

1001018 [2010] RRTA 363 (6 May 2010)

DECISION RECORD

RRT CASE NUMBER: 1001018

DIAC REFERENCE(S): CLF2009/118972

COUNTRY OF REFERENCE: Malaysia

TRIBUNAL MEMBER: Jennifer Ciantar

DATE: 6 May 2010

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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 Malaysia, arrived in Australia [in] August 1999 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] September 2009. The delegate decided to refuse to grant the visa [in] January 2010 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 under the Refugees Convention.
4. The applicant applied to the Tribunal [in] February 2010 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 relating to the applicant.
20. On the visa application the applicant stated that he is Christian and Tamil and he arrived in Australia [in] August 1999. He states that he left his country because of his faith and Christian religion, anti Islamic and anti Malaysian activities. He fears returning to his country as he will be killed by Islamic fanatics and fundamentalist party. He strongly believes that if he returns to Malaysia he will be arrested by Malaysian authorities due to his past political and anti Government activities. He fears he will be mistreated by Islamic fanatics and Government authorities. He fears that he will be killed by Government authorities and there will be no trace of his body. He also states that he left Malaysia legally and that there are charges of anti Islamic and anti Government against him.
21. [In] November 2009 the Department interviewed the applicant and the interview can be summarised as follows. The applicant confirmed that he had recently obtained a new passport. The Department advised that it had the old passport and would take a copy of the new passport. The applicant gave his name and date of birth, and said that he is a citizen of Malaysia only. His father and grandfather were born in Malaysia. The applicant said that he moved to a house in [Suburb 1] about 2 months earlier. Friends helped him complete the application. There are no mistakes that he wants to correct on the application. He grew up in Perac in West Malaysia and he left school when he was aged about 16. He had no further education. He attended a Government school. His family speak Tamil. He speaks a little Malay. His father was a house painter. His parents are still alive and he has contact infrequently. He has 2 brothers and one sister who all live in Malaysia. After he left school he worked and helped in the Catholic Church, which might have been called [name deleted: s.431(2)] but it was a long time ago and he is not sure. It was in Ipoh. His duties were to distribute leaflets in various places. When asked where, the applicant said he spoke to people on the road and distributed pamphlets. He did this for 3 years, from 1995 to 1997. He had also worked. The delegate noted that the applicant has said on his application form that he worked at [Company A] from 1993. The applicant said that he performed cleaning work in one section of the factory for 8 hours per day, 4 days per week. Sometimes he lived with his parents and sometimes with friends, if the cleaning was at night. His parents lived about 1 hour away by bus. His hours were variable.
22. When asked about his anti Islamic and anti Malaysian activities, the applicant said that he distributed leaflets and he would recognise the Muslims. They warned him against distributing to non Christians but he continued to do it and so the Muslim people hit him. He ran away but began again the next day. The delegate put to the applicant that the church would not have been happy about him irritating people. The applicant said he is doing it for God but the Church told him to do it in some other place. The applicant said he continued to distribute the leaflets and he also spoke on a loudspeaker. He was inviting people to come to the Church by walking the streets and speaking on a megaphone. He wanted to attract people to come. The delegate put to the applicant that this was unusual for the Catholic Church and

also independent information indicates that the church is very sensitive to the Muslim majority and it was unlikely he would be shouting through a megaphone from a van. The applicant said that some churches won't allow this but the particular priest with whom he worked allowed it. The applicant does not have ongoing involvement with the church.

23. When asked if he was concerned about any of his other activities in Malaysia, the applicant said that this was the only one. When asked why he delayed applying for protection given that he has been in Australia for 10 years, the applicant said that he was not aware he could do this until his friends told him. The applicant said he was fearful for his life at the time that he left. The delegate put to the applicant that he had returned to Malaysia a month after he first left but he claims to have been afraid. He thought that after 6 months it should be alright but when he went back he discovered it was worse so he returned to Australia. He had not applied for protection then, as he was not aware that he could. The delegate asked the applicant why, after nearly 11 years, he thought there would be trouble for him if he returned to Malaysia. The applicant said that they told him they would kill him if they saw him around because he had promoted churches. When asked why he would not get help from the police the applicant said that the police are also Malays and it would be fruitless. The delegate put to the applicant that there are also Tamil police. The applicant said that the Tamil police are afraid of the Malay police and it would not be the norm.
24. The delegate put to the applicant that he had a new Malay passport and he is a Malay citizen. The applicant said that he obtained the passport in Canberra where there were Indonesian people working. The applicant confirmed that he has done casual work in Australia. The delegate put to the applicant that the fact that he waited 10 years suggests that he was not fearful. The applicant said he was in fear but he did not know what to do until his friends told him. The applicant said that he goes to the church in [Suburb 2] sometimes but he has not done work for them. He is still a committed Catholic. He has not followed what has happened to the Catholic Church in Malaysia. The delegate put to the applicant that the country information about Malaysia does not support the applicant's fear that he will be killed. The Catholic church walks a careful line between inflaming the Muslim population and keeping its congregation safe, and the delegate does not accept that it would support what the applicant claims to have done. The applicant said he had the church's permission, he performed these activities and he was threatened. For 3 years he talked on a megaphone in the streets, he distributed bibles in the church and he gave out pamphlets on the streets and at bus stops. He was sometimes stopped by the police. He was asked to cease by the priest sometimes. The priest was called [name deleted: s.431(2)] and he does not know his full name but he supported the applicant's activities. The applicant said that he is afraid to return to Malaysia.
25. The applicant appeared before the Tribunal [in] March 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil and English languages.
26. The applicant's oral evidence can be summarised as follows. He first arrived in Australia [in] November 1998. He returned to Malaysia from [early] May 1999 to [mid] August 1999. Since 1999 he has been helping his friend with the cooking and cleaning in the house where they live. He lived in different places for a few years but he has lived at the same address in [Suburb 1] for the last eight years. He has managed financially because his friend with whom he lives helps him. His friend is an Australian citizen and he works for [Company B].

27. When asked why he had not applied for a protection visa earlier, the applicant stated that he was scared to do so in case he was deported. However, his friend told him that if he presented the facts about having been beaten up in Malaysia he would be helped. Previously, he had not known how to do it or how to go about making the application. When asked why his friend could not have assisted him earlier, the applicant stated that he had been trying to find someone to help him and eventually someone told him what to do. The Tribunal put to the applicant that it was difficult to believe that it had taken 10 years for him to find out how to lodge a protection visa. The applicant stated that he was told that if he did something like this, he would be sent back to Malaysia and this is why he had not lodged an application but now he thinks that Australia will help him. When asked why he had not thought previously that Australia would help him, the applicant stated that he was very scared before but he was later told that if he feared for his life and if he feared persecution he could lodge the application.
28. When asked why he fears for his life, the applicant stated that he was a Christian and he feared Muslim people. The Tribunal put to the applicant that there is a large Christian population in Malaysia. The applicant stated that that is their business but he has to protect his own life and his life is in danger and there are many more Muslim people in Malaysia. The Muslim people in Malaysia have taken over everything including politics. The Tribunal put to the applicant that reports about his country indicate that there is little, if any, targeting of Christian people by Muslim people in Malaysia. The applicant stated that his life was in danger and in Australia he is safe but if he returns to Malaysia, his life will be in danger again.
29. When asked what had happened to him in Malaysia, the applicant stated that when he was helping at the church he was beaten up. He cannot recall exactly when this incident occurred. When asked if he could recall the year the applicant stated that it was 1995. Muslim people beat him up because he distributed books and he was speaking on the streets using a megaphone. When asked what he had said, the applicant stated that he was telling people to come to church because there is a God there. When asked which church he was encouraging people to attend, the applicant stated that it was a Christian church. When asked which type of Christian church, the applicant stated that it was just a Christian church. He had gone to all churches and preached and he cannot remember which one. The church he attended in Malaysia may have been called [name deleted: s.431(2)] or [name deleted: s.431(2)] but he cannot remember now. He went to Mass on Sunday and he also went to church at other times including after work.
30. The Tribunal noted that the applicant has provided a baptism certificate. The applicant stated that he was baptised in India because although he was born in Malaysia, his mother was from India and his father was Malaysian. When asked about baptism, the applicant stated that a child is taken to a church and something happens there. The baptism certificate had been sent to him by his mother's relatives at the time he was interviewed by the Department, in order to prove that he is a Christian. When asked why he was baptised in India, the applicant stated that his mother had taken him to India for holidays.
31. The applicant confirmed that before coming to Australia he had worked as a cleaner at [Company A] His shifts were either four hours or eight hours and he worked day or night. He did not work near his home and it took about 1.5 hours to get to work. He lived with his family but if his shifts changed then he might stay with friends. He had attended the same church as his parents.

32. When asked if he attended church in Australia, the applicant stated that he has been to the church in [Suburb 2] but he cannot say the name as he does not speak English. When asked when he had last attended church in [Suburb 2], the applicant stated that he went once in 2000 and he has not been since. The applicant then stated that he goes to church at Christmas time or on celebrations. He goes to church every Christmas including last Christmas. The Tribunal put to the applicant that he had just said that he had not been to church since 2000. The applicant stated that although he had said this, he is now changing his evidence and he had attended church last Christmas. He also goes to church at other times and prays privately, for himself.
33. When asked if he had encouraged people to attend any particular Christian church in Malaysia, the applicant stated that he had preached that people should go to the temple and that he thinks that all religions are equal. He had distributed books that were like Bibles but were written by priests although he cannot remember the names of the books, and he had distributed pictures of God.
34. When asked if he was a Catholic in Malaysia the applicant stated that he was a Catholic. The Tribunal put to the applicant that independent information indicates that Catholics in Malaysia do not evangelise. The applicant stated that Catholics might not evangelise in Australia but they do in Malaysia. Maybe they do not evangelise now but they did when he was there.
35. When asked why he is not still active in the Catholic Church if he was active in Malaysia, the applicant stated that in Australia he does not know the priest. The applicant then stated that he does recognize the priest but the priest does not speak to the applicant so he has not got involved.
36. When asked to describe what happens during a Catholic mass, the applicant stated that someone talks about God and there are blessings. When asked about the important ceremony that occurs in the middle of Mass, the applicant stated that people cross themselves. When asked about the seven sacraments, the applicant stated that he cannot remember. Even though he attends church he does not understand English. When asked about the significance of baptism, the applicant stated that he was a baby at the time and the Tribunal would have to ask his mother. The Tribunal put to the applicant that Catholics are taught about the significance of baptism when they are older. The applicant stated that he cannot recall this. The Tribunal put to the applicant that the Tribunal is finding it hard to believe that the applicant attended church very often, if at all, and he does not seem to know much about Catholicism. The applicant stated that he did go to church and many people saw him do so. The Tribunal put to the applicant that it was also difficult to believe that he would have been encouraging others to attend church when he seems to know very little about the Catholic faith. The applicant stated that he did know about it and this is why he was outside.
37. The applicant stated that he was beaten up again in 1996 and told to not get involved and also that he should convert to being a Muslim. The Tribunal put to the applicant that he has never claimed before to have been told that he should convert to being a Muslim. The applicant stated that he had told Department this when he was interviewed. The Tribunal put to the applicant that as the Tribunal has already told him, the Tribunal has listened to the recording of the interview that the applicant had with the Department and it is not recorded that he said he was encouraged to convert to Islam. The applicant stated that he is saying this now.

38. The applicant stated that he left Malaysia because his life was in danger and they threatened to kill him on many occasions including just before he left. He was threatened in 1995, in 1998 and every year but he cannot recall the dates. If he returns to Malaysia he will be killed. The Tribunal asked the applicant why he had returned to Malaysia in 1999 if he feared for his life. The applicant stated that he did not know what to do so he had returned for three months as he was required to do so before he was allowed to return to Australia. However, the threats started again and so his family told him to leave.
39. When asked if he had reported the threats and assaults to the police, the applicant stated that he not go to the police because they are Muslim. The Tribunal put to the applicant there are also Tamil police. The applicant stated that although there are Tamil police, Muslims are in control. He had told the church what was happening to him and they had said to try to stay but otherwise he should go abroad. When asked if he had stopped his activities of distributing books or pamphlets and using a megaphone, the applicant stated that he did stop for a few days but then he had started again when things were quiet.
40. The applicant showed the Tribunal his current passport. He stated that he had no difficulties obtaining the passport. The Tribunal put to the applicant that on the visa application form he indicates that there may be charges against him. The applicant stated that he cannot recall saying this. When he was beaten up he was hit on the head and so he cannot recall this.
41. The Tribunal asked the applicant if he could provide any more details about the attacks on him, for example, where and when the attacks occurred, and at what time of day, and how many people were involved. The applicant stated that he cannot recall any details. The Tribunal asked the applicant if anything else had happened to him and the applicant stated that nothing else had happened to him and that he fears returning to Malaysia because he is a Christian.
42. The Tribunal explained to the applicant that it wished to discuss with him information that would be a reason for affirming the decision to refuse his a protection visa. The Tribunal explained that the Tribunal would explain the relevance of the information and that the applicant would be asked to respond to this information and he would be entitled to seek additional time to comment on, or to respond to, the information the Tribunal was about to put to him.
43. The Tribunal put to the applicant that he had delayed lodging his application for protection for more than 10 years and this may lead the Tribunal to not accept that the applicant fears returning to Malaysia because of persecution. The applicant stated that he really had problems in Malaysia but he had not applied for 10 years after coming to Australia.
44. The Tribunal put to the applicant that after he first came to Australia he had then returned to Malaysia for three months and this might also lead the Tribunal to not accept that the applicant feared persecution in Malaysia. The applicant stated that he went back to Malaysia but then there were more problems and he had had to wait three months before he could return to Australia.
45. The Tribunal put to the applicant that he seems to know little about the Catholic faith and he has little involvement in the Church in Australia. The applicant stated that he does go to Church but not often. He does know about Catholicism but he cannot remember.

46. The Tribunal asked the applicant if he wished to comment on, or to respond to this information, either now, or after a short break, or at another time, or in writing. The applicant stated that if he has to think much more he will have a headache. The Tribunal discussed with the applicant if you would like to have a break and perhaps takes some pain relief and then respond to the Tribunal. At this point the interpreter offered the applicant Panadol. The applicant said that he had already stated that he would get a headache. The Tribunal told the applicant that it was important for him to think about whether he wanted to make a response or provide the Tribunal with any more information because the information that the Tribunal had put to the applicant may lead the Tribunal to decide to refuse the visa. The applicant stated that he would take a short break of 10 minutes. After the adjournment the applicant stated that he did not have anything further to say to the Tribunal and he did not need any more time to make a further response.

Independent Information

47. The US Department of State's 2009 Report on Human Rights Practises, 11 March 2010, states the following in respect of Malaysia:

Malaysia is a federal constitutional monarchy with a population of approximately 28.3 million. It has a parliamentary system of government headed by a prime minister selected through periodic, multiparty elections. The United Malays National Organization (UMNO), together with a coalition of political parties known as the National Front (BN), has held power since independence in 1957. The most recent national elections, in March 2008, were conducted in a generally transparent manner and witnessed significant opposition gains. On April 3, Najib Razak was sworn in as prime minister. Civilian authorities generally maintained effective control of the security forces.

The government generally respected the human rights of its citizens; however, there were problems in some areas. Significant obstacles prevented opposition parties from competing on equal terms with the ruling coalition. Some deaths occurred during police apprehensions and while in police custody. The nonprofessional People's Volunteer Corps (RELA) reportedly abused refugees, asylum seekers, and illegal immigrants. Other problems included police abuse of detainees, overcrowded immigration detention centers (IDCs), use of arbitrary arrest and detention using the Internal Security Act (ISA) and three other statutes that allow detention without trial, and persistent questions about the impartiality and independence of the judiciary. The government continued to pursue the prosecution of a prominent opposition leader on politically motivated charges. The government also arrested other opposition leaders, journalists, and Internet bloggers apparently for political reasons. The civil courts continued to allow the Shari'a (Islamic law) courts to exercise jurisdiction in cases involving families that included non-Muslims. Additionally, the criminal and Shari'a courts utilized caning as a form of punishment. The government continued to restrict freedom of press, association, assembly, speech, and religion. Trafficking in persons remained a serious problem. Longstanding government policies gave preferences to ethnic Malays in many areas. Some employers exploited migrant workers and ethnic Indian-Malaysians through forced labor. Some child labor occurred in plantations.

Freedom of Religion

The constitution provides for freedom of religion; however, the constitution and the government placed some restrictions on this right. The constitution defines all ethnic

Malays as Muslims at birth and stipulates that Islam is the "religion of the Federation." The government significantly restricted the practice of Islamic beliefs other than Sunni Islam. Article 11 of the constitution states, "Every person has the right to profess and practice his religion," but it also gives state and federal governments the power to "control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam."

Non-Muslims, who constitute approximately 40 percent of the population and include large Buddhist, Christian, Hindu, and Sikh communities, were free to practice their religious beliefs with few restrictions. According to the government, it allocated 428 million ringgit (approximately \$125.9 million) to build Islamic places of worship and 8.1 million ringgit (\$2.4 million) to build Christian, Buddhist, Hindu, and other minority religions' places of worship between 2005 and the end of 2008.

FINDINGS AND REASONS

48. The Tribunal accepts the difficulties of proof faced by applicants for refugee status. In particular there may be statements that are not susceptible of proof. It is rarely appropriate to speak in terms of onus of proof in relation to administrative decision making: see *Nagalingam v MILGEA & Anor* (1992) 38 FCR 191 and *McDonald v Director-General of Social Security* (1984) 1 FCR 354 at 357; 6 ALD 6 at 10. The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992, at paragraph 196-197 and 203-204 recognises the particular problems of proof faced by an applicant for refugee status and states that applicants who are otherwise credible and plausible should, unless there are good reasons otherwise, be given the benefit of the doubt. Given the particular problems of proof faced by applicants a liberal attitude on the part of the decision maker is called for in assessing refugee status. However, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. Moreover, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. In addition, the Tribunal is not obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.
49. Having sighted a copy of the applicant's passport in the Department's file, the Tribunal is satisfied that the applicant is a national of Malaysia.
50. The applicant claimed to have been involved in church activities and proselytising, and because he proselytised, he was threatened and assaulted by Muslim Malaysians. He claims that he was assaulted a number of times from 1995 until 1999. The applicant claims that he proselytised on behalf of the Christian and Catholic Church. However, for the following reasons, the Tribunal does not accept that the applicant was actively involved in the Catholic or Christian Church or that he proselytised on behalf of the Christian or Catholic Church from 1995, or that he was assaulted and threatened for doing so.
51. First, despite his claim to have been actively involved in proselytising on behalf of the local Christian or Catholic Church from 1995, the applicant could not recall the name of the church he attended in Malaysia. He said that it may have been called [name deleted: s.431(2)] or [name deleted: s.431(2)] but he cannot recall now. The Tribunal accepts that the applicant has been in Australia for 10 years but nevertheless, the Tribunal is of the view that if the applicant had been actively attending church every Sunday in Malaysia, for many years since

he was a child, as he claims, he would recall the name of the church he attended. The Tribunal is also of the view that the applicant's evidence about what he said when he proselytised was very vague and general. He said he told people to come to church because God was there. The applicant also told the Tribunal that he encouraged people to attend any Christian church and that he had gone to all churches and preached, and he cannot recall which church. When asked which Christian church he encouraged people to attend the applicant said it was any Christian church. It was not until he was prompted by the Tribunal that he said that he was a Catholic and he had proselytised for the Catholic Church in Ipoh. The Tribunal is of the view that if the applicant had been so committed to his religion as to have been proselytising, he would have recalled the name of the church that he attended and more detail about what it was that he said when he was proselytising.

52. Secondly, although he claims to have been baptised as a Catholic and to have been proselytising for the Catholic Church, the Tribunal is of the view that the applicant showed little knowledge of significant aspects of Catholicism. For example, he could not describe what happens at a Catholic Mass other than making general statements that there are prayers and blessings. He could not name the significant event during Mass, which is Holy Communion. The applicant did not know why he had been baptised or the significance of Baptism, which is the sacrament whereby a person becomes a Catholic. He did not know the 7 sacraments of the Catholic faith. The Tribunal is of the view that if the applicant had been a practising Catholic since birth and he had been proselytising for the Catholic Church in Malaysia for a number of years, he would recall the name of the church he worked for and he would have some basic knowledge about what happens at a Catholic Mass, the significance of Baptism and the 7 sacraments. The Tribunal does not accept that the applicant was a practising Catholic in Malaysia.
53. Third, despite his claim to have been actively proselytising in Malaysia, the applicant claims to have had minimal involvement in the Catholic Church in Australia. The applicant initially told the Tribunal that he had not been to church since 2000. He then said that he attended church in [Suburb 2] at Christmas time and at other times. The applicant acknowledged that he changed his evidence to the Tribunal about the frequency of his attendance but he gave no explanation for having done so. The Tribunal considers that the applicant changed his evidence regarding his involvement with the Catholic Church in Australia, in response to the Tribunal's questions, as a means of tailoring his evidence. However, the applicant did not know the name of the church he claims to have attended in [Suburb 2] and he said that the priest would not recognise him. The applicant has now been living in Australia for more than 10 years and the Tribunal is of the view that if the applicant was a practising Catholic or Christian he would recall the name of the church he attends, even if his attendance is occasional. The Tribunal does not accept that the applicant has practised as a Catholic or Christian in Australia. This also leads the Tribunal to not accept that the applicant was a practising Catholic or Christian in Malaysia.
54. Fourth, the applicant's evidence about the assaults and threats he claims he received in Malaysia was vague and lacking in any detail. He claimed to have been assaulted a number of times but he could not say where the assaults occurred, when they occurred, at what time of day or how many people were involved. The Tribunal has considered that as the assaults occurred many years ago, the applicant may have forgotten some details. However, the applicant could not recall any details about any assaults even though it is these incidents which he claims caused him to leave Malaysia and seek protection. The Tribunal does not accept that the applicant was assaulted and threatened for proselytising or for distributing

religious material. The Tribunal is of the view that the applicant has fabricated his claim that he proselytised for the Catholic Church or for Christian churches in Malaysia.

55. Fifth, despite his claim to have been assaulted and threatened in Malaysia, the applicant returned to Malaysia [in] May 1999 and stayed there until [a date in] August 1999. The Tribunal has considered the applicant's claim that he had to return to Malaysia because it was a condition of his visa but the Tribunal is of the view that the fact that the applicant returned to Malaysia in 1999 casts doubt on his claim to have fled persecution when he first departed Malaysia and came to Australia [in] November 1998.
56. Lastly and significantly, the applicant waited for more than 10 years to apply for a protection visa. This casts serious doubt on the genuineness of his fear of persecution and the truth of his claims. At the hearing, other than stating that he had stayed with a friend who encouraged him to lodge an application for a protection visa in order to stay in Australia, the applicant was unable to provide a meaningful explanation for the significant delay in the lodgement of his application. He claims that he did not know how to apply but the Tribunal does not accept this explanation. The applicant claims to have lived for many years with a friend who is employed by [Company B] and who is an Australia citizen. The applicant was also able to depart and return to Australia in 1999, and he gave evidence to the Tribunal that he did so as it was a requirement of his visa. This indicates to the Tribunal that the applicant had some understanding of the visa process. The Tribunal is of the view that the applicant could have made enquires, either with or without his friend's assistance, about how to apply for a protection visa many years ago. As the applicant did not lodge a claim for protection for more than 10 years, the Tribunal does not accept that the applicant left Malaysia because he was persecuted or for any convention reason.
57. For all the above reasons, the Tribunal did not find the applicant to be a credible, truthful and reliable witness. The totality of his evidence showed a propensity to shift and tailor evidence in a manner which achieves his own purpose. The Tribunal is of the view that the applicant's claims are fabricated.
58. The Tribunal, therefore, does not accept that the applicant was active in any church or was engaged in proselytising to Muslims or to anyone. The Tribunal does not accept that the applicant was ever threatened and/or harmed for the reason of his Christian religion. As discussed with the applicant at hearing, independent information indicates that there is a large population of non Muslims in Malaysia and they are free to practice their religious beliefs with few restrictions. The applicant is specifically claiming to have been targeted because he was engaged in proselytising. However, the Tribunal has not accepted that the applicant was engaged in proselytising. The Tribunal does not accept that the applicant was assaulted and targeted by Muslims or that he was encouraged to convert to Islam or that he engaged in any anti Islamic activities, or that he came to the attention of Muslim fundamentalists.
59. The Tribunal does not accept that the applicant was ever harassed, intimidated, threatened or harmed by native Malaysians. The Tribunal does not accept that he had expressed or was imputed with an "anti-government" political opinion. On the visa application, the applicant refers to charges against him but at the hearing he denied that there are any charges and he could not recall having made such a claim. This also leads the Tribunal to find that the applicant has fabricated his claims. The Tribunal does not accept that the Malaysian authorities or anyone else had or have any interest in him for his express or imputed political opinion.

60. As discussed with the applicant at hearing, independent information indicates that there is a large Christian population in Malaysia and that there is little, if any, targeting of Christian people by Muslim people in Malaysia. The applicant only claims to fear harm because of his proselytising activities. However, the Tribunal has rejected the applicant's claim that he was engaged in proselytising activities in Malaysia. He has not claimed to have been engaged in this kind of activity in the last 10 years in Australia and the Tribunal is not satisfied that he would engage in proselytising the Christian faith or Catholic faith if he were to go back.
61. The Tribunal does not accept that the applicant has suffered any Convention related harm in Malaysia or that there is a real chance that he will be harmed for a Convention reason if he were to return to that country. The Tribunal is not satisfied that the applicant has a well-founded fear of persecution in Malaysia. He is not a refugee.

CONCLUSIONS

62. 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

63. 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