

1104538 [2011] RRTA 728 (23 August 2011)

DECISION RECORD

RRT CASE NUMBER:	1104538
DIAC REFERENCE(S):	CLF2010/134902
COUNTRY OF REFERENCE:	Fiji
TRIBUNAL MEMBER:	Michelle Grau
DATE:	23 August 2011
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Fiji and applied to the Department of Immigration and Citizenship for the visas on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] October 2010. The delegate decided to refuse to grant the visas [in] April 2011 and notified the applicants of the decisions.
3. The delegate refused the visas on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention because the first named applicant is not a person to whom Australia has protection obligations under the Refugees Convention
4. The applicants applied to the Tribunal [in] May 2011 for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decisions are RRT-reviewable decisions under s.411(1)(c) of the Act. The Tribunal finds that the applicants have 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. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 (the Regulations) for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include spouse and children.
9. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Regulations.

Definition of 'refugee'

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

17. 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.
18. 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.
19. 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

20. The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
21. The first named applicant is a [age deleted: s.431(2)] year old married male Fijian Methodist (applicant 1) who is married to the second named applicant (applicant 2), a [age deleted: s.431(2)] year old Fijian, and has 6 children aged between [ages deleted: s.431(2)] years and are also applicants. He arrived in Australia with his family [in] March 2010 on a tourist visa granted [in] February 2010 and valid until [a date in] June 2010.
22. [In] October 2010 the applicant lodged an application for a protection visa. According to the application applicant 1 speaks, reads, writes English and Fijian, and has 14 years of schooling, a [diploma] and [certificate]. He has resided in Suva between 1998 and 2002 and in Lautoka between 2002 and 2010. He has also lived in Australia for short periods between 2006 and 2010. He has travelled to Hong Kong, China, Japan for seminars between 2005 and 2007. His occupation is listed as advisor consultant union dispute. From 1994 – 1998 he was an accounts clerk in Fiji; 2002 – 2004 a stock verifier/audit; 2004 – 2008 a finance officer with [Organisation 1] in Lautoka; June 2008 – December 2008 acting [official] [Organisation 2]; and since December 2008 an advisor consultant union dispute to [Organisation 3].
23. Applicant 2 has 12 years of schooling and was employed in a call center operation. Applicants 3, 4 and 5 and are students in [school years deleted: s.431(2)] in 2010. Applicant 6 is aged [age deleted: s.431(2)] years, applicants 7 and 8 are twins born in Australia on [birthdate deleted: s.431(2)] These applicants do not make their own claims but are members of the family unit of Applicant 1.

24. Applicant 1 claims as follows:

- a. The family left Fiji for a holiday in Australia, having travelled to Australia previously in March 2006 and April 2008. While on holidays applicant 1 received a phone call telling him he was wanted by the police and they were interested in a meeting that took place at his home [in] February 2010.
- b. He represented workers through the union movement and has been accused of instigating instability and fears that he will be physically abused, imprisoned and psychologically harmed.
- c. He has been previously detained and abused by the military during the Fiji Nurses strike in 2007. He led a delegation of [workers] to the picketing site of the nurses. Since that incident he kept a low profile until [date]/2/2010 when during a workshop involving youth and their rights he was taken into custody abused and released after 3 hours and warned to not hold public meetings. On [a further date in]/2/2010 he had an informal meeting at his home with some committee members to prepare for activities of national youth day for 23/3/2010.
- d. This holiday was repealed by authorities on 18/3/2010 when he was in Australia and was warned by friends the police were looking for him and visited his office and were interested in the meeting [of] 2/2010.
- e. He believes there are informants in his institution and is concerned about the information and criticisms he made previously in confidence.
- f. He was invited to join the [Organisation 4] executive team in Qld and has accepted in principle and will be attending the next meeting on [in]/10/2010.

25. The applicant provided a number of letters of support from organisations in Queensland attesting to his help with disadvantaged people, volunteering, helping in the floods and distributing food.

26. Applicant 1 was interviewed [in] March 2011 by the delegate. The applicant claimed as follows:

- a. He started off in [Organisation 1] as a credit officer until 2008 and got involved with the union after that. He joined the union in 2004 and worked for them part time.
- b. Most of the travel was paid for by international body for the union.
- c. In 2008 he became fulltime union delegate. He received an allowance rather than a salary but it was comparable. He changed his job as it was better for career development and believed in fair play.
- d. They monitor us and permission is required for a normal meeting for union. There are problems with surveillance and speaking to neighbours.
- e. He decided had to leave Fiji as he had had problems with authorities before. There was a national strike in 2007 with nurses and a week later the civil

service went on strike. His union supported the nurses. The picket place was moved from hospital as illegal, and went to a private place. They went there and he led the delegation and did not know. When they went there he was stopped and told it was illegal. He said there was nothing illegal about it and then they arrested him. They were in civilian and not uniform and he was taken to police station and asked questions, slapped around and threatened him. He was told he needed to think about his family and needed to stop. He said if I don't do this this is what I do. He was punched a couple of times and they let him go to find his on way home. He was in police cell but they were military people.

- f. They check about meetings and workshops to make sure not against them.
- g. He kept a low profile until last year. National Youth Day is public holiday and planning for that. He is [position deleted: s.431(2)] and wanted to plan according to ILO. Some others came to know there was a meeting regarding that youth committee and they warned us again. They said you have been warned twice and you have to stop. After that we stopped. After a few days they came to the office and by then he had left and asked about him. Eventually the holiday was scrapped in government calendar. 23rd March is youth day and it was repealed on 18 March 2010.
- h. His purpose for coming to Australia was for his holiday period. He normally leaves the country between February and May for the past 5 years. On this trip he promised his family a holiday, so they came over before him as he still had things to do at work. His plan was to spend a holiday and return after 3 months. The job he has is as consultant 3 times a week and if needed he will be called me.
- i. A number of inconsistencies in his statements were pointed out; such as in 2007 he was not working for the union full time, but said to police that could not stop what he did because that was what he did and did nothing else. He said he kept low profile after that, but in fact quit his job and took up full time job with union, which is not low profile. He said he was not high profile as he did not protest and kept low profile.
- j. When asked how the union pays a high salary for 3 days week and allow 3 months leave a year, he said he does part of the general secretary's work.
- k. When asked about his role in organising the youth group, he said he helped planned a workshop to make the young aware of the ILO conventions and sport and vocational activities to educate them on their rights. He was one of the organisers of games activities and planned the whole day and there were events and speeches. How was he to do the day when he was going to be in Australia and said he it was planned. The government was planning activities by the ministry of youth, and was going to take part but after 26th meeting at home, some of them came to know about the meeting and were not really keen to be around.

- l. When asked how he can be an organiser if had already planned not to be in Fiji, he said it would go ahead whether there or not he was there as he is just one, and there is president, vice president and two others.
- m. He could not recall when he bought tickets for Australia, but thought was after Xmas.
- n. It was put to him that there was information that he stole [money] and was wanted by police. He said they would do anything to make up stories. The other friend is also here and she is the office lady but he left his [employer] in 2008 so how could that happen in 2010. She was employed under him when he left. When asked why he did not want to go back and clear his name, he said first things first and he cannot prove his innocence as they have control over media and everything.
- o. When asked why he wait till October to lodge a refugee application, he said he did not know about refugee application until someone from work told him. He was in fear. He asked for help and they took information and did not come back to him.
- p. He went to [Organisation 4] meeting first in June, when his visa was about to run out. When put to him that the delegate doubted that he did not know about refugee applications after meeting with [Organisation 4], he said he did find that out then but spent time getting information from Fiji.

General background information

Political Situation in Fiji

- 27. On 5 December 2006 Fiji's military chief Commodore "Frank" Bainimarama announced in a televised address that he had taken over the running of the country. The following day he installed a caretaker prime minister and sent troops to shut parliament.
- 28. The Fiji Country Profile from the UK Foreign and Commonwealth Office includes the following observations on the coup and its aftermath:

On 5 December 2006, Bainimarama launched a swift and peaceful take-over of government. Military road-blocks were erected in the major towns and cities and Qarese, after a brief house arrest, was forced to leave Viti Levu. (As of mid-June 2007, he remains in de facto exile on his home island). On 8 December, Fiji was once again suspended from the Councils of the Commonwealth.

In the 6 months after the take-over, a chain of events unfolded, which included the suspension and sacking of key public figures, as well as some resignations. Bainimarama pronounced himself President for a short while, before reinstating President Iloilo. In April 2007, the Great Council of Chiefs (GCC) refused to accept Bainimarama's chosen nomination for the role of Vice-President. Bainimarama suspended the GCC. The role of the Vice President remains unfilled. Military figures were appointed to government ministries, and Bainimarama's deputy, Captain Esala Teleni, was given the role of Police Commissioner. The Chief Justice was dismissed and an Acting Chief Justice appointed (outside the scope of the Constitution). Numerous accounts of human rights abuses were detailed by those taken to the barracks for questioning into statements they were known, or alleged, to have made. Newspaper staff were detained and intimidated, resulting in

self-censorship by the press. Human rights activists were (largely) silenced. Military interference in the judiciary rendered it severely compromised. The Director of the Fiji Human Rights Commission (the only commission in the South Pacific) expressed pro-military sentiments, compromising the integrity of the institution (though she did not have the support of all in the Commission). (UK Foreign and Commonwealth Office 2008, *Country Profile: Fiji*, 18 November, <http://www.fco.gov.uk/en/about-the-fco/country-profiles/asia-oceania/asia-fiji?profile=all>)

29. Independent information records that some abuses did occur in the wake of the coup. In a report of August 2008, DFAT stated that, in the first few weeks after the December 2006 coup, a number of people “were detained at the army camp for questioning”. It indicated that many of these were people who opposed the coup or had close links to the ousted government. (DFAT 2008, *Fiji political persecution FJI 9361, FJI 9367, Country Information Report No. 08/69*, 6 August)
30. More recently, the Fijian constitution was abrogated by the Fijian President. Amnesty International, in particular, has expressed a range of concerns about the situation in Fiji in the wake of the abrogation of the constitution. In a 2009 report it stated as follows:

This report illustrates Amnesty International’s concerns about widespread human rights violations which followed then President Ratu Josefa Iloilo’s abrogation of the Fiji Constitution on 10 April 2009. These include violations of the rights to freedom of assembly, opinion, expression and movement, the right to a fair trial, and freedom from arbitrary detention...

On 9 April 2009, Fiji’s Court of Appeal ruled that the government of Frank Bainimarama, Army Commander appointed in the wake of the 2006 coup, was unconstitutional. Bainimarama had led the coup on 5 December 2006, following a protracted public stand-off between the Qarase led multi party government and the Republic of Fiji Military Forces (RFMF). Before the coup Bainimarama had accused then Prime Minister Laisenia Qarase’s government of corruption and of institutionalising racism.

In response, President Ratu Josefa Iloilo announced in a nationally televised speech at 11am on 10 April 2009 that he was taking over executive authority of the government and abrogating the 1997 constitution. He also announced that he was revoking all judicial appointments, effectively sacking all members of the judiciary. Furthermore, he stated that a new government was to be sworn in which would work towards holding democratic elections in 2014.

After his 10 April announcement, the President immediately issued public emergency regulations effective for the next 30 days. He stated that he had the backing of Fiji’s security forces and had directed Prime Minister Commodore Frank Bainimarama to take all reasonable steps to ensure that peace and order be maintained...

Since the December 2006 coup d’etat and the appointment of a military-controlled government, with Bainimarama as both commander of the army and prime minister, the military had been encroaching on Fiji’s political and administrative system, including on the independence of judges and lawyers. In the process, they violated a wide array of human rights... With the April 2009 abrogation of the constitution and the declaration of emergency, Commodore Frank Bainimarama and the military council consolidated their virtually absolute power in Fiji. Parliament had previously effectively been abolished with the deposing of the Qarase government in December 2006.

After the abrogation of the constitution, the security forces acted swiftly, stepping up their presence in and around government offices and other strategic locations. There was a prevailing sense of panic amongst those in public service, especially the senior officials. Those whom Amnesty International spoke with from the 10 – 13 April feared for the worse as they began comprehend what the abrogation of the constitution would mean in reality.

The Public Emergency Regulations (PER) as decreed by President Iloilo, included provisions on severe censorship of all Fiji media. Police arrested several journalists, politicians and activists for breaching the PER during the first few weeks that emergency regulations were in place. The abrogation of the constitution, the promulgation of the PER, the dismissal of the judiciary, subsequent political arrests and intimidation of activists have led to a climate of fear and desperation amongst human rights defenders, lawyers, the NGO community and society as a whole. After the judiciary was dismissed in April 2009, there was no recourse for people whose rights had been violated. (Amnesty International 2009, *Fiji: Paradise Lost: A Tale of Ongoing Human Rights Violations: April-July 2009*, September, ASA 18/002/2009, pp.5-8)

DFAT reports

31. In May 2010 the Department of Foreign Affairs and Trade (DFAT) was contacted and asked to comment on the harm various categories of people might experience on return to Fiji. The post replied on 6 July 2010.

32. On the situation for people who are not activists or political or religious leaders but who are nevertheless known to be opposed to the military regime, the post stated:

We are not aware of reports of ordinary individuals who are ‘known’ to be opposed to the regime being subject to harm unless they have also publicly express opposition to or criticism of the regime.

It would be difficult to identify such individuals unless they were associated with a particular political group or organisation. They would also be identifiable if they have publicly expressed opposition to or criticism of the regime.

Non-vocal opponents of the regime could potentially be subject to monitoring and intimidatory threats. If the individual is a public servant, harm could also involve reduced opportunities for promotion or other career development, or possibly demotion or dismissal. Harm is less likely to include detention and/or restrictions on travel as these are generally only applied in limited cases to high profile individuals.

33. On the situation for prominent figures in politics, the churches, the traditional chiefly structure or the public service who are seen as opposing the regime the post stated:

We are aware of a number of cases where prominent individuals who are (or seen as) regime opponents have been subjected to harm by the regime. This is particularly so if they have publicly expressed criticisms of the regime. Those most at risk include politicians who were party to the court case challenging the coup (this case was against Bainimarama and members of his regime), high profile members of the Methodist Church, and high profile chiefs.

High profile figures who have opposed the regime are well known through Fiji, including to the regime. It would therefore not be difficult for the regime to identify or target these individuals.

Such individuals would most likely be subject to monitoring and intimidatory threats. A number have also been charged with offences by the regime, often under the ‘Public Emergency Regulations’ or subject to politically-motivated investigations by the Fiji Commission Against Corruption (FICAC) as a form of harassment. Individuals targeted in this way include politicians, chiefs, Methodist church leaders, journalists, and human rights activists. As a result of such charges, individuals have also been subject to restrictions on their travel. Public servants who become known as regime opponents are likely to be subject to economic

harm in the form of reduced opportunities for promotion or other career development, or demotion/dismissal. While detention is less likely for individuals in this category, there have been a number of cases, including more recently, where some high profile individuals have been detained for shorter and longer periods of time. Although verbal abuse could occur in such instances, more severe forms of physical mistreatment would be unusual. (Department of Foreign Affairs and Trade 2010, *DFAT Report 1167 – Fiji: MRT/RRT Information Request:6 July*)

34. **Article from ITUC CSI IGB International Trade Union Confederation, “Fiji: Military Intimidation and Beatings of Union officials”**,

2 March 2011: The ITUC and Global Union Federations ITF and IUF have reacted strongly to intimidation and physical attacks against Felix Anthony, General Secretary of the Fiji Trade Union Congress and against other officials from FTUC affiliates.

Anthony is also General Secretary of the Sugar Workers’ Union which is affiliated to the ITF and the IUF. On 12 February, Anthony was taken from his home by 3 uniformed military officers and subjected to threats whilst being driven around the back roads of Lautoka for some 2 hours. His families, including children, were also threatened.

On 18 February, Anthony and other union officials from the sugar industry were called to meet the Fijian Prime Minister at a sugar mill in Ba, on the western side of Fiji. The union representatives were subsequently assaulted by military officers while still at the mill, then taken to Namaka military barracks and subjected to further beatings. As they were released from the barracks, they were again threatened with further violence.

“We have asked the International Labour Organisation to intervene with the Fiji authorities, and will be monitoring the situation very closely. This kind of behaviour from the Fiji regime is totally unacceptable, and is a serious violation of fundamental trade union rights,” said ITUC General Secretary Sharan Burrow.

<http://www.ituc-csi.org/fiji-military-intimidation-and.html>

The Tribunal hearing

35. The first named applicant appeared before the Tribunal [in] July 2011 to give evidence and present arguments.
36. The other applicants did not appear before the Tribunal and applicant 1 informed the Tribunal that they did not have claims of their own. He also told the Tribunal that another child was born about [period deleted: s.431(2)] ago. He confirmed he prepared the application himself.
37. The Tribunal spent some time establishing from applicant his past employment information. The applicant was employed by the [Organisation 1] from 1994 starting out as an [apprentice] but did not complete this and went into administration working in various sections and finally in the accounts section. He earned \$1,200 a month. He left this employment in June 2008 to take up a full time position as [position deleted: s.431(2)] [Organisation 2]. He said he took over from the departing officer, [Mr A].
38. The Tribunal discussed the applicant’s union involvement. The applicant joined the union in 1994 as a member and became active in 2004 on a voluntary basis as treasurer. He worked on a voluntary basis with [Organisation 2] from 2004 and it was an unpaid position. He later said

he was paid with allowances for travel and to attend meetings. He then said he oversaw the management of the [Organisation 2] office also. He said the office employed one full time staff and another part time training 3 days a week. He said he attended the office every day to open it and lock it. The Tribunal noted it might be unusual that he would be required to open and close an office when there was already a full time person in the office and he was not in a paid position himself. The applicant said the person was not consistent with closing the office and it had been broken into. He resigned from [Organisation 1] in June 2008 and [Organisation 2] to take up a full time paid position with [Organisation 2] as treasurer and acting secretary.

39. The applicant referred to a copy of a letter dated [in] June 2008 from [Organisation 2] which he provided to the Tribunal at hearing. This letter was a reference for the applicant from [Organisation 2] stating he had been an executive member of [Organisation 2], was now finished with them and wishing him well in his future endeavours. The Tribunal asked if the applicant had an original of the letter and the applicant provided it to the Tribunal for viewing.
40. The Tribunal asked the applicant how many members [Organisation 2] had in 2008. The applicant said over 300 members. The Tribunal noted that his reference letter from [Organisation 2] said there were 212 members and asked the applicant why he had different information or knowledge about the members. The applicant said the numbers in the letter were affected by the new legislation where managers opted to individual contracts and therefore the numbers were reduced.
41. The Tribunal spent some time pointing out to the applicant that the letter of reference clearly indicated that he had ended his association with the [Organisation 2] in June 2008 and was therefore inconsistent with his claim that he left the [Organisation 1] to take up a full time paid [position] in [Organisation 2] in June 2008 as claimed. The applicant said they requested that he stay on after the letter of reference was provided and that the reference proves that he worked for [Organisation 2]. He said he the president and vice president are full time in Suva, so they requested that he stay until the next AGM in Lautoka.
42. The Tribunal noted that the applicant's account changed regarding his take up of the position with [Organisation 2] in 2008; being on one account he left but later they asked him to stay on till the next AGM, and another account; that he left to take up a full time union position with [Organisation 2].
43. The applicant confirmed that he resigned [Organisation 1] in June 2008 and his [Organisation 2] position but took up the same [Organisation 2] position as a full time [official]. He ran the whole office from Lautoka with the same staff. There was no office in Suva. The Tribunal expressed some doubt that the same voluntary unpaid position would become a full time paid position in an office of 1.5 people and declining membership. The applicant said the [position] was a full time job and the [official], [Mr A] resigned and left the union and the applicant replaced him out of Lautoka. The Tribunal expressed doubts given the reference letter of June 2008 did not list [Mr A] as the [official] but listed [Mr B] and noted it was inconsistent with his evidence.
44. The applicant said he was confused with the two roles. The Tribunal asked the applicant to explain his transition from [Organisation 1] to a full time paid union position again. The applicant said between 2004 – 2008 he was with [Organisation 2] union on a voluntary basis as acting secretary and treasurer. In June 2008 he resigned from [Organisation 1] to take on a

full time role with [Organisation 2] and continued in the same role as Secretary and Treasurer. He took up the role because [Mr A] had left. When [Mr A] left [Organisation 2], the VP of [Organisation 2] took on the role of general secretary and he became responsible as secretary in the Lautoka office. He worked in this role until March or April 2009 when they had their AGM.

45. He earned \$1000 a month tax free. He was paid by cash cheque and did not have any evidence of bank deposits on cashing of cheques. The Tribunal expressed some doubts that the union would pay him a regular salary in this manner given the need to be accountable for expenditure of funds. The applicant confirmed he was paid by bank deposit when he worked for [Organisation 1] but said he asked the union to pay him this way and the records were well kept and could provide them.
46. The [Organisation 2] AGM resolved to do away with all paid positions and all roles would be voluntary positions. The Tribunal asked the applicant what he did then. He said he stayed at home for awhile. He then received a call from [Mr A] to attend his office in Nadi who suggested he could do some work for his union [Organisation 3]. The Tribunal asked the applicant when he commenced this work and he had some difficulty remembering this and changed his account from a few weeks to a few days. The Tribunal asked him to reference this with how long his period of unemployment was after the [Organisation 2] AGM. The Tribunal expressed some concerns at his changing account of commencing work with [Organisation 3] from staying at home for few weeks, to only a few days to doing some work and then doing full time work later to doing full time work within a few days. The applicant said it was progressive and he had full time work in April 2009 and earned \$900 a month. He said he was also paid by cash cheque. The Tribunal again expressed doubts about evidence of payments in this manner and recording keeping of payments to the applicant.
47. The Tribunal asked him about his work with the union and he said his role was as general secretary or CEO of the union because [Mr A] was on other Boards in the Fiji government. It was a larger union and he had 4 full time staff who he supervised and he did the finance and administration of the union. When asked if he supervised staff daily, he said most days he went to the office but other days he worked from home. He agreed the title given to him of consultant advisor was not consistent with the duties that he described. The Tribunal expressed doubts that he undertook the role as he described and noted that the letter of [in] June 2011 from [Mr A] did not include any of the duties he described and was a general letter. The Tribunal asked the applicant if he had the original of that letter. The applicant was not sure where it was. The Tribunal expressed some concerns that he could produce the original of a 2008 reference letter but not the original of a letter dated a few weeks ago and might place little weight on it.
48. The Tribunal asked the applicant about the original of the letter dated [in] April 2010 given to the department. The applicant thought he had that and the Tribunal took the opportunity to adjourn the hearing to enable him to provide it and provide a break for the interpreter and the applicant.
49. The applicant could not provide the original letter but said he had it at home and would send it to the Tribunal.
50. The Tribunal asked the applicant to describe the circumstances of his detentions in Fiji. The applicant described attending a private home to support the Nurses Union Strike in 2007 with 2 other colleagues. He said the picket had been moved from the hospital to a private home as

the police had told them to move on. When asked how he knew where to go, he said it was announced on the news and he was told by phone. The Tribunal expressed doubt that new venue would be announced on the news. The applicant said he was told on the phone and the union did not have anything to do with the news.

51. They were stopped at the entrance by plain clothes police and were asked why he was there and who he was with. He said he was invited by the owner to visit and he was representing the union. He was told he could not enter and should return. He insisted he could visit private property. He was thrust against the vehicle and taken away. His colleagues said they would follow him. He was punched in the vehicle and assaulted until he lost consciousness. He woke up in the police cell in Lautoka and a policewoman let him go to the restroom, which is where he saw the extent of his injuries, his clothes were torn and had 3 broken ribs. He was taken back to the room and told to wait. He lay there for a long time and there was a change of shift. Another man came in saw the injuries and asked him what he was there for and then he mocked him and ridiculed him. He took a notebook and asked his name and said he could be detained for weeks. Another one came in and took his particulars. The applicant asked for his mobile phone so he could make calls and asked how long he would be there. He was told to wait. They left him in the room and he fell asleep and woke up at dawn the next day. He was released at the next change of shift when a Fiji Indian checked on him was told to go home and he had to find his own way home He phoned his colleague who came to pick him up by taxi.
52. The Tribunal asked the applicant whether his colleagues had contacted his wife to tell him what had happened during his detention. He said his wife did not know anything until he arrived the next day. The Tribunal expressed some doubt that his work colleagues would not have told his wife what had happened. The applicant said there is no phone at his home and they thought he would only be detained for a short time. The Tribunal expressed doubt that his colleagues did not try to check on him as they said they would follow him to the police station. The applicant said they checked at the station but were assured that he was not there and had been released and went home on the same day he was detained The Tribunal expressed doubts that they did not try to contact him or his wife to be sure he was home and find out what had happened. The applicant said they would have rung his mobile phone, received no response and would have assumed that, as he always has it switched off at home, therefore he was at home. The Tribunal expressed its doubts that given the circumstances that the colleagues would not have tried to confirm that he was safe at home or informed his wife of what had occurred. The Tribunal expressed doubts that the applicant was detained as claimed. He said there was no phone or public transport and to take a taxi would have been too expensive to check on him.
53. The Tribunal asked about his other detention. The applicant said he and a colleague were preparing for a youth workshop in Nadi and were arrested before it started. They were taken to separate rooms in the police station. He was interrogated and told it was illegal event. They threw him in the corner of the room and kicked his back and there was a prolonged assault for 2 hours. He saw his colleague crying afterwards but she was threatened with rape if she continued meetings and she was slapped but not otherwise assaulted. He said he was released after 2 hours at about lunchtime. He contacted his boss who came to pick them up from the station.
54. The Tribunal asked the applicant about his injuries. He said they were not as grave as the 2007 assault but he had a sore back and had been spat on. The Tribunal put to the applicant that he might have had significant injuries if he had been subjected to a prolonged assault of 2

hours. The applicant said they abused him and slapped the back of his head and knocked chairs from under him and spat on him and it was more verbal abuse.

55. The Tribunal put a number of its concerns to the applicant; being the country information indicates that high profile opposition critics may face serious harm but his description of his activities indicate he is low profile; doubts about the credibility of his detention claims in terms of its description, explanations about colleagues concerns for his welfare and telling his wife; doubts that he was employed full time by the union in a paid position from 2008, particularly given the contents of letter of June 2008
56. The applicant said there is no transport in Lautoka after 6pm so his colleagues could not have warned his wife or tried to find him at home and a taxi was too expensive to take. His colleagues would have assumed he had gone home as advised by the police.

424AA

57. The Tribunal put adverse information to him that would be the reason or part of the reason for it to affirm the decision, subject to his comments. He was informed that the relevance of the information would be explained to him and he could seek additional time to respond. The information was put to him.

Information from a third party:

You are buying time to avoid returning to Fiji to face police investigation in respect of [amount] being stolen from your former employer in 2008 and you left Fiji to escape investigation.

You received a call from Fiji from a friend who told you that you were a suspect in the missing [amount]

You were unemployed since 2008 up to the point of departure for Australia. Any information relating to your employment in support of your application after that date is totally misleading

This information is relevant because it might lead the Tribunal to doubt the credibility of your claims about your work history since 2008 or reasons for not wanting to return to Fiji and doubt your credibility generally. As a result the Tribunal might not accept your claims and find that you do not have a well-founded fear of persecution and may affirm the decision under review.

You travelled to Australia in 2008 but did not claim protection and returned to Fiji even though you claim to have been detained and beaten by authorities at the Nurses Strike in 2007.

This is relevant as it might lead the Tribunal to doubt that you have a well-founded fear of persecution and to doubt you were involved 2007 in Nurses strike or detained. As a result the Tribunal might not accept your claims and find that you do not have a well-founded fear of persecution and may affirm the decision under review.

There are inconsistencies in what you said at interview and at hearing about your detentions, for instance that you were detained for 3 hours (interview) or 2 hours (at hearing) and you did not provide the same detail account at interview as at hearing, which might lead the Tribunal to doubt you were detained as claimed or the credibility of your detention claims. As a result the Tribunal might not accept your

claims and find that you do not have a well-founded fear of persecution and may affirm the decision under review.

58. The applicant said he covered these in his interview with the Department of immigration and has provided further material in response to those concerns. The allegations are malicious complaints and he wants to vindicate his name but cannot appear to answer the allegations because of the current legal regime in Fiji. He was shocked to hear about the allegations at the interview. He considered that his documents from legal entities should be accepted and not those of a faceless anonymous person.
59. The Tribunal noted that the June 2008 letter from [Organisation 2] indicated that the applicant had ended his association with the [Organisation 2] and was therefore inconsistent with his evidence that he took up a full time paid position with them in June 2008. The applicant said he resigned from [Organisation 1] and he ceased to be a volunteer of [Organisation 2] as he had no more staff and was not a member of the union from then.
60. The Tribunal noted that if it accepted his letters from [Organisation 2] and [Mr A] it might still have doubts that he was of high level interest to the authorities or had a high profile which might attract a well-founded fear of persecution.
61. The Tribunal pointed out that it might have some concerns about the appearance the copies of the [Mr A] letters and some doubts as to the authenticity of the copies of recent documents given he was not able to provide originals of the documents.
62. The applicant said it is the low profile people how are victims and who lose their lives. He said Sam Speight continued to travel to and from Fiji but was eventually harmed and he is the same.
63. The Tribunal expressed some doubts that he might hold another meeting 7 days after his detention in February 2010 and the day before he left for Australia or that he would plan to be out of the country for national youth day when he was one of the key organisers. The applicant said he took the risk because he was not formally charged although threatened.
64. The Tribunal asked the applicant about his [Organisation 4] claims in Australia. He said he was asked to join the executive in Qld in June 2010 after his visa had expired. He went to a meeting last month at the gold Coast with the VP, President but there were no supporters. The Tribunal explained the operation of s91R of the Migration Act to the applicant. He said he was aware of this section and that is the reason he has not advanced his claims in respect of his association with the [Organisation 4] in Australia.
65. The Tribunal asked the applicant if he had any trouble leaving Fiji in 2010 and he said he had not.
66. He requested that the Tribunal consider his present situation; that he now has another child and his children are struggling; has nothing to go back to as he sold his property; having to wait is taking its toll on the children. He did not want some anonymous third party to throw a spanner in the works of the application. All of his information was credible. He would love to return to prove his innocence but cannot do it with the current judicial system in Fiji as it would not be a fair hearing. He is focussing on providing the welfare and sustenance for his family.

FINDINGS AND REASONS

67. The applicant travelled to Australia on what appears to be a valid Fiji passport and claims to be a citizen of Fiji. The Tribunal finds that he is a citizen of Fiji and has assessed his claims against that country as his country of nationality. The applicant claims to fear persecution on the basis of his union involvement.

[Organisation 2] and union involvement

68. The Tribunal accepts the applicant was employed by [Organisation 1] starting out as an [apprentice] and then in administration until June 2008. The Tribunal accepts he was also a member of [Organisation 2] union and worked on a voluntary basis from 2004 until he resigned in June 2008 as evidenced by the [Organisation 2] letter dated [in] June 2008. The Tribunal accepts this documentary evidence as the applicant provided the original letter to the Tribunal.
69. The Tribunal accepts that he was [an official] until June 2008 on a voluntary basis. However, the Tribunal does not accept that applicant was telling the truth about the level of his involvement with [Organisation 2], even on a voluntary basis, and that he exaggerated his union involvement. The applicant's evidence regarding his involvement and duties with the union as a volunteer were vague and lack credibility and the Tribunal considers the applicant exaggerated his involvement to bolster his protection claims. For instance he initially said he worked on a voluntary basis unpaid, then said he was paid allowances for travel and to attend meetings and later said he oversaw the management of the [Organisation 2] office. The Tribunal found his account of how the office operated lacked credibility. For instance the office had one full time employee, but it was he, as a volunteer who opened and closed the office each day and oversaw the operations of the office. The Tribunal finds this arrangement lacks credibility particularly where the applicant was employed full time with [Organisation 1] at the time. The Tribunal does not accept the applicant's explanation that the full time employer of [Organisation 2] was unreliable in opening and closing the office.
70. In addition, the applicant at hearing claimed [Organisation 2] had over 300 members, when the [Organisation 2] letter said they had 212 members. When put to this inconsistency was put to the applicant, he explained that numbers had reduced because of individual contracts. While the Tribunal accepts that union numbers and knowledge of them might fluctuate, the applicant was adamant at hearing, until the contrary information was put to him. In the circumstances, the Tribunal considers the applicant exaggerated the size of the union and his level of involvement. The Tribunal accepts the applicant was a member of the union, the Tribunal does not accept that he was a high profile member.
71. The Tribunal does not accept that the applicant was employed by [Organisation 2] full time since 2008 for a number of reasons. Firstly, the 2008 letter from [Organisation 2] reads like a reference and indicates his termination of his association with [Organisation 2] [in] June 2008. When put to him, the applicant changed his account saying he was asked to stay afterwards until the next AGM. The Tribunal does not accept that he was asked to stay on in a permanent position as it is inconsistent with terms of the [Organisation 2] letter.
72. Secondly, the applicant's claims about the take up of a full time position with [Organisation 2] after 2008 are also inconsistent with his written application that he ceased with [Organisation 2] in December 2008.

73. Thirdly, the applicant continued to provide inconsistent accounts about his take up of the [Organisation 2] full time position, saying on one account he left [Organisation 1] to take up a full time permanent position with [Organisation 2] and on another account he was asked to stay until the AGM.
74. Fourthly, his description of the [Organisation 2] position he took up lacked detail and he changed his account about whom he replaced. For instance, at first he said he took over as [from] [Mr A]. When pointed out that [this official] according to the [Organisation 2] letter was [Mr B], he said he was confused with the two roles and explained a different arrangement. In that explanation, the applicant said he worked in the role until the next AGM in March or April 2009. When questioned further he admitted that all paid positions were abolished in 2009 at the AGM.
75. In addition, the applicant's account of how the office was set up lacked credibility. For instance prior to June 2008, it employed one full time and a part time person and he helped on a voluntary basis. But after June 2008 on his account he took over with an additional paid full time position also, when on his own evidence the membership was declining.
76. When the Tribunal expressed doubts about the applicant's evidence that he was paid by cash cheque by [Organisation 2] and [Organisation 3] given that unions would need to account for their payments or that there would be no record of payments, the applicant said he could provide evidence. However the applicant provided no evidence of any payment from [Organisation 2] or [Organisation 3].
77. The Tribunal does not accept that the applicant was a consultant or adviser to [Organisation 3]. Firstly, the applicant's account about how and when he was employed by [Organisation 3] changed throughout the hearing, from staying at home for few weeks, to only a few days, from doing some work and then doing full time work later to doing full time work within a few days. Secondly, his description of his duties (supervising staff and the office and sometimes from home) was also inconsistent with his title of consultant/advisor. In addition, the applicant provided no evidence of payments made to him by any union. His evidence that that he was "on leave" from March 2010 and is still "employed" is not credible. The Tribunal does not accept that the applicant was telling the truth about employment with [Organisation 3] and does not accept that he was a consultant or adviser to [Organisation 3].
78. The Tribunal has had regard to the letters from [Mr A] provided by the applicant. While the applicant was able to provide the original letter from [Organisation 2] dated [in] June 2008 at hearing, he did not have the original letters of 2010 and 2011 from [Mr A] at hearing. At hearing the Tribunal expressed some doubts about the authenticity of the [Mr A] letters and while the applicant said he would provide the original letters to the Tribunal after the hearing, he provided copies of the letters only. In addition, the letters are inconsistent. For instance the 2010 letter does not mention the applicant's consultant role or prior detentions and refers to his active union membership, [an official] of the Youth wing in 2004 which is inconsistent with the 2011 letter which mentions his arrest and consultant/advisor position. Further the applicant's description of his duties at hearing is not reflected in [Mr A]'s letters.
79. While the Tribunal accepts that the applicant was involved with the [Organisation 2] union on a volunteer basis as treasurer up until [a date in] June 2008, it does not accept that he has been employed either full time or part time with any union since then.

Detentions

80. The Tribunal does not accept that the applicant was detained in 2007 or 2010 as claimed. The applicant provided an account that appeared rehearsed and contained minor details that one might not expect would be recalled or something that would be noticed by a detainee from an incident 5 years ago. For instance, he the number of changes of shift and when they occurred. Also his account of the number of different police coming at different times to ask him for his details and what he was in there for lacks credibility, as he was detained at a police station and they would have his particulars and know why he was detained. Further his account at interview lacked any of the detail provided at hearing and did not mention that he was detained overnight.
81. The applicant's account that his colleagues did not inform his wife of his situation or check that he had been released and returned home is not plausible, particularly given he was detained overnight and his colleagues said they would follow him to the police station. The Tribunal does not accept the applicant's explanations about difficulties with phone contact and lack of public transport. The explanation that they would have tried to phone him and when they received no response, would have assumed he was at home because he turns it off when he is at home is illogical in the circumstances. The Tribunal does not accept that contact by the colleagues with his wife could not and would not have been made in such unusual and serious circumstances.
82. The Tribunal does not accept the applicant's other explanation that his colleagues would accept what the police said of release without checking with others for his welfare. It is also inconsistent with his claim that his colleagues followed him to the police station; as if they had they might have seen that he had not been released.
83. Further, the Tribunal notes that the applicant travelled to Australia in April 2008, six months after his claimed 2007 detention but he did not seek protection Tribunal considers his failure to seek protection at that time is inconsistent with his claim that he had been detained 6 months earlier. The Tribunal does not accept that the applicant had a subjective fear of persecution. The Tribunal does not accept that the 2007 detention took place.
84. The applicant's account of 2010 detention by contrast to 2007 was vague and lacked detail. He had to be continually prompted for details. The Tribunal found it incongruent that he would recall minor details of a 2007 detention but not be able to provide general details of a 2010 detention. Further the applicant changed his account saying at first he was subject to a prolonged assault for 2 hours. But when put to him that one might expect significant injuries after such an assault, he said it was more verbal abuse. In addition his accounts of 2010 detention were inconsistent. For instance, at hearing he said he was detained for 2 hours, but in his written application said he was detained for 3 hours and at interview he did not mention he was detained but talked about being warned.
85. Further the Tribunal does not accept that it is credible that the applicant would want or be able to have a meeting at his home 1 week after being detained and assaulted. Further, the applicant's claim that he left for a holiday to Australia less two weeks after the detention (and planned to return to Fiji) is inconsistent with having been detained and assaulted and fearing persecution. The Tribunal does not accept that the applicant was detained in 2010 and does not accept that he held a meeting at his home as claimed.

86. The Tribunal has also considered the June 2011 letter from [Mr A] which refers to the detentions. As discussed above, the Tribunal places little weight on this letter as it is inconsistent with the letter he provided in April 2010, as it did not mention the applicant's detentions. Further the letters are general letters and copies only which on the face of them appeared to lack authenticity. While the applicant said he would provide originals, copies were only provided. The Tribunal places little weight on the letters. The Tribunal does not accept that the applicant was detained.

Political opinion

87. The Tribunal notes and accepts the country information that since the 2006 coup the citizens of Fiji have had to endure considerable restrictions and suppression of their right to express their political opinions. Those who have criticised the government have put themselves at risk of short term arrests, interrogations, physical mistreatment and intimidation. The military authorities have exercised their power to the detriment of various freedoms previously enjoyed by the Fijian people such as freedom of expression, of association and of political opinion.
88. The Tribunal also accepts the reports that have issued from Fiji about certain union leaders having been mistreated by the military. However the Tribunal does not accept that the applicant has been detained as claimed and finds he has exaggerated his involvement in union activities throughout the hearing as discussed above. The Tribunal accepts that the applicant has been a member of the [Organisation 2] union in the past until June 2008 and has held voluntary positions, but does not accept that he has had a full time paid position or that he was employed by [Organisation 3] or any union since June 2008. The Tribunal is not satisfied that the applicant is a high profile unionist or of interest to authorities. The Tribunal is not satisfied that there is any real chance that the applicant will face serious harm in the reasonably foreseeable future because of his union involvement or activities.
89. On the evidence before it, the Tribunal is not satisfied that he has been accused of political instability or is a high profile union activist or of interest to the authorities for political activities. The Tribunal also considers as the applicant had no trouble leaving Fiji on a number of occasions (2006, 2007, 2008 and 2010) and based on the country information set out above that he is not of interest to authorities or high profile activist in respect of union activities.
90. The Tribunal does not accept that the police are looking for the applicant because of his union activities or national youth day meeting arrangements. The Tribunal does not accept he was involved in organising the Youth Day event. That he planned a holiday to Australia when the Youth Day was scheduled to be on is inconsistent with being a key organiser. The Tribunal does not accept his explanation that others could run it as it is at odds with his claim that he was a key organiser.
91. The Tribunal considers the police may be interested in applicant to answer questions about money that went missing from his former employer [Organisation 1]. The applicant admitted that he was aware of the police investigation and wanted to clear his name but could not do so with the current regime. The Tribunal does not accept that the police have an interest in him for union activities or political profile reasons. The Tribunal finds the police are not interested in him for Convention reasons but in respect of an investigation about missing money from his former employer.

92. Further the Tribunal considers the delay in the applicant's application for protection until 7 months after his arrival indicates that the applicant did not have a well-founded fear of persecution because of his union activities or political profile in Fiji.
93. The Tribunal notes that the applicant referred to being invited to [Organisation 4] and at hearing when the effect of s91R was discussed with him. He quickly acknowledged that he did not include this in the application or wish to advance claims in this regard because of the operation of s91R. The applicant did not provide any evidence in relation to his [Organisation 4] involvement in Australia. On the evidence before it the Tribunal is not satisfied the applicant is involved with [Organisation 4] in Australia or that upon return he will have a political profile such that might attract attention.
94. On the evidence of the applicant, the Tribunal is not satisfied that the applicant is a focus of the regime such that on his return in foreseeable future the Fiji regime would seek to harm him for a Convention reason.
95. While the Tribunal accepts that the applicant might have difficulty finding employment upon his return and may face investigation regarding funds missing from his former employer, the Tribunal is not satisfied that he will suffer serious harm or that any difficulties encountered are for reasons of his political profile or any other Convention reasons. While the Tribunal accepts that there are difficulties with the independence of the judiciary in Fiji, the Tribunal does not accept that any difficulty (if any) encountered by the applicant as result of the police investigation is Convention related or that he has a profile that would attract discriminatory application of the law.
96. The Tribunal has considered the first named applicant's claims cumulatively and while it accepts that the applicant may encounter difficulties in responding to the police investigation about money missing from his former employer the Tribunal is satisfied that this is not for any Convention reason.
97. For the reasons set out above the Tribunal is not satisfied that the first named applicant has a well-founded fear of persecution for a Convention reason on his return to Fiji.

Secondary applicants

98. In the protection visa application, the applicant wife, [name deleted: s.431(2)] (second named applicant) and the children (third, fourth, fifth, sixth, seventh and eighth named applicants) gave their religion as Methodist. They have not made any substantive claims against the Convention on the basis of their religion or any other Convention ground. Looking to the reasonably foreseeable future, the Tribunal is not satisfied that the second, third, fourth, fifth, sixth, seventh or eighth named applicants have a well-founded fear of being persecuted in Fiji for any Convention reason. Nor are they able to satisfy the criterion set out in s.36(2)(b).

CONCLUSIONS

99. The Tribunal is not satisfied that any of the applicants is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

DECISION

100. The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.