

1105236 [2011] RRTA 842 (28 September 2011)

DECISION RECORD

RRT CASE NUMBER: 1105236

DIAC REFERENCE(S): CLF2011/45188

COUNTRY OF REFERENCE: Fiji

TRIBUNAL MEMBER: Andrew Mullin

DATE: 28 September 2011

PLACE OF DECISION: Brisbane

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 Fiji, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] December 2010 and applied to the Department of Immigration and Citizenship for the visa [in] March 2011. The delegate decided to refuse to grant the visa [in] May 2011 and notified the Applicant of the decision.
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] June 2011 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, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
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.
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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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 Departmental and Tribunal files relating to the Applicant. The Tribunal also has had regard to the material referred to in the delegate's decision.
20. The Applicant appeared before the Tribunal on 16 August 2011, by video link from Cairns, to give evidence and present arguments.

Summary of written claims

21. In her protection visa application the Applicant claims to have been born in [Town 1], Fiji, in [year deleted: s.431(2)]. She gives her ethnicity as Indian and her religion as Hindu. She claims to have lived at an address in [Town 1] from [year deleted: s.431(2)] to 2003 and at three addresses in Suva in the period 2003 to December 2010. She claims to have received a total of eleven years of formal education in Fiji, ending in 2000, and subsequently to have completed a number of training courses in computing and management. Regarding her employment history she claims to have worked part-time as an office assistant in 2004, as a part-time receptionist in a medical clinic in 2005 and as a receptionist and accounts clerk with [Organisation 2] from 2005 to March 2011. She claims never to have been married and lists no family members or close relatives in Fiji or elsewhere.
22. The Applicant's substantive claims are set out in expanded responses to questions attached to the protection visa application form. They may be summarised as follows:
 - There have been three coups in Fiji and she believes the country will never return to normalcy.
 - The 2000 coup threatened ethnic Indians. She witnessed widespread hatred by ethnic Fijians toward the Indian minority. Fijians looted and burned Indian shops. Indians were forced to leave their houses and land and were robbed and tortured. This is still happening in the interior of the country. She fears for her life because she is ethnically Indian. She has no alternative but to look for shelter in another country.
 - She is totally opposed to the military regime which seized power in the December 2006 coup. It is unknown whether elections will be held. Common people like her are struggling and paying the price for the coup. She does not have the strength or courage to say anything against the government. She lives in continual fear of the military regime. Anyone who speaks out will be taken to the military barracks and forced to run for several miles.

- Under the military there are abuses of human rights, the killing of civilians, devaluation of the currency, increased costs of living and rising unemployment. After the abrogation of the Constitution there is no law and order and anything can happen in future. The military commit acts such as interrogation without warrants, beatings, sexual molestation, torture, killings, name-calling and adopting racist attitudes toward Indians. She is very fearful of being raped or sexually molested, or of being taken to the military barracks. She wants to live a stable life, without fear, and cannot live in a country where there is no law and order.
- She 'joined the democratic group online since 4th May 2010 because I want democracy in Fiji, but there is no office or anything in Fiji for democratic group, I am fearful that if Commander Voreqe Bainimarama finds out I will be in serious trouble, I am fearful to voice and support return of democracy government.' Her house could be searched, she could be beaten and abused by the military and she could be mentally tortured so that she became insane.

23. Also attached to the application are, relevantly:

- Academic records from the [name of educational institution deleted: s.431(2)] , together with a number of certificates from training courses attended by the Applicant.
- Three reference letters from [Organisation 2]'s Suva office recording appreciation for her service from July 2005.
- A letter from the National President of the Fiji Democracy and Freedom Movement, Mr Usaia Waqatairewa, dated [in] 2011. Mr Waqatairewa states that the Applicant joined the Movement on [date deleted: s.431(2)] . Fijians who have joined the Movement and advocate restoration of democracy and human rights in Fiji face a strong possibility of persecution if they return to Fiji.

24. On the Departmental file (at f.11) is a note indicating that the Department had received a letter from an un-named friend of the Applicant stating that she might apply for a protection visa 'for further stay.' The friend indicated that he or she wished to withdraw all support from the Applicant.

Departmental interview

25. I have reviewed the audio recording of a Departmental telephone interview [in] May 2011 in which the Applicant added to her written claims by claiming, relevantly, that:

- She was raised by her maternal grandparents in [Town 1] from the age of two after her mother was murdered by her father and paternal grandfather. Her maternal grandparents' names are recorded in her birth certificate as her parents. Her father and paternal grandfather were jailed for the crime. She had seen her father on only two occasions, most recently in 2003, and heard he had remarried. She was scared of what he might do to her.
- She had two married sisters living in Fiji.

- While she was working with [Organisation 2] in Suva she would regularly travel to [Town 1] to visit her grandparents. She was in regular telephone contact with them from Australia.
- She had been in a relationship with a man in Fiji for four years but left him in 2007 as a result of domestic violence. He had been violent toward her on subsequent occasions when he would come to her house and assault her. The most recent incident was in 2009. He married an Australian woman in 2007 and his wife would harass her in abusive telephone calls to her workplace from [State 3]. These calls had also been made to her boss and everyone in her office knew about them. They continued up to the time the Applicant left Fiji. The Applicant had complained to police and military about her former partner but had not mentioned the physical assaults. She had also complained to them about the calls but they could do nothing as his wife was calling from Australia.
- She was from a Hindu background but now considered herself a Christian and attended church regularly.
- She would discuss the military regime in her work place in Suva but staff members were discouraged from doing so. She had never expressed her views in writing, for fear of being caught and taken to the military camp.
- She joined the Fiji Democracy and Freedom Movement [in] 2010. The Movement had no office in Fiji so she registered online. She had not been involved in any of the Movement's activities in Australia. She followed the Movement through its website. On one occasion while she was in Sydney she had met the leader of the Movement. He had spoken to her about the Movement's activities. She was unable to recall his surname.
- Asked if she knew personally anyone who had suffered harm at the hands of the military she said she did not. She had, however, dealt with [Organisation 2] clients who had suffered such harm.
- Asked if she had ever suffered harm in Fiji she said that her vehicle was searched at a military checkpoint on one occasion in 2007.

Claims at hearing

26. The Applicant said she completed her protection visa application form and the accompanying statement by herself, without any help, although a friend named [Mr A] had directed her to the Departmental website. Everything she had stated in these documents and at her Departmental interview was true.
27. Asked what she had feared would happen to her at the time she left Fiji she said she had always lived in fear and had known something could happen. She could be killed or sexually molested, or the military might interrogate her. She had feared for her life. Asked who would do this to her she said that for most of her life she had been fearful that her father, who had murdered her mother, might one day kill her. Additionally, she feared harm from her former boyfriend who was very violent and had frequently abused her. Finally, the political

situation in Fiji was very bad. People were being taken from the street for interrogation and torture, without any reason. She feared this would happen to her too.

28. Asked what she feared would happen to her if she returned to Fiji she said she would live in continual fear as she did not know what would happen to her. Her father or her ex-boyfriend could appear and harm her at any time. She could also be harmed at any time as a result of the political crisis.
29. Asked if she feared harm in Fiji for any other reason the Applicant said she did not. I noted that she had also claimed in her protection visa application to fear harm because of her Indian ethnicity. She agreed this was so and said she had forgotten to mention it. There were many racial barriers in Fiji and it had been very difficult for her when she was growing up. She had faced racism in many ways.
30. The Applicant confirmed the biographical details set out in her protection visa application. She had been raised by her grandparents in [Town 1] and immediately before leaving Fiji had been living in [place deleted: s.431(2)], Suva, in shared accommodation owned by [Organisation 2]. She was employed by [Organisation 2] from mid-2005. She came to Australia using her annual leave and resigned, over the telephone, [in] January 2011. The resignation became effective immediately. She agreed this had been a good job which involved responsibilities for the payroll for some seventy employees.
31. Asked why her most recent reference letter from [Organisation 2] was from 2009 she said she had not asked for a reference when she left. I put to her it seemed strange that, having planned to find work in Australia she would not have obtained an up-to-date reference from her employer for this purpose. She said she had not sought a reference as she knew very well if she did so her boss would not let her go. Asked how he would have prevented her from going she agreed he could not have done so but said she had felt reluctant to request it. I asked why she would not have asked for a letter when she telephoned him to announce her resignation. She said she had known he was not happy about her resignation. Another person in the office had promised to mail her a recommendation but this did not happen.
32. The Applicant confirmed that her maternal grandparents were living in [Town 1] and that she had two sisters living elsewhere in Fiji. She had seen her father on two occasions. He had always known where she lived and this made her nervous.
33. The Applicant said she joined the 'Fiji Democratic Movement,' online, in May 2010. When she came to Sydney she met its President, Mr Waqatairewa, who explained what the organisation was doing and how it worked. She told him about the loss of democracy in Fiji following the coup and the desire to see its return. She expressed her interest in joining the Movement's activities and paid her subscription to him. One or two months ago she joined the Movement's Facebook page. I put to her that the Movement's website does not have a provision for joining online. She agreed that she had not formally joined in May 2010 but had only expressed her approval of the organization. Her membership began after she arrived in Australia and paid Mr Waqatairewa.
34. Asked how she had met Mr Waqatairewa the Applicant said she had a Fijian friend who knew him. They met, by arrangement, at a Hungry Jack's restaurant in Bankstown. Asked if she had taken part in any of the Movement's activities in Australia she said she had not - she had been travelling between New South Wales and Queensland a number of times and had not had an opportunity. Asked if she had ever made public her political opinion while in

Australia she said she expressed her views using [a certain] Facebook page. In her most recent posting, in June or July 2011, she had mentioned her wish for democracy in Fiji. [Details deleted: s.431(2)] Noting that this was a few weeks after the date of the delegate's decision, which had identified a lack of any involvement in the Movement's protest activities in Australia, I put to her that it could suggest she had posted the comment in order to strengthen her claim to fear harm in Fiji. She said she had been afraid to comment previously but, following the delegate's decision, had decided she should do so. I explained to her the possible relevance of s.91R(3) for this conduct. She confirmed she understood this and, invited to comment, said it had not occurred to her to strengthen her case in such a way.

35. I put to the Applicant that there seemed little in the independent country information to indicate that people who had been involved in some way with the Movement had suffered harm when they returned to Fiji. In her case she did not seem to have had much involvement with it and it was difficult to believe this would cause her trouble if she returned to Fiji. She said she had not realised that involvement with the Movement would affect her until Mr Waqatairewa explained that people had been prosecuted for their membership of it. She then realised she faced persecution if she went home.
36. The Applicant confirmed that she had not suffered any harm from the Fiji authorities in the past. However, she had always feared that something would happen to her because of her Indian ethnicity. She had witnessed beatings of Indians and racist comments and reactions by ethnic Fijians at the time of the coup in 2000 and she had never been able to put these things from her mind. The 2006 coup had served to strengthen her fears. I put to her that the independent country information available to the Tribunal indicated the two coups were very different in their impact on Fiji's ethnic Indian community. While the 2000 coup was a trigger for an outbreak of ethnic violence in which Fiji Indians were injured and lost their property, the military coup of 2006 brought about an improvement in law and order and clear indications that Commodore Bainimarama was committed to protecting the Fiji Indian community and its rights. There did not seem to be any evidence to suggest that Fiji Indians had been harmed by the regime since 2006, while the incidence of crime had been reduced. She said Bainimarama could say this but only Fiji Indians knew what was actually happening in Fiji. At the time of the 2006 coup she had personally witnessed the beating of Indian shopkeepers in Suva and she had heard from her grandparents that this was also happening in [Town 1]. These actions were being perpetrated by military and civilians. I put to her that the information available to the Tribunal indicated the new regime had imposed a strong law and order presence straight away. She said ethnic Fijians were also attacked but she had seen Indian shops being looted and Indians being tortured.
37. I put to the Applicant that independent country information indicates the authorities have gone out of their way since 2006 to protect and defend the Fiji Indian community, and that the community is not being targeted or discriminated against. I noted that an ethnic Indian was Bainimarama's Attorney General and reportedly wields most influence within the regime. She said Bainimarama and his Attorney General are very different from other members of the Fijian or Indian communities. Bainimarama did not get out among the people and he was not aware of the impact the military was having on ethnic Indians.
38. I put to the Applicant that, despite her claims to have suffered discrimination in Fiji because of her Indian ethnicity she was a person who had received a very good education, who had been employed continually since finishing her education and who had had a good, responsible job. She did not appear to have been prevented by any form of discrimination from leading a normal life. She said her education had been interrupted because of the

financial situation she had faced. It was only through the assistance of [Organisation 2] that she had been able to complete her studies. When the 2006 coup occurred she had been fearful of being harmed by the military, including by being taken to the barracks, tortured and sexually molested. Asked if there was any particular reason that the military would target her in this way she said she feared this would happen, as it had happened to many innocent people who had caused no harm. I put to her that she was suggesting this harm might be purely random. She said she simply feared that she would be harmed, even if she had done nothing wrong.

39. The Applicant confirmed her claim that she feared harm from her former partner, whose name she gave as [name deleted: s.431(2)]. She said they met in 2003, fell in love and began to live together. He would drink regularly and, when drunk, had beaten her many times. He had many ethnic Fijian friends whom he would often invite to the house for parties. He often beat her in front of them. She had complained to the police but was afraid he and his Fijian friends would kill her. She left him in 2006 but he found where she was living and stalked her. He would appear at her house with his friends, swearing at her and telling her to come out with him. This had a severe impact on her life, making her afraid to go out. She said that, unknown to her, he had married a woman from [State 3] in 2006 at a time when she was still sometimes seeing him. The Applicant knew nothing of this marriage until the wife telephoned her to ask why she was still seeing him. The wife kept making harassing calls and would swear at her over the telephone.
40. Asked the location of her former partner the Applicant said he was still in Fiji. Asked why he would not have gone to Australia to join his wife she said she met him in Suva in 2009 and heard his spouse visa application had been rejected. She had last seen him in September 2010 when he came to her house and asked her to come with him. He tried to hit her when she refused to do so and a friend intervened. Asked if she called the police she said had not done so on this occasion. On a previous occasion she had been telephoned at work by a military officer to tell her they had received a complaint from [Mr A]'s wife in Australia accusing the Applicant of having an affair with him. She tried to deny this but was threatened and told to stop seeing him. I put to her that I found it hard to believe the military in Fiji would accept a complaint from someone in Australia on such a matter or, if they had, that they would take any action on it. She repeated the claim. I put to her that she had previously denied that she had ever suffered harm from the police or other authorities in Fiji. She said she had been referring only to harm for political reasons, not to personal matters such as this.
41. Asked again if she had ever complained to the police about being assaulted by her former partner the Applicant said she had not done so because she knew they were aware of the complaints his wife was making. She went on to say that on one occasion in 2008 she and her former partner were called to the barracks by a military officer. The officer told them to cease their relationship and passed this on, over the telephone, to her former partner's wife. There were many further calls from the wife and she had become very tired of the situation, believing that it would be useless to complain. She tried to have no further connection with her former partner but there had been very many calls from the police and the military.
42. Asked why she believed her father wished to harm her the Applicant said that after he and his younger brother killed her mother she was raised by her maternal grandparents. When she and her siblings were young her father tried to regain custody of them but he was chased away by her uncles. She had often feared he was following her and she saw him once more in 2002. Asked why he would wish to harm her, given that he had demonstrated an interest

in regaining custody, she said he had killed her mother and could also kill her. He had often tried to get in touch with her. I put to her that since she had seen him only twice and he had never tried to harm her there did not appear to be a factual basis for the harm she feared from him. She repeated that she feared he could harm her at any time.

43. I asked the Applicant why she had not made any mention in her protection visa application of a fear of harm from her ex-partner or her father. She said this was because she had understood that the definition of a refugee did not include harm from a partner or father. She had, however, raised the matter when she was asked about it during her Departmental interview.
44. I put to the Applicant that the independent country information available to the Tribunal indicates the police in Fiji will take action where there are complaints of domestic violence. This information indicates the police force suffers from a range of problems, including limited resources, lack of training and corruption, which reduce its efficiency. However, while the police and other authorities might not be able to offer an absolute guarantee that she would not suffer harm from her father or her former partner, such an assurance could not be provided by any country, Australia included. The issue relevant to her claim to be a refugee was whether or not the authorities would try to help her and whether in doing so they were able to offer a reasonable level of security for her. The Applicant said in response that she had given her statement to the police and the military but their reaction was to ask her to end her relationship with her former partner. It was his Australian wife who kept pushing them, in multiple telephone calls, to take action against her and who continued to harass and abuse her on the telephone. The Applicant added that the police had become tired of this pressure and had suggested to her that she should report the calls to the Australian police. Asked if she was still receiving these calls in Australia she said her former partner's wife was now using Facebook to harass her, going so far as to create a false Facebook page in the Applicant's name and include on it defamatory material.
45. I put to the Applicant that if she had genuinely feared severe harm in Fiji as she was claiming she would have left the country as soon as she received her tourist visa, on 30 September 2010, rather than wait for almost three months to do so. She said she had not had enough money for her ticket and pocket money at the time and had been saving for it. Additionally, her leave was not due until December 2010. I put to her that it was hard to believe she would have been unable to raise this money from her family members and friends in Fiji, and her friends in Australia, if they knew she was in danger of real harm. She said she had not asked anyone for money. She had not told her friends in Australia or her sisters about the problems she was having with her former partner and this was known only to her workmates. I put to her that if her situation had been desperate she would have asked these people for money to save her life. She said she had felt she should not ask them, and that she should do it by herself. I put to her that the delay could cast doubt on her claim to have feared serious harm in Fiji. She said she still feared for her life if she returned to Fiji, for the reasons she had given.
46. Regarding the Applicant's claim that she delayed her departure until her annual leave was due I put to her that this would not have been a consideration if she was planning to resign as soon as she arrived in Australia. She said she had not wanted to leave a bad name for herself with her employer as they had been good to her. I put to her that if they knew her reason for leaving was to avoid serious harm or death this would not harm her reputation. She repeated that she had not wanted to tell people about her problem.

47. Noting that she had delayed seeking protection for almost three months after arriving in Australia, at a point shortly before her visa was to expire, I put to the Applicant that this could cast further doubt on her claim to fear harm in Australia. She said she had been studying on the internet to find out how to claim protection. A friend in Sydney, who had sponsored her for the tourist visa, helped her with this research.
48. Asked if there was anything she wished to add the Applicant repeated that after she arrived in Australia she had begun searching the internet to find a way to remain. She had been badly affected by the things which had happened to her, and she wanted to avoid them. Asked if she had ever sought professional assistance for emotional or mental issues she said she had received counselling from [Organisation 2] on a number of occasions after her problems began affecting her everyday life and her work. Her efficiency at work had dropped off and she had begun missing deadlines – this was something she wished to avoid.

FINDINGS AND REASONS

49. On the basis of the photocopied pages of her passport attached to her protection visa application I accept that the Applicant is a citizen of Fiji, as she claims to be.
50. The Applicant claims to fear harm in Fiji from:
 - Ethnic Fijians because of her Indian ethnicity.
 - Her former partner, who has been physically violent toward her, and his wife, who has harassed her over the telephone.
 - Her father, who murdered her mother when the Applicant was a child.
 - The authorities, who may arrest and mistreat or sexually molest her because of her opposition to the military regime or simply at random.
51. I have considered the Applicant's claims in these areas, as follows:

Ethnicity

52. The Applicant claims to fear harm at the hands of ethnic Fijians because of her Indian ethnicity. She claims to have witnessed violent attacks, together with racist comments and abuse, directed at ethnic Indians during the coups of 2000 and 2006.
53. As put to the Applicant at the hearing, the independent country information available to the Tribunal indicates that the military regime headed by Commodore Bainimarama has been publicly supportive of the rights of Fiji's ethnic Indian community since it came to power in the December 2006 coup and has acted to improve law and order generally. There is nothing in the information to indicate that ethnic Indians in Fiji have been targeted or discriminated against by the regime, and the Applicant's claims at the hearing about violence against ethnic Indians by the military at the time of the 2006 coup are not reflected in the reports available to the Tribunal. I note in this context that these claims are not mentioned in her protection visa application in which she speaks only of military personnel patrolling the streets of Suva on the day of the coup and having seen them questioning and taking away people who had gathered in groups. I have considered the Applicant's suggestion that Bainimarama and the military leadership are unaware of what is actually occurring at grass-roots level but I am not satisfied that if there were any pattern of abuse of ethnic Indians by the military or other

authorities this would not have been known to them, or reported publicly, in the nearly five years which have passed since the coup.

54. So far as her personal circumstances are concerned I note that the Applicant does not claim to have suffered any physical harm in the past because of her Indian ethnicity, apart, perhaps, from the trauma of witnessing violence against other ethnic Indians. Nor does she claim that members of her family or her friends ever suffered such harm. She suggests (not very clearly) in her protection visa application that when she was a child in her village she would have to pass by Fijian communities on her way home and that Fijians would swear at her and demand food and money but she does not claim that these things ever happened to her after she moved to live in Suva. I note further, as put to her at the hearing, that she was not prevented by any form of discrimination from obtaining a good education in Fiji or from finding secure and responsible employment there.
55. Taking these considerations together I am not satisfied that the Applicant faces a real chance of serious harm in Fiji because of her Indian ethnicity.

Domestic violence

56. The Applicant claims to fear harm from her father, who murdered her mother when the Applicant was a child, as well as from her former partner. I accept that, in principle, this feared harm might have a Convention connection through the Applicant's membership of a particular social group consisting of women in Fiji or some other variant of such an entity.
57. At the hearing the Applicant was unable to explain exactly why it was that she believed her father would wish to kill or otherwise harm her. She suggested that he had tried to regain custody of her and her siblings at some point, after they had been given to their maternal grandparents. She also believed that at various times throughout her life he had tried to establish where she was living. She had seen him on just two occasions since her childhood.
58. Given the distressing circumstances of the death of her mother I accept that the Applicant may have a strong subjective fear of her father, and that she may believe he has been looking for her with the intention of harming her. However, she has produced no information to suggest that he has ever attempted to harm her in any way and it is difficult to believe, in the circumstances of a small island state such as Fiji, that he would have been unable to locate her had he wished to do so over the past twenty five years. I am not satisfied, on the information before the Tribunal, that the Applicant's fear of harm from her father has any objective basis.
59. The Applicant also claims to have suffered violence from her former partner, with whom she lived from 2003 to 2006. She claims he would regularly beat her during this period and, after she left him, would stalk her and at times inflict violence on her. She claims these incidents continued up to the time she left Fiji for Australia. She does not mention a fear of harm from this person anywhere in her protection visa application but I accept, as she explained at the hearing, that she may not have known of its potential relevance for her claim to be a refugee and may only have realised this when she was asked about it at the Departmental interview.
60. While I accept that the Applicant may have suffered domestic violence from her former partner while she was living with him, I am not satisfied that she would now be unable to obtain protection from the authorities. As put to her at the hearing, the independent country information indicates that the police and other authorities in Fiji do not withhold assistance to

women who complain of domestic violence, even though some limitations may be placed on their ability to respond. It was not clear from the Applicant's evidence at the hearing that she had ever complained to the police directly about this violence in the past, or that she had ever given the authorities an opportunity to assist her, but the information available to the Tribunal indicates she would be able to obtain protection should she ask for it. I also note in this context that if she were to return to Fiji any further threats or violence from her former partner would be outside the context of domestic violence, given that she would presumably not live with him or maintain any form of relationship with him, and they would constitute simple criminal acts. I am not satisfied that she would be denied state protection from such criminal harm.

61. The Applicant also claims to have been the target of harassing telephone calls from an Australian woman who is, in fact, the wife of her former partner. It appears from the Applicant's evidence at the hearing that this person lives in [State 3] and that an application she made for a spouse visa for her husband (the Applicant's former partner) to join her there was unsuccessful. The Applicant claims, and I accept, that this harassment has continued after her arrival in Australia although it now takes the form of a fraudulent Facebook page, set up in her name, containing defamatory material.
62. While I accept that this harassment has been hurtful for the Applicant I am not satisfied, on the basis of the information before the Tribunal, that it can reasonably be seen as amounting to serious harm. Nor am I satisfied there is anything to indicate that it has a connection with a Convention reason. It arises, instead, from a purely private conflict involving relationships, past and present, between three people.
63. The Applicant claimed at the hearing that there was another dimension to the harassment she has suffered from her former-partner's wife. She claimed this person had also been telephoning members of the military in Fiji to accuse her of continuing a relationship with her husband, and that as a result she had been frequently contacted by military personnel who threatened her and warned her to end the relationship. She claimed that on one occasion she and her former partner had been summoned to an army barracks where these threats were made to her. She also claimed that the military had become tired of the calls from her former partner's wife.
64. As put to the Applicant at the hearing I am not satisfied that these claims are credible. I find it implausible that military personnel in Fiji would take any particular notice of telephone calls from a person in [State 3] who was unknown to them and who was making allegations of a purely personal nature against a citizen of Fiji. I find it quite implausible that the military would go so far as to question, threaten or summon her to the barracks over such an issue, or that they would have the slightest interest in whether or not she was continuing the relationship. I note in this context that although she referred during the Departmental interview to complaints she made to the police about the telephone calls, she made no mention at all of having been threatened by the military or anyone else as a result of them.
65. Based on these considerations I am not satisfied that, whether or not the Applicant can be said to be a member of a particular social group in Fiji, she is at risk of harm from her father or that she would be unable to obtain protection from the Fiji authorities against any threat of harm from her former partner.

Political opinion

66. The Applicant claims that she may be arrested and harmed because of her opposition to Fiji's military regime. She claims in her protection visa application to have expressed her political opinion by joining the 'democratic group' (in context, the Fiji Democracy and Freedom Movement- FDFM) [in] 2010, while she was still in Fiji. At the hearing she said she had done this by accessing the Movement's website but then agreed that the website does not in practice allow any means for joining the organisation and that she formally joined it at a meeting with its President, Mr Usaia Waqatairewa, at a fast food outlet in Sydney soon after her arrival.
67. The Applicant does not claim to have involved herself in any of the FDFM's protest activities in Australia and explained at the hearing that her travel commitments did not allow her the chance to do so. Although she claims to have contributed comments in postings to the Movement's Facebook page expressing a wish for democracy in Fiji, she has not substantiated this with the texts of any such comments. I also note that the supporting letter from the FDFM's President, Mr Waqatairewa, does not mention any of these postings.
68. I accept that the Applicant may have discussed the 2006 coup and the subsequent military regime with her work colleagues in Suva, as she claims, and that she may have expressed criticism of the regime in doing so. Based on the lack of any documented activity in support of a return to democracy in Fiji (apart from a brief meeting with Mr Waqatairewa during which she claims to have joined the FDFM) since she has been in Australia, however, I am not satisfied that she has a strong political opinion against Fiji's military regime such that she would face serious harm by being forced to be discreet in the public expression of her views if she should return to Fiji. Further, having considered the claims advanced in Mr Waqatairewa's letter against the Applicant's lack of any significant involvement in protest activities in Australia and the independent country information regarding treatment of members of the FDFM, I am not satisfied that she has placed herself at risk of harm from the Fiji authorities by anything she has done since leaving the country.
69. I also note the Applicant's more general claim that she fears harm from the military because the regime is unpredictable and arbitrary and that it has heavily suppressed human rights. I am not satisfied that the information before the Tribunal supports her claim that people are taken from the streets and placed in military custody, where they are abused and humiliated, simply on a whim and for no reason. Even if this were the case, however, I am not satisfied that any harm which she might suffer at the hands of the military could be said to be for a Convention reason if it had occurred in such a random and non-discriminatory fashion.

Delay in departure

70. Finally, I note that the Applicant's claim to have feared serious harm in Fiji is not consistent with the delay of nearly three months between the time she received her Australian tourist visa, [in] September 2010, and the date of her departure, [in] December 2010. Her explanation for this delay at the hearing was that she did not have sufficient money for the airfare and had to save for it, and that she had to wait until her annual leave was due. Having considered these explanations I am not satisfied that they are at all convincing. I am not satisfied she could not have borrowed money from friends if her life had been at risk, or that she would have allowed concern about the impact on her career to influence her decision in such circumstances.
71. I find that the Applicant's delay in departing Fiji casts further doubt on the credibility of her claim to have feared serious harm there.

Withdrawal of support by friend

72. As noted, on the Departmental file there is a somewhat cryptic note to the effect that an unnamed friend had informed the Department that he or she had withdrawn all support from the Applicant. What, if any, relevance this may have for the Applicant and her claimed fear of harm in Fiji is not explained and I have placed no weight on it in considering her claims.

Summary

73. In the light of all the information before the Tribunal I am not satisfied there is a real chance that the Applicant would suffer serious harm in Fiji for the reasons she claims. She does not claim to fear harm for any other reason and no other reason is apparent on the face of the information before the Tribunal.
74. I am not satisfied that the Applicant has a well-founded fear of persecution for a Convention reason should she return to Fiji, now or in the reasonably foreseeable future, and I am not satisfied that she is a refugee.

CONCLUSIONS

75. 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

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