with the right aptitude take up jobs in the fields of the arts and sports. They serve 36 months. Holders of Ph.Ds can opt to do research to discharge their national service responsibility. (Soh 1996 CX17158)

The laws requiring military service in Korea generally apply to all young Korean males and therefore are a non-discriminatory law of general application. There is no evidence available to the Tribunal to suggest that the applicant would be selectively targeted to undertake military service beyond the norm. Further at the Tribunal hearing the applicant did not advance any political or religious objections to military service and the Tribunal finds that the impact on him of compulsory military service (or penalty for not taking part in it) will not amount to serious harm for a Convention reason.

Given these findings and the evidence of the applicant at the hearing, the Tribunal finds that there is no evidence to indicate that the applicant's subjective fear of harm, from his return to South Korea, has any connection to any of the five Refugee Convention grounds of race, nationality, religion or political opinion or membership of a particular social group.

The Tribunal believes that the applicant has strong humanitarian grounds that apply to his circumstances and these should be a significant consideration in determining his future.

The Tribunal has found that the applicant is a credible witness, who presented his case with humility and respect and did not at any stage attempt exaggerate his claims.

The fact is that the applicant, has been abandoned in Australia by people who he believed were his parents and siblings. At this point the applicant has no known relatives in Australia or Korea. Despite these difficult circumstances the applicant has continued with the completion of his education and is optimistic about his results. The applicant is hoping to undertake tertiary studies in the future.

The applicant has been extremely fortunate for the support of his home stay family over the past few years; they in effect now represent his only connection with any form of family unit. The applicant acknowledges the home stay father as like an older brother who has been able to provide more than just food and shelter.

The applicant has contributed to his own support by working in two part time jobs – as an administrative clerk for his home stay father and as a waiter in a restaurant. At the same time he has been able to maintain his motivation to do well in his studies. The Tribunal acknowledges that the applicant has a strong commitment to improving his prospects for the future and commends him for doing so in difficult circumstances.

The applicant has no familial or friendship connections in Korea. He states that he has spent so much of his early and formative years in Australia that he believes that he would feel like an alien in Korea and that he will have no help or care in re-establishing himself in Korea. The Tribunal is in no doubt that the applicant would face a difficult future if he was returned to Korea.

For over 10 years the applicant has little understanding of his life outside of Australia, he humbly and proudly believes that he is Australian and can add significantly to this country if he were allowed to stay. The Tribunal concurs with this belief.

The Tribunal is aware that its role is limited to determining whether the applicant satisfies the criteria for the grant of a protection visa. A consideration of his circumstances on other grounds is a matter solely within the Minister's discretion.

CONCLUSIONS

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

DECISION

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the Migration Act 1958.
Sealing Officer's I.D. PRRTZB