

060619793 [2006] RRTA 202 (4 December 2006)

DECISION RECORD

RRT CASE NUMBER: 060619793

DIMA REFERENCE(S): CLF2006/044353

COUNTRY OF REFERENCE: Latvia

TRIBUNAL MEMBER: Giles Short

DATE DECISION SIGNED: 4 December 2006

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is a review of a decision made by a delegate of the Minister for Immigration and Multicultural Affairs refusing an application by the Applicant for a Protection (Class XA) visa. The Applicant was notified of the decision under cover of a letter and the application for review was lodged with the Tribunal. I am satisfied that the Tribunal has jurisdiction to review the decision.

The Applicant is a citizen of Latvia. She arrived in Australia as a visitor and applied for a Protection (Class XA) visa.

RELEVANT LAW

In accordance with section 65 of the *Migration Act 1958* (the Act), the Minister may only grant a visa if the Minister is satisfied that the criteria prescribed for that visa by the Act and the Migration Regulations 1994 (the Regulations) have been satisfied. The criteria for the grant of a Protection (Class XA) visa are set out in section 36 of the Act and Parts 785 and 866 of Schedule 2 to the Regulations. So far as is material, section 36 of the Act provides that:

- ‘(2) A criterion for a protection visa is that the applicant for the visa is:
- (a) a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; or
 - (b) a non-citizen in Australia who is the spouse or a dependant of a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa.
- (3) Australia is taken not to have protection obligations to a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, if the non-citizen has a well-founded fear of being persecuted in a country for reasons of race, religion, nationality, membership of a particular social group or political opinion, subsection (3) does not apply in relation to that country.
- (5) Also, if the non-citizen has a well-founded fear that:
- (a) a country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion;

subsection (3) does not apply in relation to the first-mentioned country.’

Subsection 5(1) of the Act defines the ‘Refugees Convention’ for the purposes of the Act as ‘the Convention relating to the Status of Refugees done at Geneva on 28 July 1951’ and the

'Refugees Protocol' as 'the Protocol relating to the Status of Refugees done at New York on 31 January 1967'. Australia is a party to the Convention and the Protocol and therefore generally speaking has protection obligations to persons defined as refugees for the purposes of those international instruments.

Article 1A(2) of the Convention as amended by the Protocol relevantly defines a 'refugee' as a 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 time at which this definition must be satisfied is the date of the decision on the application: *Minister for Immigration and Ethnic Affairs v Singh* (1997) 72 FCR 288.

The definition contains four key elements. First, the applicant must be outside his or her country of nationality. Secondly, the applicant must fear 'persecution'. Subsection 91R(1) of the Act states that, in order to come within the definition in Article 1A(2), the persecution which a person fears must involve 'serious harm' to the person and 'systematic and discriminatory conduct'. Subsection 91R(2) states that 'serious harm' includes a reference to any of the following:

- (a) a threat to the person's life or liberty;
- (b) significant physical harassment of the person;
- (c) significant physical ill-treatment of the person;
- (d) significant economic hardship that threatens the person's capacity to subsist;
- (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
- (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

In requiring that 'persecution' must involve 'systematic and discriminatory conduct' subsection 91R(1) reflects observations made by the Australian courts to the effect that the notion of persecution involves selective harassment of a person as an individual or as a member of a group subjected to such harassment (*Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at 388, McHugh J at 429). Justice McHugh went on to observe in *Chan*, at 430, that it was not a necessary element of the concept of 'persecution' that an individual be the victim of a series of acts:

'A single act of oppression may suffice. As long as the person is threatened with harm and that harm can be seen as part of a course of systematic conduct directed for a Convention reason against that person as an individual or as a member of a class, he or she is "being persecuted" for the purposes of the Convention.'

'Systematic conduct' is used in this context not in the sense of methodical or organised conduct but rather in the sense of conduct that is not random but deliberate, premeditated or intentional, such that it can be described as selective harassment which discriminates against

the person concerned for a Convention reason: see *Minister for Immigration and Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1 at [89] - [100] per McHugh J (dissenting on other grounds). The Australian courts have also observed that, in order to constitute 'persecution' for the purposes of the Convention, the threat of harm to a person:

'need not be the product of any policy of the government of the person's country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution' (per McHugh J in *Chan* at 430; see also *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 per Brennan CJ at 233, McHugh J at 258)

Thirdly, the applicant must fear persecution 'for reasons of race, religion, nationality, membership of a particular social group or political opinion'. Subsection 91R(1) of the Act provides that Article 1A(2) does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless 'that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution'. It should be remembered, however, that, as the Australian courts have observed, persons may be persecuted for attributes they are perceived to have or opinions or beliefs they are perceived to hold, irrespective of whether they actually possess those attributes or hold those opinions or beliefs: see *Chan* per Mason CJ at 390, Gaudron J at 416, McHugh J at 433; *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 570-571 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ.

Fourthly, the applicant must have a 'well-founded' fear of persecution for one of the Convention reasons. Dawson J said in *Chan* at 396 that this element contains both a subjective and an objective requirement:

'There must be a state of mind - fear of being persecuted - and a basis - well-founded - for that fear. Whilst there must be fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear.'

A fear will be 'well-founded' if there is a 'real chance' that the person will be persecuted for one of the Convention reasons if he or she returns to his or her country of nationality: *Chan* per Mason CJ at 389, Dawson J at 398, Toohey J at 407, McHugh J at 429. A fear will be 'well-founded' in this sense even though the possibility of the persecution occurring is well below 50 per cent but:

'no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.' (see *Guo*, referred to above, at 572 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)

CLAIMS AND EVIDENCE

In accordance with section 418 of the Act, the Tribunal was given the Department's file relating to the Applicant. The Applicant appeared before the Tribunal to give oral evidence. The Tribunal was assisted by an interpreter. The Applicant was unrepresented.

The Applicant's evidence

(a) The Applicant's original application

The Applicant is aged in her mid-twenties. According to the details in her original application she is of Russian ethnicity and Russian Orthodox by religion. She said that she had completed a substantial level of schooling in City C and she was employed in recent years until her departure from Latvia although she said that she had not in fact worked for some months prior to her departure 'due to fear of reprisals and persecution'. She said that she had lived at one address in City C for several years and at another address briefly until her departure. She said that she had been registered at yet another address but had never lived there.

The Applicant said that her mother had given birth to a sibling some years ago but that her mother's partner had disappeared as soon as the child had been born. She said that because her mother was not a Latvian citizen she was not entitled to any government assistance and that the police had ignored all her requests to help her to locate her former partner. The Applicant said that her mother had been told that she would be better off if she went to live in her 'motherland'. She said that a number of years previously they had received an eviction notice from the authorities because they had failed to make regular payments. She said that this had been their own apartment but it was a common practice to evict aliens who had been unable to pay the government's 'stata'. She said that soon after they had had no choice but to sell the apartment but they had rented it back from the new owner.

The Applicant said that because they had disagreed with the government's policy they had applied to a number of authorities including the Latvian Human Rights Committee and their story had been published in a few Russian-language newspapers and in a newsletter issued by the Committee. She said that some years ago they had started receiving threatening notes. She said that her mother had gone to the police and they had 'pretended that they were going to investigate the matter' but a couple of weeks later they had received a letter from the police to say that the case had been dropped due to lack of evidence. She said that her mother had also applied to an international body (the name of which she said she did not remember) a few years later.

The Applicant said that recently, after they had moved to a new apartment, she and her mother had been severely beaten by a group of Latvians just metres away from their new apartment. She said that a few days later someone with a Latvian accent had telephoned and had told her mother that they would be 'finished off soon'. She said that a friend of theirs who had been in the police but who had been sacked had told them that the 'nationalists' had put them on a kind of black-list and that they should be very careful. The Applicant said that she had applied for a visa to travel to Australia around that time and it had been granted soon after. She said that her mother had not been able to travel with her because she would not have been granted a visa and could not afford to travel with her. She said that shortly after this, their apartment had been robbed and all their valuables and money had been stolen. She said that she had been able to buy her ticket only a few months after that.

The Applicant said that she believed that she and her mother had been persecuted by Latvian nationalists because they had 'dared to fight against the system'. She said that on numerous occasions they had expressed their disagreement with the policy of the Latvian Government to push Russians from Latvia at all costs. She said that she feared being persecuted for reasons of her political opinion if she returned to Latvia.

(b) The Applicant's evidence at the hearing before me

At the hearing before me the Applicant said that her relatives had helped her to fill out her original application for a protection visa. She said that there were some mistakes which she wished to correct. She said that where it said in her application that her mother had not been able to travel with her because she would not have been granted a visa it should have stated that her mother had applied for a visa but had been refused. She said that where it stated that she had been employed at the time noted until her departure this had not really been employment: she had been doing a course of study which had included a practical element. She said that a year later she had told her manager that she would not be able to come in to work as she was very unwell. Finally the Applicant said that her mother had only recently told her (when she knew she was going for an interview in relation to her application) that she had reported the attack on them on the last occasion to the police. She said that her mother had said that she had not told her this before because she had not wanted to upset her even more.

The Applicant produced two pages from the Internet in relation to the Tenants Association of Liepaja and a report in relation to a fact-finding mission undertaken by the Centre on Housing Rights and Evictions (COHRE) in Latvia in October 1999. She said that she had other reports in Russian which referred to the fact that the Russian-speaking community was bearing the brunt of human rights violations in Latvia and which also talked about nationalism and fascism in Latvia and how Russians were being harassed and made to leave Latvia. She said that the report of the fact-finding mission undertaken by COHRE was relevant (and she had highlighted relevant passages) because her problems had started with her living arrangements. She said that in the report in Russian it stated that over 20,000 people had been evicted from their units and the cases of a further 38,000 people were still being looked at.

The Applicant said that she had suffered an injury after the beating she had received in the last attack and she had suffered a lot of problems as a result: a lot of stress, memory gaps and migraine headaches. She asked that her health problems be taken into account in relation to any inconsistencies in her evidence. The Applicant confirmed the level of education she completed and when, as stated in her original application. She said that she had just commenced a further course of study as she had mentioned. She said that from the time she finished school and for some years following this she had been looking after her sibling because her mother had not been able to as she had been working. She said that her mother had not had an official job, just casual jobs. The Applicant said that she herself had Latvian citizenship because her father had been a Latvian citizen.

The Applicant confirmed the year her mother had received an eviction notice from the authorities because she had failed to pay fees or charges. She explained that her mother had purchased the apartment where they had been living with her former partner (the father of the Applicant's sibling) when she herself had been in her teens. She said that the fees or charges which her mother had been expected to pay had doubled so her mother had been required to pay 150 whereas their neighbours, who were Latvian, and whose apartment was identical to theirs, had only had to pay 80. She said that if they complained they would be told that if they did not like it they should go back to another country or wherever they came from. She said that she viewed this as a violation of human rights. She said that there had been a Commission which was supposed to look at rental matters and her mother had tried to approach the Commission but the Commission had referred her to a different office and she

had never received an explanation. The Applicant said that Latvia was seen as a successful and rich country but the people who lived there knew what was happening.

The Applicant confirmed the year her mother had sold the apartment but that they had rented it back from the new owner. She said that her mother could have gone to a court but a lawyer had advised them that if they did so the court would order the apartment sold at an amount less than its true value and would moreover use the proceeds first to pay off all the fees or charges owing to the Latvian authorities. They would only get what was left after that. The Applicant said that the lawyer had advised them that the courts were on the side of the Latvian authorities. She said that her mother had therefore sold the apartment to a friend of theirs who had also agreed to pay all the debts that were owing and to allow them rent the apartment.

I referred to the Applicant's evidence that they had gone to the Latvian Human Rights Committee and that their story had been published in a few Russian-language newspapers and in a newsletter issued by the Committee. The Applicant said that these had not been proper newspapers but small brochures published by the organisations that protected the human rights of Russian people. She said that in these brochures their story would not have been the only one but it had been highlighted because the rights of a small child (her sibling) had been violated. The Applicant confirmed the date from when they had started receiving threatening notes. She said that these notes had been put in their letterbox and had said things like 'the only good Russian is a dead one' and 'you are buying yourself a place in the cemetery'. The Applicant said that these were the ones she had seen but because she had become depressed her mother had not let her see any more. She confirmed that her mother had gone to the police and she said that they had thought that the police were taking the matter seriously because they had taken some of the letters. She confirmed, however, that the police had told them that they would not take the matter further for lack of evidence.

The Applicant said that they had continued to live in their old apartment until a recent time and that they had moved into a new apartment the following year. She said that when they had sold their old apartment they had still been in hope that the matter of the fees or charges would be reviewed but after some years had passed the person to whom they had sold the apartment had suggested that it was a lost cause. She said that by then he had wanted to sell the apartment because property prices had gone up in Latvia. Moreover their money had finished so they had had to find somewhere cheaper to rent. She said that the new apartment had been the cheapest they could find and theirs had been the only decent family in the building. She said that the rest of the people had been homeless people or 'bums'. She said that it had not really been an apartment but a pig sty: the walls had been rotten, the ceiling had been falling in and there had been no toilet or shower.

The Applicant produced a number of photographs: four showing her sibling and her mother at the old apartment, a fifth showing her mother at the new apartment, a sixth showing the Applicant herself at the new apartment and the seventh showing her sibling. The Applicant said that in the fifth photograph you could see the state of the apartment although other parts were worse. She said that the photograph had been taken shortly after the last time she and her mother had been beaten up and you could still see her mother's injuries. She said that the photograph of her had also been taken after the attack, when she had been depressed and had not been able to get out of bed. The Applicant said that she thought that she and her mother had been attacked because they were Russian. She said that it had been a chain of events. She said that in that year her mother had approached an international organisation. She said that it had been after this that she and her mother had been beaten up and that later they had

received a telephone call from someone with a dreadful Latvian accent who had said that this would not be the end of it.

I asked the Applicant how the nationalists would have known that her mother had approached an international organisation. The Applicant said that it was all connected and that they had found out their address and their telephone number as well. She asked why else she and her mother would have been attacked. She said that they had been attacked because they had been fighting for their rights. She said that she had thought about how their attackers could have found out their address and telephone number. She said that it was not hard: there was a black market where one could buy disks containing people's telephone numbers and addresses. She repeated that in her view it was all connected.

The Applicant said that after the attack they had called an ambulance but the ambulance had refused to take them to hospital even though she had been injured. She said that after that they had called the police but the police had asked what the ambulance had said and when they had told the police this the police had said that they had obviously not been injured. She said that the police had told them that if they wanted they could come and make a statement in the next few days. The Applicant said that a couple of days later they had spoken to the friend of theirs whom she had mentioned in her original application who had been in the police. She said that this friend had advised them against making a statement because he had said that, since the police had not visited the crime scene at the time, they would not be able to find any evidence.

The Applicant said that this friend had told them that the attack had a nationalist basis, that these people knew everything about them and that this meant that they had been included in a black-list. The Applicant said that as she had mentioned her mother had told her that she had in fact gone to the police to make a statement. She said that so far as she knew this had had no result but she said that she did not know what had happened to her mother since she herself had left Latvia because her mother would not tell her as a result of the state she was in. She confirmed that her mother and her sibling were still living in the same apartment. She repeated that she did not know if anything had happened to her mother since she had left because her mother would not tell her. She said that she had wanted to end her life after the last occasion when she and her mother had been beaten up.

The Applicant said that her relatives and their children lived in Australia. She said that they had been granted refugee status after they had come here a number of years previously. I asked her if this had been why she had come to Australia rather than going to another country in the European Union. The Applicant said that she could not have gone to any other country. She said that she had been very stressed, she had often fainted and she had spent some months in bed because her psychological condition had been so bad. She said that during this period she had thought of killing herself she had been in such a bad state. She said that in these circumstances for her to have travelled to a country where she did not know any one at all would have been 'a trip to the cemetery': she would have died. She said that it had been decided she should come to Australia where her relative would provide her with moral support and a roof over her head and would feed her.

I put to the Applicant that the US State Department had said in its *Country Reports on Human Rights Practices for 2005* in relation to Latvia that there were no reports that the government or its agents committed arbitrary or unlawful killings and no reports of politically-motivated disappearances. It had said that there were no reports of political detainees or political prisoners. The US State Department had said that the law provided for

freedom of speech and of the press and that the government generally respected these rights in practice. It had said that the independent media were active and expressed a wide variety of views without restriction (US State Department, *Country Reports on Human Rights Practices for 2005* in relation to Latvia, Sections 1.a, Arbitrary or Unlawful Deprivation of Life, 1.b, Disappearance, 1.d, Arbitrary Arrest or Detention, 1.e, Denial of Fair Public Trial, and 2.a, Freedom of Speech and Press).

I put to the Applicant that this suggested that at the government level one would not be persecuted for speaking out about the rights of the Russian community. The Applicant said that she knew that the human rights of the Russians in Latvia were being violated. She said that the Latvians could not stand the Russians and they were trying to expel them from the country. She referred to the figure mentioned in the COHRE report of 53,000 eviction cases having been brought to the Latvian courts. She said that people were being evicted and forced onto the streets. She said that in 1992 they had passed a law saying that people should not be evicted but this was not what happened in practice. She said that her sibling did not have Latvian citizenship even though the father was a Latvian citizen. She said that during her pregnancy her mother had not received any payments like family payments which were available to mothers. She said that when her mother had gone and told the authorities about her dire financial situation she had been advised to put the child in an orphanage. She said that every day people's rights were violated in Latvia and the Russian-speaking community bore the brunt of this.

I put to the Applicant that a senior official at the mission of the Office for Security and Cooperation in Europe (OSCE) in Riga had advised the Australian Department of Foreign Affairs and Trade (DFAT) in 1999 that there was very little violence against ethnic Russians in Latvia. The official had advised that violence in Latvia tended to be non-nationalistic and was associated with criminal activities. I put to the Applicant that the Australian Department of Foreign Affairs and Trade had said that there was no evidence of systematic harassment, mistreatment or discrimination against ethnic Russians in Latvia (DFAT Country Information Report No. 286/99, dated 5 August 1999, CX36764). The Applicant responded that this person had not been living in Latvia and that what was happening was not written down. She suggested that because Latvia had joined the European Union people wanted to give a rosy picture of the situation there. She said that lots of Russians had left Latvia because they had been treated badly there. She asked why apartment charges had been increased so much and she referred to the attack on her. She said that this had happened to her: she had experienced it.

She referred to reports in Russian which she produced and which she said she had downloaded from the Internet. She said that these stated that Latvia had been criticised for violating the human rights of non-citizens and Russians in particular. She referred again to the figure of 53,000 court cases in relation to evictions and to the law which had been passed in 1992. She quoted passages from the report saying that evictions were not supposed to take place without a court order, that people were entitled to an opportunity to be heard before being evicted, that the Latvian Constitution said that every citizen had a right to inviolability of their private life, home and correspondence and that children had the right to housing. She quoted from the report to the effect that, despite these protections, the judges did not know or observe the law, and money was not being made available for legal representation.

The Applicant quoted from the report to the effect that all legal proceedings were in the Latvian language which she said was unfair for Russian-speakers. She said that Latvia did not protect the legal rights of people who were evicted and could not afford to pay for

lawyers. She referred to the fact that all documents in legal cases had to be filed in the Latvian language which she said violated the rights of Russian-speakers to a fair trial. She said that the courts in Latvia were not independent: they just assisted in evicting people. She said that they did not help people: they tried to harm people. The Applicant said that she had looked up the fascist organisations in Latvia on the Internet as well but she had not been able to access their websites: she had been locked out.

I indicated that I accepted that there were fascist organisations in Latvia but that their activities were not condoned by the Government of Latvia (US State Department, *Country Reports on Human Rights Practices for 2005* in relation to Latvia, Section 5, Discrimination, Societal Abuses, and Trafficking in Persons - National/Racial/Ethnic Minorities; US State Department, *International Religious Freedom Report 2006* in relation to Latvia). The Applicant suggested that the Government of Latvia would not acknowledge that they were trying to evict Russians. She referred again to the fact that Latvia had just joined the European Union and that it did not want to be seen in a bad light. She said that she had been attacked, beaten up, because she was Russian and this was the reason she had come to Australia. She said that she could have come here earlier if she had wanted, because she had relatives here, but she had come here because she had been in fear for her life.

I gave the Applicant time to enable her to listen to the tape of the hearing and to make any further submissions and produced any further evidence she wished. She asked me to put myself in her place and to look at the case from a human perspective. She said that she knew that it would be difficult for someone who had not experienced what she had experienced to understand this but she could not go back to Latvia, to that hell.

(c) Post-hearing submissions

In a letter the Applicant said that in general people were not subjected to harm in Latvia and that most people did not have any problems with the authorities or with nationalists. She said, however, that a poll conducted by the Latvian Human Rights Office had found that 22.6 per cent were of the opinion that their human rights had been violated only following the independence of Latvia. She also referred to evidence that about 700,000 Russian-speaking residents of Latvia did not have some basic civil, economic, social and cultural rights and were disenfranchised. The Applicant said, however, that she had not left Latvia because of such discrimination but because she had been threatened and severely beaten because of her own and her mother's activity. She said that they had struggled against injustices and discrimination, in particular the discriminatory eviction policy of the Latvian authorities by applying to a number of human rights organisations. She said that they had been desperate to attract public attention and as a result had been deprived of their own apartment, severely beaten and had had their lives threatened.

The Applicant referred to a report prepared by Nils Muiznieks, Angelita Kamenska, Ieva Leimane and Sandra Garsvane of the Latvian Centre for Human Rights and Ethnic Studies (LCHRES) - now the Latvian Centre for Human Rights (LCHR) - which noted that the Latvian Human Rights Office and a number of NGO's had been inundated with complaints and requests for help from people who had been threatened with eviction or who were already homeless because of their inability to pay rising rents and utility costs. The report said that the response of the government and the municipalities had been woefully inadequate.

The Applicant also referred to a report issued by the Latvian National Human Rights Office which stated that in the third quarter of 2005 the Office received 571 written applications and provided 832 oral consultations in relation to presumed human rights violations. The report said that the majority of written applications (almost 89 per cent) were received from penitentiary institutions and investigation prisons. The Office said that it had received 27 written applications and had provided 159 oral consultations in relation to housing during the third quarter of 2005, most with questions regarding local authorities' assistance in solving housing problems including evictions from apartments. It said that in the same quarter it had received 8 written applications and had provided 37 oral consultations in relation to issues involving property rights, most often in relation to the privatisation of apartments by local authorities. The Applicant suggested that this information indicated that there was a discriminatory eviction policy in Latvia.

The Applicant said that she had been beaten by a group of fascists not because she had money or valuables but because of her own and her mother's activities, because they had tried to defend their basic human rights. She said that they had not been common hooligans because they had managed to find out her and her mother's address and telephone number. She said that the only reasonable explanation was that they had been instructed by some people who had had the power to punish her and her mother for their 'commotion'. She said that the police had been reluctant to defend her and her mother, otherwise they would have come to their place to investigate as soon as the crime had been committed. She said that instead they had refused to investigate the matter even though her mother had lodged a complaint. She said that the police had not questioned their neighbours and had not taken into account the threatening notes. She said that the inference to be drawn from this was that the police had been unwilling to protect her and her mother because the crime had been politically-motivated persecution. The Applicant said that she feared returning to Latvia because she did not want to go through these horrible things again. She said that she could not state that she would be beaten or killed but she believed that the nationalists would find her and harm her in future. She said that she would live in constant fear of being persecuted.

Background

(d) US State Department reports

As I put to the Applicant in the course of the hearing before me, the US State Department said in its *Country Reports on Human Rights Practices for 2005* in relation to Latvia that there were no reports that the government or its agents had committed arbitrary or unlawful killings and no reports of politically-motivated disappearances in 2005. It said that there were no reports of political detainees or political prisoners. It said that the law provided for freedom of speech and of the press and that the government generally respected these rights in practice. It said that the independent media were active and expressed a wide variety of views without restriction (US State Department, *Country Reports on Human Rights Practices for 2005* in relation to Latvia, Sections 1.a, Arbitrary or Unlawful Deprivation of Life, 1.b, Disappearance, 1.d, Arbitrary Arrest or Detention, 1.e, Denial of Fair Public Trial, and 2.a, Freedom of Speech and Press).

The US State Department said that the government generally respected the human rights of its citizens and the large resident non-citizen community but that there were problems in some areas. It said that the law prohibited torture and other cruel, inhuman or degrading treatment or punishment but that there were reports that government officials employed such practices. It said that accurate statistics on reports of police brutality were unavailable and

that Latvian Centre for Human Rights and Ethnic Studies (LCHRES) expressed concern that victims underreported incidents of police brutality. The US State Department said that allegations of corruption and bribery within law enforcement ranks were frequent and affected the public's perception of police effectiveness. It likewise said that although the law provided for an independent judiciary there were significant problems including inefficiency and corruption. It said that a time-consuming judicial process and a shortage of judges overloaded the courts (US State Department, *Country Reports on Human Rights Practices for 2005* in relation to Latvia, Introduction and Sections 1.c, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1.d, Arbitrary Arrest or Detention, and 1.e, Denial of Fair Public Trial).

The US State Department said that although the law barred the registration of Communist, Nazi or other organisations whose activities would contravene the constitution, many nationalist organisations using fascist-era symbols, slogans and rhetoric nevertheless operated openly. It said that attacks against racial minorities had been a problem in 2005, instancing four reported attacks including one against the head of the country's African-Latvian community and another against a Sri Lankan medical student. It said that misdemeanour charges had been brought against the attackers and that the President, the Prime Minister, the Social Integration Minister and the Foreign Minister had all spoken out against racism and racist violence. The US State Department said that there had been a limited improvement in the effectiveness of prosecution of crimes of racism and racist violence but most perpetrators were charged with petty hooliganism, a misdemeanour (US State Department, *Country Reports on Human Rights Practices for 2005* in relation to Latvia, Sections 2.b, Freedom of Peaceful Assembly and Association, and 5, Discrimination, Societal Abuses, and Trafficking in Persons - National/Racial/Ethnic Minorities).

In its *International Religious Freedom Report 2006* in relation to Latvia the US State Department said that many government leaders - the President in particular - had reacted to a perceived increase in public anti-Semitism by speaking out against all forms of xenophobia and appearing prominently at Holocaust-related commemoration events. It said that the Latvian Government actively discouraged anti-Semitism, although anti-Semitic sentiments persisted in some segments of society, manifested in occasional public comments and resistance to laws and memorials designed to address Holocaust remembrance. It said that books and other publications appearing in Latvia that addressed the World War II period generally dwelt on the effects of the Soviet and Nazi occupations on the state and on ethnic Latvians, sometimes at the expense of comment on the Holocaust or some Latvians' role in it (US State Department, *International Religious Freedom Report 2006* in relation to Latvia).

(e) *Australian Department of Foreign Affairs and Trade advice*

In 1999 the Department put the following questions to the Australian Department of Foreign Affairs and Trade and received the following response:

'Questions [date]

Background

Applicant's personal details/claims are:

A. She is a Russian in her twenties from [City C], Latvia where she fears persecution because of her race.

B. In [year] she was [description] assaulted by members of ‘Aizsardze’, one of Latvia’s nationalistic organisations. ‘Aizsardze’ have attacked her home and threatened to kill her. Police refused to offer her protection.

C. She was forced to leave her job ([position description]) because of her language. Most employers cannot employ people unless they have level 3 Latvian.

Questions

Q1. What is [the] current situation of [the] Russian community in Latvia? Are they subjected to harassment/mistreatment by anti-Russian organisations? If so, does this occur in [City C]?

Q2. Are Russians who are not Latvian citizens being discriminated against in, or refused such things as [the] right to vote, employment, police protection etc?

Q3. Are ethnic Russians in Latvia able to enter and live in Russia?

Answers [date] Stockholm

We wish to stress the difficulty of fully assessing the situation, given the post only visits Latvia occasionally. We are therefore reliant on media reporting and the advice of organisations on the ground. Post considers the OSCE mission to Latvia (based in Riga) to be the most unbiased and knowledgeable source of information on the treatment of ethnic Russians in Latvia, and we therefore sought an update on the situation from a senior member of the mission

The OSCE official reiterated previous OSCE advice that the situation for ethnic Russians was generally improving. As we reported earlier, Latvia’s citizenship law has been amended (approved by referendum) to improve the rights of ethnic Russians to obtain Latvian citizenship. These amendments were in accordance with OSCE recommendations and had met with the international community’s approval. The official said the situation was a little more difficult regarding Latvia’s language law. As previously reported, the Latvian parliament recently passed a language law that failed to meet international standards. The official said the law allowed for too much state interference in the private sector and failed to provide sufficient predictability. The new Latvian President, Vaira Vike-Freiberga, has returned the law to Parliament for the latter’s reconsideration. The official said the issue was very controversial in Latvia, with the government coalition parties divided over the issue. The official expected some amendments would be made.

The official advised there was very little violence against ethnic Russians or for that matter any particular ethnic or national group in Latvia. Violence in Latvia tended to be non-nationalistic, taking place in specific settings, and was associated with criminal activities, including organised crime. The official had heard of “Aizsardze” (which means guardian), which she believed was one of several semi-military private “guardian” or security organisations/companies operating in Latvia (including in [City C]). These companies competed fiercely (often violently) to provide security services, solve crime and “clean-up areas”. The official said that, while these organisations were nationalistic, they had not heard of any incidents where they harassed or were violent towards any particular group. Were this to happen, the

official considered that such harassment and violence would be directed towards ethnic Russians.

The official said that ethnic Russians who were not Latvian citizens had the same social and economic rights as Latvian citizens, but did not have political rights (eg. the right to vote, the right to run for election). Non-citizen ethnic Russians had the right to police protection and employment rights. On police protection, the official noted there were some incidents in Latvia of police violence but these were not directed against any particular group. Moreover, there were many Russian-speaking police. On employment rights, the situation was complicated by Latvian language requirements in some professions, with regulations stipulating Latvian language requirements for some 1000 professions. The official considered it highly likely that there would be a Latvian language requirement for [employees in positions similar to the applicant]. Employees with insufficient Latvian language skills for their jobs often worked illegally without a Latvian language certificate, or bought such certificates on the black market. Complaint could be lodged against an employee for not meeting the regulated language requirements of his/her job and lacking the necessary certificate of proficiency (or had a false certificate). The person concerned was usually fined and given a deadline for improving their Latvian (if this deadline was not met, the result was normally dismissal). The official did not expect a new Latvian language law would improve this situation. Adding that a few professions were reserved for Latvian citizens, such as the public service.

The official said ethnic Russians in Latvia could enter and live in Russia, and this was essentially a matter between the person concerned and the Russian authorities. In practice, substantial private funds or the assistance of the International Organisation for Migration (IOM) was necessary for an ethnic Russian to enter and live in Russia. Many ethnic Russians in Latvia had returned to Russia; in the mid 1990s some 25,000 returned annually, but by 1998 this had dropped significantly to a few thousand. The official said that, in an attempt to stop people with considerable outstanding debts from leaving Latvia, the Latvian government would introduce shortly a requirement that all Latvian residents, both citizens and non-citizens, must obtain a certificate from [the] Latvian authorities if they wished to leave the country.

We vaguely sketched out to the OSCE official the scenario presented in [the] applicant's claim for a protection visa. While they had not heard reports of any such incidents, the official considered the claim was not outside the realms of possibility.

We agree with the OSCE official's view that, although there is generally little violence directed against ethnic Russians in Latvia and their situation is improving, the protection visa applicant's claim is not outside the realms of possibility. However, there is no evidence of systematic harassment, mistreatment or discrimination of ethnic Russians in Latvia.' (DFAT Country Information Report No. 286/99, dated 5 August 1999, CX36764)

(f) *Advice provided by the Research Directorate of the Canadian Immigration and Refugee Board*

The Research Directorate of the Canadian Immigration and Refugee Board reported in January 2001 that:

‘According to the Minorities at Risk Project, “an independent, university-based research project that monitors and analyzes the status and conflicts of politically-active communal groups in countries” at the Center for International Development and Conflict Management at the University of Maryland:

The extreme right seems to have a somewhat stronger position in Latvia than in the other two Baltic republics. This has resulted in more serious instances of discrimination against Russians and in a law on citizenship and naturalization that sets limits on the number of non-citizens who can be naturalized. This law was passed against vociferous opposition from Russian minority groups, international human rights groups and even the Latvian president. Other laws passed by the Saeima, such as a series of laws requiring small business owners, teachers, public servants, and police officers to be fluent in Latvian or face forced unemployment, have been seen as a threat to Russians in Latvia.

Not least, due to the stronger position of Latvia’s right parties, former Red Army soldiers, currently in their old age, have been brought to trial on charges of genocide against the Latvian people during WWII. Russian protests against the trials and even its threat to impose economic sanctions against Latvia did little to alleviate the situation of the convicted Latvian Russians.

There have been some recent improvements in Latvian legislation. The 1997 amendments to the Citizenship Law, which went into effect in 1998, allow faster citizenship, while the Language Law, sent back to parliament by president Vaira Vike-Freiberga, was slightly modified in order to meet basic European standards of minority rights.

On the whole, however, Latvian legislation does not bode well for the future status of Russians in the country. It has been speculated that the object of the legislation is to force most of the Russians to emigrate from Latvia. Latvian politicians recently voted down even the Framework Convention on the Protection of National Minority Rights, which was signed back in 1995. The atmosphere of social intolerance toward the ethnic Russians has been expressed in mass demonstrations coloured in nationalistic and sometimes even explicit Nazi tones (6 Aug. 2000).

A 4 September 2000 IPS article states:

A new law requiring all businesses in Latvia to be conducted in the local language took effect last weekend, angering the nearly one-third of the population who are ethnic Russians and speak little Latvian. “Only those fluent in Latvian will hold official positions or get good jobs, while the rest of us can only collect garbage,” says Vladimir, a Russian speaker with a Latvian passport. The law lists three levels of language proficiency, and employers determine which level is appropriate for the job they are filling. For instance, all applicants for civil service jobs must now submit their applications and credentials in Latvian. The law stipulates that Latvian is the only language to be used at public functions and in business, even those involving only Russian speakers. It prohibits speaking Russian in the workplace....

The legislation also requires the names of private firms to be given in Latvian, and non-Latvian names in official identification documents to be spelled out according to Latvian grammatical rules....Some 700,000 of Latvia's 2.4 million people are ethnic Russians. Many of them moved into the country during the Soviet era and speak little or no Latvian. The European Union (EU) and the Organization for Security and Cooperation in Europe (OSCE) have warned Riga that a number of the law's provisions violate international human rights guaranteeing free speech. However, last weekend, the OSCE approved the new rules as being in conformity with Latvia's international obligations....Most Russian speakers complain the new law will seriously hamper their businesses and will deepen tensions between Russians and Latvians.

(Research Directorate, Immigration and Refugee Board of Canada, 'Latvia: Update to LVA23961.E of 17 May 1996 on the treatment of ethnic Russians (January 2000 - January 2001)', 10 January 2001, LVA36038.E)

In advice in January 2006 the Research Directorate of the Canadian Immigration and Refugee Board said that:

'Information on the treatment of ethnic Russians was scarce among the sources consulted by the Research Directorate. Sources reported contradictory information on whether ethnic Russians face discrimination. *Country Reports 2004* indicated that "[t]here was public debate about the existence of discrimination on the basis of ethnicity" (28 Feb. 2005, Sec. 5) while Freedom House reported that "political, social, and economical discrimination suffered by the Russian-speaking community is a subject of much debate" (July 2005, 363).

Radio Free Europe/Radio Liberty stated that "Latvia remains a split society still struggling to overcome ethnic divisions and forge national unity" (19 May 2005). In its annual report, the European Monitoring Centre on Racism and Xenophobia reported that "there is widespread hostility against Russians in the newly independent states ... as noted in the NFP [National Focal Point] reports for Lithuania, Estonia and Latvia" (EU 2005; *Telegraf* 4 Dec. 2005). On the other hand, another article from the BBC indicated that Russians and Latvians were able to cohabit peacefully and that "[t]here is no ethnic strife in the streets of Latvia" (25 Mar. 2005).

Russians residing in Latvia who do not possess citizenship cannot hold certain public positions (e.g. pharmacists, lawyers, firemen, doctors, police officer and elected politicians) and cannot vote (*Russia in Global Affairs* 21 Nov. 2005; Meeting.lv n.d.; AP 4 Sept. 2004). One source indicated that this situation would be the case for "[a]bout half of Latvia's native Russian-speakers" (ibid.). An assistant professor from the State University of New Jersey alleged that

[t]here are at least three "worlds" in Latvia:

Ethnic Latvians who have no limits on their mobility or choice of occupation;

"Latvianized" Russians ... who enjoy citizenship and official access to state jobs, but are confronted with informal barriers to certain careers

and occasionally suffer from slights by ethnic Latvian counterparts in their daily lives;

Non-citizen Russians ... who are explicitly barred from state jobs, are disenfranchised, face bureaucratic nightmares when traveling or seeking state aid, and who are regularly treated with disrespect by ethnic Latvians in their daily lives (*Russia in Global Affairs* 21 Nov. 2005).

In 2004, the government proceeded with a reform of its educational system whereby Latvian would be imposed as the main language of instruction (Interfax 14 July 2004; EU 4 Feb. 2005; *Russia in Global Affairs* 21 Nov. 2005). More specifically, 60 per cent of courses have to be taught in the Latvian language (ibid.; EU 4 Feb. 2005; BBC 29 Mar. 2005) “for the final three school years” (ibid.). While this reform has brought on criticism, “the EU [European Union] has said Latvian language laws, including the new school language law, conform to European minority rights standards” (AP 4 Sept. 2004).

The chairman of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), Gyorgy Frunda, made recommendations, following his visit to Latvia in October 2005 (COE 14 Oct. 2005), to abrogate the requirements for naturalization of immigrants from the Soviet era, to allow voting in local elections of non-citizens and to waive the reservations that Latvia had imposed when it ratified the Framework Convention for the Protection of National Minorities (ibid. 23 Nov. 2005; *Eurasia Daily Monitor* 30 Nov. 2005). *Eurasia Daily Monitor* reported that the Monitoring Committee of PACE “overruled Frunda’s recommendations regarding ‘national minority rights’ in that country and discontinued the monitoring procedure on Latvia, of which Frunda was in charge” (ibid.).

Latvia joined the European Union as a member on 1 May 2004 (EU n.d.). In its comprehensive monitoring report on Latvia’s preparations for membership, the European Union stated that “[p]articular attention should also be given ... to integrating ethnic minorities” and “Latvia is strongly encouraged to promote integration of the Russian minority by, in particular, continuing to accelerate the speed of naturalisation procedures, and by taking other proactive measures to increase the rate of naturalisation” (2003).’ (Research Directorate, Immigration and Refugee Board of Canada, ‘Latvia: Treatment of ethnic Russians; whether ethnic Russians face discrimination; availability of state protection (January 2004 - December 2005)’, 19 January 2006, LVA100686.E)

(g) *Report of the International Helsinki Federation for Human Rights*

Although the Latvian Government has now ratified the Framework Convention for the Protection of National Minorities, as referred to in the more recent advice from the Research Directorate of the Canadian Immigration and Refugee Board, according to the International Helsinki Federation for Human Rights it did so with two ‘hidden reservations’ which refused national minority status not only to non-citizens but also to naturalised citizens. It also stated that it did not consider the articles of the convention relating to the use of minority languages binding insofar as they contradicted existing laws regarding the use of the state language.

The International Helsinki Federation for Human Rights also referred to a debate in relation to the Citizenship Law which was sparked by the case of Juris Petropavlovskis who was refused naturalisation for allegedly being disloyal to Latvia. After Petropavlovskis challenged the decision in the courts the government introduced amendments to include a criterion of loyalty to the Latvian state as a pre-requisite for naturalisation. After a heated debate took place in the Russian-language media, some Latvian nationalists called for a moratorium on naturalisation and in November 2005 Fatherland and Freedom/Latvian National Independence Movement put forward amendments to the law which would have prevented anyone who had come to Latvia during the Soviet period from being naturalised. The amendments were only defeated by a narrow margin (10 voted for and 24 against with 52 abstentions).

The International Helsinki Federation for Human Rights also reported that in 2005 'the issue of racial violence and hate speech became alarmingly topical'. It referred to five incidents of racist violence, all reportedly committed by skinhead sympathisers. The incidents it referred to did not include the attack on a Sri Lankan medical student referred to in the US State Department report and it referred to one incident in particular involving an African-American who was a member of the staff at the US Embassy which is not mentioned in the report of the US State Department. The International Helsinki Federation for Human Rights said that although all of these incidents were recorded by the police and efforts were made to identify and detain the perpetrators, 'criminal cases were initiated only in a few cases'. It said that '[i]n general, when no physical injury was established, no grounds for a criminal case were found'. (The source for this and the preceding two paragraphs is the International Helsinki Federation for Human Rights, *Report 2006 (Events of 2005) - Human Rights in the OSCE Region* in relation to Latvia.)

(h) The issue of evictions

As referred to by the Applicant in the course of the hearing before me, the report of the COHRE fact-finding mission which visited Latvia in October 1999 referred to the fact that in 1998 nearly 53,000 eviction cases had been brought to the Latvian courts, the majority of them under the Law on the Rent of Living Premises that allows commencement of eviction proceedings where a tenant has fallen three months behind in the payment of rent. The report noted that there was no provision in the law preventing or finding alternatives to the eviction of vulnerable groups such as families with children, the elderly or the disabled. The report noted that in spite of the economic decline in Latvia - resulting in 14 per cent unemployment in the cities and up to 33 per cent in rural areas - housing costs had nearly doubled and there was insufficient regulation of the price of utilities, especially heating. The report said that as a result many people were left with less than one Lat (US\$0.57) a day with which to meet expenses such as food, clothing, health care and transportation.

As the Applicant noted, the report states that under the law in Latvia evictions cannot be undertaken without a court order and tenants are entitled to notice and an opportunity to be heard before they can be evicted. The Latvian Constitution recognises the right to the inviolability of private life, home and correspondence and the Law on the Rights of the Child provides that children have the right to housing. However, as the Applicant noted, the report states that, '[d]espite such protections, however, poorly informed judges, lack of legal representation or legal aid, under-funded advocacy groups and general ignorance about rights and responsibilities have limited the utility of formal tenure rights' (page 7). The report notes that, while some judges have found that the children's rights law is applicable in cases involving the non-payment of rent, many judges are not informed about the applicability of

the law and therefore ignore it or do not believe that it is applicable in the context of evictions. The report states that of the 53,000 eviction proceedings brought in 1998, 4,167 resulted in evictions.

As the Applicant noted, the report also comments that Latvia has almost no legal assistance available for households facing eviction who were unable to pay private attorneys. It states that there is a right to counsel in criminal proceedings but no comparable right in civil proceedings. As the Applicant said, the report mentions that access to the courts is particularly limited for those who do not speak Latvian because all court proceedings are in the Latvian language and all court documents are written in Latvian, discouraging non-Latvian speakers in eviction proceedings. The report refers to the rising cost of utilities, particularly heating costs, some of which it said had risen by over 400 per cent in recent years, and it notes that many municipalities ask new occupants of social housing units to pay the utility and rent arrears not collected from evicted tenants in order to obtain their apartments.

While the report of the COHRE fact-finding mission does not directly sustain the Applicant's contention that the government's policy in relation to evictions discriminates against Russian-speaking Latvians or that the government is trying to expel members of the Russian community from Latvia, there is evidence in independent sources such as the Minorities at Risk Project report referred to in the earlier of the two Canadian research reports quoted above that there is a widely held view that the objective of the Latvian legislation on citizenship and language is to force members of the Russian community out of Latvia. There have been a number of highly publicised cases where this is exactly what has happened and where the European Court of Human Rights has awarded compensation, such as that of Tatjana Slivenko and her daughter Karina Slivenko who were evicted from their flat in Riga and ordered to be deported to Russia in 1996 because Tatjana's husband (and Karina's father), Nikolay Slivenko, had been an officer in the Soviet armed forces (see the European Court of Human Rights, 'Grand Chamber Judgment in the Case of *Slivenko v. Latvia*', 9 October 2003, downloaded from <http://www.echr.coe.int/Eng/Press/2003/oct/JudgmentSlivenkoeng.htm>, accessed 15 November 2006, and see also Peter van Elsuwege, 'Russian-Speaking Minorities in Estonia and Latvia: Problems of Integration at the Threshold of the European Union', European Centre for Minority Issues (ECMI) Working Paper # 20, April 2004, downloaded from http://www.ecmi.de/download/working_paper_20.pdf, accessed 15 November 2006).

FINDINGS AND REASONS

I found the Applicant to be a credible witness. She gave her evidence openly at the hearing before me and she was able to answer my questions and to provide more detail in relation to her claims than she had provided in her original application. I accept that she is telling the truth with regard to her past experiences in Latvia. I accept, in particular, that she and her mother were attacked by Latvian nationalists on the date stated. I accept that, as the Applicant said at the hearing before me, she was traumatised by this attack and that she suffered from depression and even thought of committing suicide as a result of the attack. I accept that this was in addition to the physical symptoms following from the injury she suffered at the time of the attack. I accept that the reason for this attack was that the Applicant and her mother had been fighting for their rights following their eviction from the apartment which her mother had purchased with her former partner. I accept that, as the Applicant said in her post-hearing submissions, this is the only reasonable explanation which fits with the known facts.

I likewise accept that, although the Applicant and her mother called the police, they did not come because they took the view that, because the ambulance had refused to take the Applicant and her mother to hospital, they had obviously not been injured. I note that the Applicant's evidence in this regard is consistent with the observation of the International Helsinki Federation for Human Rights that criminal cases have only been initiated in relation to incidents of racist violence in cases where physical injury has been established (International Helsinki Federation for Human Rights, *Report 2006 (Events of 2005) - Human Rights in the OSCE Region* in relation to Latvia). Despite the fact that I accept that the Applicant suffered injury and her mother also suffered injuries in the last attack, it appears that the police were able to avoid the need to conduct an investigation in relation to the attack on the basis that the Applicant and her mother had not in fact suffered physical injuries because they had not been taken to hospital.

While, as I put to the Applicant in the course of the hearing, a senior official at the mission of the Office for Security and Cooperation in Europe (OSCE) in Riga advised the Australian Department of Foreign Affairs and Trade some years ago that there was very little violence against ethnic Russians in Latvia, that violence in Latvia tended to be non-nationalistic and that it was associated with criminal activities, I note that both the senior official and the Australian Department of Foreign Affairs and Trade considered the claims of the applicant in that case - regarding a serious assault on her by members of a nationalist organisation - to be 'not outside the realms of possibility' (DFAT Country Information Report No. 286/99, dated 5 August 1999, CX36764).

Other information referred to above suggests that there is widespread hostility against Russians in the Baltic states and that the extreme right seems to have a somewhat stronger position in Latvia than in Lithuania and Estonia meaning that even people of Russian background who are Latvian citizens (like the Applicant) may experience prejudice from ethnic Latvians in their daily lives while people like the Applicant's mother who are not citizens are regularly treated with disrespect by ethnic Latvians in their daily lives (Research Directorate, Immigration and Refugee Board of Canada, 'Latvia: Update to LVA23961.E of 17 May 1996 on the treatment of ethnic Russians (January 2000 - January 2001)', 10 January 2001, LVA36038.E; Research Directorate, Immigration and Refugee Board of Canada, 'Latvia: Treatment of ethnic Russians; whether ethnic Russians face discrimination; availability of state protection (January 2004 - December 2005)', 19 January 2006, LVA100686.E).

While the report of the COHRE fact-finding mission does not directly sustain the Applicant's contention that the government's policy in relation to evictions discriminates against Russian-speaking Latvians or that the government is trying to expel members of the Russian community from Latvia, there is evidence in independent sources such as the Minorities at Risk Project report referred to in the earlier of the two Canadian research reports quoted above that there is a widely held view that the objective of the Latvian legislation on citizenship and language is to force members of the Russian community out of Latvia (Research Directorate, Immigration and Refugee Board of Canada, 'Latvia: Update to LVA23961.E of 17 May 1996 on the treatment of ethnic Russians (January 2000 - January 2001)', 10 January 2001, LVA36038.E) and as referred to above there have been a number of highly publicised cases where this is exactly what has happened.

While, as I put to the Applicant, the Government of Latvia does not condone the activities of fascist organisations, it appears to be ineffectual in controlling them. As referred to above, the US State Department said in its most recent reports that although the law barred the

registration of Communist, Nazi or other organisations whose activities would contravene the constitution, many nationalist organisations using fascist-era symbols, slogans and rhetoric nevertheless operated openly. It said that, although there had been a limited improvement in the effectiveness of prosecution of crimes of racism and racist violence, most perpetrators were charged with petty hooliganism, a misdemeanour (US State Department, *Country Reports on Human Rights Practices for 2005* in relation to Latvia, Sections 2.b, Freedom of Peaceful Assembly and Association, and 5, Discrimination, Societal Abuses, and Trafficking in Persons - National/Racial/Ethnic Minorities).

The International Helsinki Federation for Human Rights likewise said that although the incidents of racist violence which it catalogued had been recorded by the police and efforts had been made to identify and detain the perpetrators, 'criminal cases were initiated only in a few cases'. It said that '[i]n general, when no physical injury was established, no grounds for a criminal case were found' (International Helsinki Federation for Human Rights, *Report 2006 (Events of 2005) - Human Rights in the OSCE Region* in relation to Latvia). The US State Department said that allegations of corruption and bribery within law enforcement ranks were frequent and affected the public's perception of police effectiveness. It likewise said that although the law provided for an independent judiciary there were significant problems including inefficiency and corruption. It said that a time-consuming judicial process and a shortage of judges overloaded the courts (US State Department, *Country Reports on Human Rights Practices for 2005* in relation to Latvia, Sections 1.d, Arbitrary Arrest or Detention, and 1.e, Denial of Fair Public Trial).

The question of what degree of protection a state is required to provide was considered in *Minister for Immigration and Multicultural Affairs v Respondents S152/2003* (2004) 205 ALR 487, a case relating to Ukraine, where Gleeson CJ and Hayne and Heydon JJ observed (at [26]) that:

'No country can guarantee that its citizens will at all times, and in all circumstances, be safe from violence. ... The Ukrainian state was obliged to take reasonable measures to protect the lives and safety of its citizens and those measures would include an appropriate criminal law, and the provision of a reasonably effective and impartial police force and justice system. None of the country information before the Tribunal justified a conclusion that there was a failure on the part of Ukraine to conform to its obligations in that respect.'

Their Honours referred in this context to a failure of state protection 'in the sense of a failure to meet the standards of protection required by international standards' (at [27]). Having regard to the information referred to above, I accept that the protection afforded by the Government of Latvia in relation to incidents of racist violence fails to meet the standards of protection required by international standards in that neither the police force nor the criminal justice system can be said to be reasonably effective.

Having regard to the Applicant's past experiences in Latvia, and in particular the last attack on her and her mother, I accept that there is a real chance that, if she returns to Latvia now or in the reasonably foreseeable future, she will again be attacked by Latvian nationalists. I accept that if this occurs it will be for reasons of her real or imputed political opinion based on her and her mother's attempts to draw attention to their case and the treatment of the ethnic Russian minority in Latvia in general. I consider that the persecution which the Applicant fears involves 'serious harm' as required by paragraph 91R(1)(b) of the Migration Act in that it involves significant physical harassment or ill-treatment. I consider that the

Applicant's real or imputed political opinion is the essential and significant reason for the persecution which she fears, as required by paragraph 91R(1)(a), and that the persecution which she fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves her selective harassment for a Convention reason, namely her real or imputed political opinion. I consider on the evidence before me that there is no part of Latvia to which she could reasonably be expected to relocate where she would be safe from the persecution which she fears.

The delegate of the Minister rejected the Applicant's application on the sole basis that, as a citizen of Latvia, the Applicant had a legally enforceable right to enter and reside in any other country in the European Union and that therefore subsection 36(3) of the Act applied to her. The delegate did not refer to any evidence which formed the basis for this finding and the evidence available to me is to the contrary. While it is true that citizens of Latvia are entitled to visa-free entry to other states in the European Union, their right to reside in such states is conditioned by domestic legislation. Some countries have imposed restrictions on access to employment on the part of nationals of the new member states for up to seven years after the accession of the new member states including Latvia while others, such as Sweden, while they have chosen not to impose such restrictions, require nationals of other member states to apply for residence permits if they live there for more than three months. In order to obtain a residence permit in Sweden, for example, nationals of other member states must establish that they are employees, self-employed or self-sufficient (Research Directorate, Immigration and Refugee Board of Canada, 'Sweden: Right of residence, employment, access to social programs (health care, education and housing) and citizenship for citizens of the 10 new European Union (EU) countries; whether citizens of the new EU countries can continue to file refugee claims/asylum applications in Sweden (2005)', 25 February 2005, SWE42759.E).

The delegate also found, without referring to any evidence, that subsection 36(5) of the Act did not apply to the Applicant because 'information on asylum seeking procedures in the European Union indicates that the European Union will not refouled [sic] an asylum seeker to the country from whence they have fled'. In fact the Protocol on Asylum for Nationals of Member States of the European Union, often referred to as the 'Spanish Protocol' and annexed to the Treaty of Amsterdam establishing the European Community, states that the level of protection afforded to an individual's fundamental rights and freedoms by member states means that they should be regarded as safe countries of origin. As a result the examining state may either declare a claim made by a national of a member state inadmissible or may consider it on the presumption that it is manifestly unfounded (UK Home Office, Immigration and Nationality Directorate, 'Asylum Claims Made by EU Nationals', downloaded from <http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/apis/claimsfromnationals.pdf?view=Binary>, accessed 4 December 2006). While this presumption is rebuttable I consider that the effect of the Protocol is that there is at least a real chance that another member state would return the Applicant to Latvia, the country where I accept she has a well-founded fear of being persecuted, without giving proper consideration to the merits of her claims for asylum.

So far as Russia is concerned, as referred to above, the OSCE official consulted by the Australian Department of Foreign Affairs and Trade advised that, in practice, substantial private funds or the assistance of the International Organisation for Migration (IOM) was necessary for an ethnic Russian to enter and live in Russia (DFAT Country Information Report No. 286/99, dated 5 August 1999, CX36764). I am therefore unable to be satisfied on the evidence before me that the Applicant has a legally enforceable right to enter and reside

in any country other than her country of nationality, Latvia, as required by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154; *WAGH v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 131 FCR 269 per Lee J (with whom Carr J agreed) at [42]-[43]). I likewise find so far as the member states of the European Union are concerned that the Applicant has a well-founded fear that they will return her to the country where she fears persecution, Latvia. I therefore find that the Applicant is not excluded from Australia's protection by subsection 36(3) of the Act.

I find that the Applicant is outside her country of nationality, Latvia. For reasons given above, I find that she has a well-founded fear of being persecuted for reasons of her real or imputed political opinion if she returns to Latvia now or in the reasonably foreseeable future. I find that the Applicant is unwilling, owing to her fear of persecution, to avail herself of the protection of the Government of Latvia. It follows that I am satisfied that the Applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Consequently the Applicant satisfies the criterion set out in paragraph 36(2)(a) of the Migration Act for the grant of a protection visa.

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act</i> 1958. Sealing Officers ID: PRRTIR</p>
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