

071362222 [2007] RRTA 266 (19 September 2007)

DECISION RECORD

RRT CASE NUMBER: 071362222

COUNTRY OF REFERENCE: Turkey

TRIBUNAL MEMBER: Jennifer Ellis

DATE DECISION SIGNED: 19 September 2007

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act, being persons to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

The applicants, who claim to be citizens of Turkey, arrived in Australia and applied to the then Department of Immigration and Multicultural Affairs for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by letter.

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

The applicants applied to the Tribunal for review of the delegate's decisions.

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 applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for

the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 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).

Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.

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

Definition of 'refugee'

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

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

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* [1989] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (2004) 217 CLR 387.

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

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

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve "serious harm" to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression "serious harm" includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that

persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

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

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

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

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

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

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file relating to the 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.

The applicants appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from the first named applicant's sibling

(Sibling A). The Tribunal hearing was conducted with the assistance of an interpreter in the Turkish and English languages.

The applicants were represented in relation to the review. Their representatives attended the Tribunal hearing.

BACKGROUND AND CLAIMS

The husband and wife applicants made a combined application for a protection visa and both made their own specific claims to be a refugee by each submitting a Part C when lodging their application. The husband (hereinafter referred to for convenience as 'the applicant'), is a citizen of Turkey. He is Kurdish by ethnicity and Alevi by religion. He was born in District P. He underwent several years of education from the late 1950s until the early 1960s, then worked for a government company for many years. Afterwards he worked as the owner of a small business in Province H. The applicant has a number of siblings: Sibling A is a citizen of Country T, while his two other siblings reside in Country M. The applicant stated that he left Turkey because of the inhumane treatment he had from the Turkish authorities. He said that because he was Kurdish his workplace had been destroyed and he referred to the statement that was submitted with the application.

The applicant's wife is a citizen of Turkey. She is Kurdish by ethnicity and Alevi by religion. She was born in District Q. She underwent several years of education from the late 1960s until the mid 1970s and has not been employed. The applicants have four children. The applicant's wife stated that she left Turkey because of the inhumane treatment she and her husband experienced and because she was subject to threats. She said that she and her family had been harmed by Turkish authorities for many years.

Refugee claims

The applicant submitted a statutory declaration in which he stated that:

has been amended in accordance with s.431 of the *Migration Act 1958*].

I am seeking protection in Australia. The reason for this is that I have experienced pressure and inhumane behaviour at the hands of the Turkish Authorities because I am Kurdish and Alevi and suspected of having anti-government political opinions.

My family and I have experienced discrimination and persecution from the Turkish authorities for decades. I have been followed by the authorities and taken into custody for interrogation without any reason more times than I can remember, just because of being Kurdish.

3. In the early 1980s Sibling B attended a demonstration and was convicted on trumped up political charges. There were opposing groups of demonstrators, but it seemed that only the Kurds and leftists were charged. He/she served several years in custody. After he/she came out of custody in the late 1980s he/she managed to escape via another country to Country N. [Information deleted in accordance with s.431 of the *Migration Act 1958*]. He/she has been living in Country N for a long time now and he/she can't return to Turkey.

In the early 1980's, when Sibling B was already in custody, I attended a protest march in Province I in support of workers' rights and fair pay. We were attacked by the authorities and nationalist group members who were working for the authorities as well. I was trying to escape and I fell and badly injured myself. Then I was attacked where I lay. [Information deleted s.431].

Around the late 1980s Sibling A, went to Country T to escape from the pressure, torture and inhumane behaviour he/she had been subjected to back in Turkey. He/she has been there ever since.

In the mid 1990s Child 1 also went to Country T to escape from the inhumane experiences he/she had endured back in Turkey,[Information deleted: s.431]. I started working for a government company in the mid 1970s and was employed by them for many years. I performed maintenance. I have never caused any accidents and always looked after the government property part of my job.

In the early 1980s there was a government policy of emptying Kurdish villages and forcing people into the towns and cities. We were forced from our village and in Province I, and had to move to Province J.

In the course of my work, however, I was mostly sent to areas where there was high level of terrorism happening even though I was working in Province J. [Information deleted: s.431]. These areas were ones which only I and friends from work who also Kurdish and Alevi would be sent to. I was also sent to mountain areas where I had to work with no protection at all. The seemed to be sending people such as me into these areas on purpose, so we would face risks.

Every time we were sent to these areas to work, we would face pressure from PKK members based in the mountains. They suspected we were informing on them to the armed forces and were very critical that we are working for the government or the army. Much of the work we had to carry out involved the infrastructure damaged or destroyed by PKK saboteurs. Basically we were under pressure from both sides; the government members and also the people up in the mountains.

I have never been involved in any illegal actions against the Turkish government; either political or criminal. I have always tried to live just like normal citizen with my family. But how much ever I have been living just like normal citizen; I still went through pressures and inhumane behaviours which was endless. We have not been able to tell our kids about their real identity, being Kurdish and Alevi because of the fear by the government and the authorities.

We couldn't even teach our kids our own cultural and religious values because of all these fears. We were forced to participate in fasting at Ramadan despite the fact we were Alevi. In a case of not fasting even though they were forcing us we were to face with inhumane and racist behaviours. Our kids were kept away from school or sent back home when they weren't fasting. We were seen as PKK members just because we were Kurdish. We were called terrorists and godless and people were always telling us to fast or leave these areas.

After all this pressure I decided to locate to another area in Turkey believing that we can be away from these behaviours and inhumanity. In the mid 1990s I was able to arrange for my position to be transferred to Province H. Unfortunately, I was mistaken in my belief that we would encounter fewer problems after the move.

I arrived in Province H a short time before I was to commence at my new workplace, although I was planning to stop by the workplace anyway to let them know I had arrived. However, I was immediately taken arrested by the authorities, who had obviously been tipped off by the authorities in Province J, blindfolded, and taken into custody.

They said to me: "Where did you come from? What's your name? Where were you born? Why did you come here? Are you bloody Kurds planning to move towards these areas to destroy it? Or are you collecting more people for your Kurdish party?"

They interviewed me for hours without break and no reason. They were calling me offensive names, bashing and kicking me and swearing at me.

Because of what I had been through, some weeks after I arrived in Province H I went to an organisation there. I spoke to the person there for a while just to get some general information, [information delated s.431].

Going to this organisation was another mistake. When I walked outside, the authorities were waiting for me. They warned me against going to this organisation again, and said that if I did "We won't let you live in this city!"

In the late 1990s, some days after Abdullah Ocalan's capture, I was going home after work a group of authorities blocked my way and took me into custody by force. I was detained for a few days. They blindfolded me and started physically assaulting me. They hosed me down with high pressure hoses. They ordered me to bend over then kicked me in the genitals. They said "Tell us what were you f*****n doing there? You are working with the bloody illegal groups and also getting payments from this government." I didn't understand what they were talking about, because I wasn't involved in any such activities. I told them "I don't know what you are talking about. I haven't been to any activities and I am innocent."

[Information deleted: s.431].

[Information deleted: s.431].

[Information deleted: s.431].

[Information deleted: s.431].

When I was released they told me to not to go to hospital at all what else it would be worse next time. Even I wanted to go to the hospital there would be no one to help me, as I was already well aware.

In Province H, I went through more than what I had experienced back in Province J. The Islamic religious groups and the MHP ultra-nationalist group members were aware of our identity through their links to the authorities. These groups' members weren't giving us peace as well. Especially during Ramadan, the Islamic groups they would leave marks on our doors pointing that we were Kurdish and Alevi. Late at night we would have people coming to front of our houses to play the drum to disturb us psychologically. We would not get out much from our house during Ramadan and

if we do so than we would pretend like we are fasting as well even though we weren't fasting Ramadan.

In the late 1990s Child 2 participated in a demonstration. As a result of his/her involvement to the protest, he/she was expelled from his/her education facility. [Information deleted: s.431].

After I was forced to retire, my pension wasn't going to be enough to support my family. I needed to support not just myself and my wife, but also to send money to Child 4 who was doing his/her national service at the time, and also to pay Child 3's tertiary fees. To try to generate some income, I used my payout to purchase a small business.

The business soon became the target of official and unofficial harassment. At night, threatening letters or notices accusing me of being a member of the PKK were placed under the door. During the day, the authorities would come into the business on some pretext and conduct a search. They would swear at me and my customers, tie our hands behind our backs and force us to lie on the floor. This was happening at a few times a month to me and my customers. Customers who were aware of the situation stopped coming to my work place which affected my business as well.

On one occasion I actually staked out my own business one night to see who was doing this. At about 3.00 am, an unmarked car came up and placed something under my door. I came to work the next day as if nothing had happened, and picked up the document which had been left there. It had the PKK logo on the front, and I just tore it up and placed it in the bin outside.

After Child 4 returned from service, he/she started working with me at the business. The authorities also started pressuring and bothering my child by telling him/her "Why are you people still here? We told your father to go back where you came from! We told him that we definitely don't want you people here!"

Both of us were arrested many times in this period, both at the business and at home. We would usually be released the same day or the next day after being abused and threatened.

We were arrested both at the business and at my home. Child 4 stopped coming to my house; because he/she was scared in case if they come back for him/her again.

The worst treatment I experienced came because I did a favour for an acquaintance, a regular customer of mine from called Customer A, who said he/she had come to Province H from Province I in search of work. [Information deleted s.431]. [Information deleted s.431].

As a result of this event the pressure and inhumane treatment I received from the authorities worsened. I had already been subject to regular harassment, but now they came to my business frequently and took me into custody before releasing me without charge. I was not allowing me to run my business at all. I had to sell my business, which led to both financial and personal problems. I also had developed a medical

condition. My wife was also under immense stress. The problems badly affected our mental health as well, not to mention our sex life.

Getting rid of the business did not solve our problems, as the authorities just came to our home instead, and would take me and one of my children away. We had our house doorknocked during the night by strangers. We regularly received threatening phone calls. They often called while I was not home, and subjected my wife to abuse. Child 4, who did not actually reside there, stopped even visiting us because of these problems.

After a few weeks of this my wife and I couldn't stand it any longer, and decided to relocate to Province K to stay with relatives, at least on a temporary basis, until we could work out something more durable.

In Turkey you cannot just change your address; you have to register with the local Muhtar. We had to notify the Muhtar in Province H that we were leaving, and also advise the Muhtar in Province K when we arrived there. The Muhtar in Province K didn't seem to care when he asked why we had come there and we said we couldn't stand that treatment we had been receiving any longer, but the Muhtar in Province H seems to have told the authorities there, who told the authorities in Province K, because they soon came calling on me. Just in the short time I was in Province K I would have been taken away several times, and abused and beaten on each occasion. The second occasion was particularly bad because I was beaten until I lost consciousness. My medical condition was also worsening.

While I was staying in Province K, I was detained on numerous occasions, sometimes several times a week. I had to find a way to avoid all this pressure and inhumane treatment which we didn't deserve, and couldn't cope with any more; these were acts of persecution no-one should have to cope with.

However, I was not really thinking clearly as I was not well, and did not really know what to do. Things were not helped by the fact that my parent was also very unwell. I decided to go to Country N where my siblings reside and to apply for refugee status there. I thought I could then bring my family to join me. I went to Country N and did not have any difficulty leaving. I already had a passport, and did not encounter any problems at the airport or anything like that.

In Country N, a relative was helping me to prepare the refugee application, but it was taking some time. Then I got a call from my wife to say that my parent's condition had worsened, and he/she was not likely to live much longer. I knew that if I lodged the application for refugee status in Country N and then went back to Turkey I was unlikely to be allowed to return to Country N, so I put it on hold to keep that option open in case I needed it later.

I came back to Turkey, just before my Country N. During this period my problems with the authorities resumed, just as bad as before. They had learned from my wife that I had been in Country N, but I just told them I had gone there to visit family. My parent passed away, a couple of months after my arrival to Turkey. After this, the authorities did ease off a bit.

Even before my parent died, a relative in Australia had been planning his/her a celebration for the following year. After my parent died, we asked my relative to send us an invitation, as we thought this might give us another opportunity to escape from the problems in Turkey. We used the invitation to obtain an Australian visa.

That is how we came to Australia, and we ask that the Australian government now provide us with protection so that we do not have to return to Turkey to face further persecution.

The applicant subsequently submitted a further statutory declaration in which he stated:

...has been amended in accordance with s431 of the *Migration Act 1958*].

I wish to add some points to clarify and expand on aspects of my previous statutory declaration.

My own problems date from about the early 1980's, as I explained in my previous statement.

I also explained that in the course of my work for a government company I travelled to various areas where there was a lot of PKK activity.

After I had first come to the attention of the authorities, I found myself under increasing pressure from the authorities to become an informant, providing information on the whereabouts of PKK members in the mountains.

Sometimes on the way to work, or when I reached my work place, I would be stopped by the Province J authorities and taken away to be subjected to both inducements and also threats and pressure to provide information about the PKK. They knew that I worked in the area and would be likely to have information they could use.

The inducements offered included being promoted at work, looking after me financially, helping me to buy a house etc. However, I was not interested in their inducements, and on numerous occasions, I was detained, interrogated and physically mistreated during this period. Mostly I was just detained for a few hours, but on several occasions it was for most of the day and on a few occasions they kept me overnight.

They would not usually keep me any longer because I was a government employee, and they would release me so I could go back to work. However the treatment I received often made me feel sick or unable to work properly, and on many occasions my workmates had to cover for me or take up the slack.

The mistreatment was more serious during the longer periods of detention, such that the short periods seem insignificant. Typically, I would be beaten, kicked, dragged by the arms, or have other injuries inflicted. This happened on many occasions, I'm still affected today.

I did have information but I did not want to give it to them. This is partly because my sympathy was with the PKK, but I was also afraid of what would happen to me if I informed on the PKK, as they were quite ruthless. I was caught between a rock and a hard place.

This pressure continued when I transferred to Province H. I have already described the reception I got when I first arrived there. The pressure to disclose information about the PKK was also a feature of the Province H interrogations.

The pressure at Province H was worse than at Province J. In my previous statement I have really only mentioned the most serious incidents but there were many others. [Information deleted s.431].

During this period that they also offered me inducements to try to get me to disclose information about the PKK, as they had in Province J. They offered to arrange for me to be promoted and other financial inducements. I refused, and experienced much physical mistreatment as a result.

Another matter I did not mention previously concerns my involvement in Alevi groups.

I am an Alevi, and I joined an association in Province H, and began attending meetings there a few times a month. Initially I was warned off by the authorities and beaten up a few times. Although the pressure seemed to reduce thereafter, it remained a risky business being involved and a few years later I stopped attending meetings altogether.

On a number of occasions I also attended large functions or demonstration on special occasions, and this also gave rise to some problems with the authorities, although not as serious as some of the other problems I had. Attendees were often subjected to verbal abuse, threats and harassment by the authorities, and on a few occasions after attending these celebrations or demonstrations I was detained for a few hours.

, I did not mention previously that the experiences I went through had a profound effect not just on me but on those close to me. My wife was treated for a medical condition for a number of years in Turkey related to the ongoing persecution I was subjected to. She was often crying uncontrollably, nervous, angry or irritable, and suffered from nightmares and other problems. She has had to go through a great deal, and is currently undergoing treatment in Australia for these problems.

The applicant subsequently submitted a further statutory declaration in which he stated:

...has been amended in accordance with s431 of the *Migration Act 1958*].

...am making this statutory declaration to answer some questions asked by the Department of Immigration. I am also making this statutory declaration because there is further information I want to provide to the Department of Immigration in support of my application.

...departed Turkey in the early 1990s and went to Country N. My siblings were in Country N. Sibling B went to Country N in the late 1980s. Sibling C went to Country N sometime in the 1980s - I cannot remember the exact date.

...went to Country N in the early 1990's with the intention of seeking asylum because of what was happening to me in Turkey. My wife and children stayed in Turkey. They were going to come to Country N at a later date.

...my stay in Country N, my siblings and I had many discussions about what the right thing to do was to protect myself and my family. I told my siblings that I did not want to leave Turkey because it was my home and my children were studying there, but I felt I had no choice. My siblings told me that things were getting better in Turkey and that my situation might improve.

...many discussions I decided to return to Turkey without seeking asylum in Country N. I thought things would get better and that if things got worse I would move my family to another location in Turkey where it was safer.

...returned to Turkey in a few months later.

I received a phone call from Child 2, who lives in Province K in Turkey. [Information deleted s.431]. He/she told me that the authorities came to their house in some months ago. Neither Child 2 nor Child 4 was home at this time. Neighbours told them that authorities came to the house.

...week ago I received another phone call from Child 2. He/she said that authorities had come back since he/she last called me. This time he/she was home, but Child 4 was not. The authorities asked Child 2 where I was. They also asked where Child 4 was. Child 2 told the authorities that I had gone for a holiday to Australia to visit relatives. He/she was very scared and did not want to give them any information. The authorities also asked him/her questions about what he/she was planning to do now that he/she had finished school. Child 2 was further frightened by these questions. When Child 2 told Child 4, he/she was also very scared.

...am frightened for my children. I told them on the phone to leave their house immediately. They have now both gone to live with relatives [Information deleted: s.431].

...applicants' representative submitted further material to the Department including a statutory declaration made by the applicant's wife in which she stated that:
...has been amended in accordance with s431 of the *Migration Act 1958*].

I am married to the first named Applicant. We have been married for many years. We have four children together. My eldest is Child 1. He/she lives in Country T. My second is Child 2. He/she lives in Turkey. I have two other children, Child 4 and Child 3. Child 4 lives in Turkey and Child 3 is in Country T.

My family has experienced discrimination and persecution from the Turkish authorities for many many years. I am Kurdish and Alevi, I grew up in Province I. Province I is a troublesome area and has been since I was a child. There was always a presence of armed forces. They would sometimes raid our house. We were harassed constantly. The armed forces wouldn't leave the youth alone. They would harass them constantly. They didn't like that Kurds were living in villages. They wanted to drive them back to the mountains.

I married my husband when I was a teenager. As soon as I married my husband, I was aware that my husband's family was often targeted by authorities. I cannot remember the year but my husband's sibling had gone to a demonstration to protest for the freedom of Kurds. [Information deleted s.431]. He/she was arrested and detained after this protest. He/she went into hiding after this and the rest of the family was under a lot of pressure from the authorities who were looking for him/her. They took my relative and undressed him/her in public. They told us they could do anything they liked to us until my husband's sibling was found. When they found him/her he/she was tortured and detained for several years.

Sibling G (the applicant's wife sibling) is in Country N. [Information deleted s.431].

My husband and I lived in Province I for the first years of our marriage. I stayed at home and raised our children. In Province I there was a demonstration about workers rights. My husband attended this demonstration. He was pursued by the authorities and whilst running away he fell and injured himself. [Information deleted s.431].

I remember there was a celebration in the village when we lived in Province I. Because there were no hotels, people attending this celebration from elsewhere would stay at villagers houses. The day after the celebration, my relative's house was raided by the authorities. They told him/her that they had been informed that he/she was housing a member of the PKK. It was clear there was no one staying there from the PKK but the authorities made my relative, who had a medical condition, stand on one leg for several hours while they questioned him/her and his/her partner. His/her partner was beaten with the butt of guns while he/she was questioned. He/she bled from her mouth and nose. This kind of treatment against Kurds was common.

When Child 3 was young, we moved from Province I to Province J. I was hoping that things would be more peaceful in Province J. Things were not more peaceful there. Worse things happened.

My husband tried to hide things from me. He often would not tell me what was going on. I would sense that things were wrong because he would become depressed and withdraw. I would ask him what was going on. Most of the time he wouldn't give me answers. He didn't want to frighten me. I could see the visible things, such as cuts and bruises which he could not hide. These cuts and bruises would be on his arms and legs. I would ask him what had happened. He would tell me that the authorities had done it but he wouldn't give me any more details.

When Child 3 was a few years older, he/she was playing outside our house in Province J with other kids. The authorities picked him/her up and I saw them drive off with him/her in the car. I ran after the car. When I arrived at the place where my child was being detained I saw Child 3 with some officers. He/she was yelling 'mum, mum, don't leave me!' I said 'what do you want with my child?' The authorities told me that they were going to ask him/her a few questions. They told me to leave. I refused. They told me I had to wait outside. I waited at the door outside. I waited for over an hour. I could hear the authorities laughing inside. When Child 3 came out he/she was shaking and crying. Child 3 told me that the authorities had asked him/her a lot of questions about his/her father. They asked him/her who his father spent time with and

what he did. They told him/her they would give him/her toys if he/she answered their questions. My husband doesn't know that this happened. I didn't tell anyone that it happened. There would be nothing my husband or anyone could do.

In the early 1990s, my husband went to Country N. He went there to seek asylum. When he got there his siblings told him that it would take a long time to become a refugee and a long time before we could join him. He came back because he thought something bad would happen to us while we were waiting to join him.

In the early 1990s, some people were killed. They had been defending Kurdish rights. They would take care of Kurdish people who were in trouble and would give help if it was asked. Not a lot of people were prepared to do this. There was a funeral for these people. Child 1 was there. He/she was picked up by the authorities. People who knew us saw this and came to our house and told us. He/she was detained for a few days. I was beside myself for the time he/she was detained. I was screaming, throwing myself against walls. I did not know where he/she was. I thought he/she would be seriously assaulted.

We moved to Province H in the mid 1990s. We sent Child 1 to Province K to stay with relatives so that he/she could have some peace. There was a demonstration in Province K. Child 1 participated in the demonstration. He/she was detained. He/she was detained for a few days. I went out of my mind. I thought 'I'm going to lose my kids'.

The next year Child 1 left for Country T. My husband and I wanted to save his/her life. He/she was in danger. I wanted him/her to be safe.

14. Province H was worse still than Province J. Because we were from Province I, we were immediately suspected of being troublemakers. The authorities asked my husband to spy on the Kurdish people. My husband refused. The authorities would harass us frequently. I would receive phone calls from the authorities. They would swear at me and say things like 'tell your husband that he must work for us otherwise we will annihilate your family.' They would call any time of the day or night. I became very depressed. I was scared to stay home and I was scared to go out. My nerves were so bad that I thought at any time I could be grabbed from behind by someone.

When we were in Province I, we were at least in a place that we knew. There was a lot of trouble from authorities, but we knew people there. We knew that there was someone to at least offer moral support. In Province H there is open hostility from everyone. [Information deleted s.431]. We lived there for many years. The circumstances were hard. The bathroom facilities were poor. I had to wash my children in the toilet. Our neighbours did not want anything to do with us because the authorities would come often to our house. Most of our neighbours would not even say hello to us.

My husband opened a small business in Province H. Child 4 worked there. [Information deleted s.431].

I felt desperate. There was no where for me to go to ask for help. The government was doing this. There was nowhere to go.

After my husband and child were released, the authorities would come to the house. They were very frightening. They would turn the house upside down. They would even pull out my clothes drawers and take out my underwear and throw it around my room.

Later my Child 4 went into hiding because he/she was being harassed by authorities so much. I was very scared and very depressed. There was no family order in the house anymore. We didn't eat together. Everything was in disarray because life was so hard, constant harassment. I couldn't think properly. My relatives were living in Province K. My husband and I took the children and went to Province K. The Muhtar of Province H notified the Province K authorities that we were going there. They started to harass us in Province K as well.

My husband went to Country N again to seek asylum. During this time my husband's parent was in very bad health. [Information deleted s.431]. He/she couldn't get out of bed. He/she was elderly but his/her ill health was also due to the constant harassment, which continued when my husband was in Country N. I was feeling very desperate. I rang my husband in Country N and told him that his parent was dying. I also told him that I felt hopeless and he should come back so that we could kill ourselves and die in Turkey as there was no life for us anymore.

My parent-in-law passed away a few months after my husband returned from Country N. We knew that a relative had planned a special occasion. We asked him/her to send us an invitation to attend this celebration in Australia so that we could escape Turkey. I am very worried about my two children who are still in Turkey. It was terribly distressing to leave them. We had to do it out of desperation for our own safety. Child 4 doesn't have a life in Turkey. He/she goes from one place to another to avoid the authorities. He/she has never been given peace because of his/her father. My husband has been a target so they target Child 4 as well. Child 2 is also staying at different places because he/she is frightened. We are not there and he/she is vulnerable. He/she lives sometimes with relatives in Province K and sometimes with relatives in Province I.

If I was to state every detail of the ways and incidents my family has been persecuted, it would fill a book. The information I have provided in this statutory declaration is only some of what has happened to us.

I feel so bad at the moment. I feel like I have no home. I would not come here to feel like this if things weren't bad in Turkey. I hope there is a chance for us to be human here.

Further evidence was submitted including declarations made by the first named applicant's siblings who reside in Country N. Sibling C stated in his/her declaration that:

...has been amended in accordance with s431 of the *Migration Act 1958*].

...sibling, the first named applicant who currently resides in Australia is asked to clarify why he didn't apply for asylum while he was in Country N in the early 1990s. Sibling C, have been living in Country N since the late 1970s. The whole world public knows that, in the country we came from (Turkey) there are political crisis, oppression and maltreatment and that the democratic institutions do not function and many people have to leave their homes and country because of religious and racial discrimination and maltreatment.

...strongly objected to my brother's application for asylum in the early 1970s.

...first reason was that people who sought asylum in Country N experienced serious problems. Many people who came from different parts of the worlds leaving their countries because of political oppression were pushed into psychological depression. In my work I witnessed that people who sought asylum experienced serious problems.

...new legislation, these people were placed in camps and were prevented from having contact with the community etc.

...second reason was that we got my brother to go back because of his children.

Because, from previous experience, all members of a family were being subjected to oppression and maltreatment because other members of our family were wanted for their political activities. I didn't want my brother's children to experience the same thing.

...used all our means so that my brother returned and we sent him back to his children. I could not, knowingly, let my brother experience this problem in Country N.

Sibling B stated in his declaration that:

Sibling B, hereby state that, in the early 1990s, I arrived in Country N [Information deleted: s.431].

...my brother, the first named applicant, made an asylum application in Australia, I have been asked to clarify why my brother didn't make an application for asylum in Country N in the early 1990s. My brother, the first named applicant, came to Country N in the early 1990s to seek asylum due to the oppression and maltreatment he experienced in Turkey. But I objected to my brother's idea. [Information deleted: s.431].

...have been unable to go back to my country for many years. I knew very well how psychologically tormenting this experience was for a human being. Also, asylum process in Country N is very tough and had turned into torture. So much so that, the asylum seeker dormitories had been turned into prisons. Seeking asylum in Country N would mean suffering an increasingly severe psychological torture everyday.

...addition to all these reasons, my biggest fear was that when they investigated my brother and could not find him at his house, I knew my sister-in-law and her family would be subjected to inhumane oppression and maltreatment. Because all members

of my family and even extended family were being subjected to insults and maltreatment because of me.

...of my fear that I described above briefly, I didn't want my brother to seek asylum. I tried very hard to get him to return to Turkey. I told him that he should be patient a little longer and that there might be some improvement in the political situation in Turkey in future. If not, I suggested he should ask for a transfer to another town.

...brother finally agreed and returned. After his return, I heard that the pressure on my brother had increased further.

...brother finally managed to have himself transferred to another town. However, he found out quickly that this wasn't going to help. In our telephone conversations, he was telling me that he was experiencing serious oppression and maltreatment. He said that he couldn't put up with it anymore and that he would definitely go to any country and seek asylum.

...last heard that my brother, the first named applicant, travelled to Australia and sought asylum. Finally I'd like to say one more thing. If my brother hadn't been subjected to oppression and maltreatment in Turkey, he wouldn't have sought asylum.

...hope his application for asylum will be accepted.

The Department received a statutory declaration made by the applicants' child, Child 1, in which he/she stated:

...has been amended in accordance with s431 of the *Migration Act 1958*].

I am the eldest child of the first named applicant and the applicants' wife. I was born in the late 1970s in Province I, Turkey.

[Information deleted: s.431]. I live with my family. My child is young.

[Information deleted: s.431]. My memory is not as clear as it used to be - a lot of what I am describing happened a long time ago. I am on medication and this makes it hard for me to remember things.

When I was growing up, I lived in Province I with my parents, and three siblings. My father worked for a government company. My mother stayed at home and looked after me and my siblings.

My father's job was transferred to Province J when I was still young. My father participated in some rallies and protest marches in Province I. As a result of those actions he was under some pressure and in my memory that is why we relocated. I had no understanding of this at the time. I found out about this later from my father.

My father was sent by his employers to work in regional areas. These areas were problematic because the PKK were there. I recall when I was young that my father would get angry and upset and swear under his breath. I recalled him saying 'why am I being sent to these trouble spots?' 'why aren't other people being sent there?' His employers were only sending Kurds to these areas.

Often when my father was working he would run into the PKK in the mountainous areas. [Information deleted: s.431]. They told him that they didn't want any harm to come to him because he was Kurdish, but that he should do as they say. He felt under pressure by both the PKK and TEK. It was a catch 22.

There were occasions where the PKK would set fire to property. The authorities would get involved because of these acts. The authorities would say to my father 'you are working these areas, you must know where the people are that are doing this.' My father denied knowing anything. The authorities offered my father bonuses, or increases in his salary or help with purchasing a house to tell them where these people were hiding.

I'll never forget during our holidays we used to go to a village where my grandparents lived. The village was in District R. The authorities would often come to this village and put pressure on the villagers to give them information about the PKK. Our grandparents were very protective of me and my siblings and told us never to speak to anyone. The PKK would come down from the mountains and tell us that if the armed forces came into the village, no one was to tell them anything. My younger sibling was beaten up by armed forces on one of our holidays. The soldiers asked him/her 'who was here last night?' He/she told them 'No one was here last night.' They beat him/her. I remember going on holidays there in the early 1990s. Before that, I can't remember.

The PKK put pressure on me to fight for them. They expected that Kurdish families would provide at least one member of their family to fight for the PKK and I was the oldest child.

In the early 1990s, my father went to Country N. He wanted to seek refuge there. Sibling B talked him out of it. He/she told him that his/her family and friends had suffered when he/she left. When Sibling B went overseas, the authorities would ask friends and family where he/she was. When they told them they didn't know, they were beaten. My father was beaten after Sibling B went to Country N because he refused to tell the authorities where he/she was.

In the early 1990s I attended a protest in front of a government building. Some people had been murdered. They were known as democratic leftist thinkers. They would help people who had been tortured by the authorities. The bodies were released from the hospital and taken to the cemetery escorted by the authorities. We followed the escort to the cemetery and continued our protest there. We shouted slogans such as 'death to fascism' and 'this should never be allowed to happen again.' The authorities started trying to break up the crowd. I was forced onto a bus with many other protesters. We were blindfolded. Many people were screaming. We were taken to a building that was unmarked. It was three or four storeys high.

I was held for a few days. I was stripped of some of my clothes and my shoes were taken. I was held blindfolded in a room for a few days. I was given water but not food. Every three or four hours, they would come in and abuse me. I was also hit around the head and my hair yanked. I felt very dizzy, not just from being hit but from being abused. They always spoke in slang, saying things like 'you know what happens to

people who get into trouble.' I was very scared. [Information deleted: s.431]. I thought I would be seriously assaulted.

When I was released, along with others, I was dropped off on a road about 30 minutes walk from Province J. I walked home. My parents cried and cried when they saw me. My father was very angry at me for taking part in this march. He told me I wasn't to talk openly about what I believed and that I wasn't to participate in protests. He told me that a neighbour who lived nearby had been taken by the authorities and they had taken his/her knife and fork after giving him/her a meal at the place of detention. They told him/her if he/she didn't give them information about certain people his/her fingerprints from his/her knife and fork would be planted and he/she would be convicted of crimes he/she didn't do. My father also told me he had often been interrogated and beaten. He told me he had tried to change things and couldn't and therefore there wasn't a chance for me to change things - I would just get hurt. At other times when he was upset or angry he would talk about what had happened to him but he would not talk about it often. He wanted to shield us from what was going on.

Around the same time some bodies of Kurdish Alevis were discovered in a burned out building in Province L. It was reported that they had been murdered by the authorities with the assistance of others. I joined in a march protesting the murder of these people. [Information deleted s.431]. At the end of school that day, the authorities were waiting outside and they took me and a few others and put us into buses.

The authorities took us to a location [Information deleted: s.431]. From here I was blindfolded. I was taken to an area where they take people to torture them for political crimes. I knew someone, a neighbour, who lived nearby in Province J. He/she was taken to the same place many times. At this place I was kicked, slapped and had my hair pulled. This would go on until I fainted. [Information deleted: s.431].

After this, the authorities would check up on me. They would wait outside my school and when I came out they would ask me subtle questions like 'what is the time?' They did this to let me know they were around. They would park their car outside the school. The message they were trying to convey is 'we're watching you.' I was beaten by authorities after school on at least one occasion.

After that time my father transferred to Province H. After my father transferred to Province H, they took him in and interrogated him. I didn't know what had happened at the time. I found out about it later. My mum told me. My mum told me that the authorities asked my father 'what are you doing here? What are your reasons for coming here? Do you know anyone here?' My mum did not offer this information. Because I was the eldest child I could tell when my mum was upset. I would ask her why. Sometimes she would tell me.

In Province H we lived in an apartment building that housed a lot of people. They would not speak to us. It was very isolating.

In Province H the authorities approached me on several occasions and asked me to inform on the PKK to them. They also told me that they knew my father had access to some of the areas that the PKK were based, through his job. They told me he would

know who they were and what they were doing. The authorities wanted me to report to them if my father discussed the PKK with me.

Before I came to Country T there was an incident in a suburb of Province M that has a large Kurdish Alevi population. People threw things at the authorities and the authorities retaliated by open firing. Soon after, there was a protest about the authorities' actions at Province K, which is a short drive from Province H. I took part in the protest. I told my parents that I was going to see a relative because I knew my father would try and stop me from going to the protest. The authorities used batons at the protest and took many people into custody. I was taken. I was held for a few days. I was beaten by the authorities.

When I was released, my father got very angry with me. He hit me. He only did this because he was scared for me. He thought it was only a matter of time before even worse things happened to me. He swore about the authorities saying 'what do these sons of bitches want from us? Why don't they leave us alone?'

I attended at least one meeting of an organisation with my father. We did not continue to go because we were under surveillance.

I only stayed in Province H for a short time and then I came to Country T. My father encouraged me to leave because of what was happening. He feared for me. [Information deleted: s.431]. Both my parents were upset about me leaving, but they wanted me to be safe.

The knowledge I have of my parents and family's experiences after I came to Country T is from having conversations with my parents and family members over the phone. I spoke with my parents over the phone regularly. Generally I spoke with my mum. If I wanted to speak with my dad I would ring late at night. He was more often home in the afternoon.

After I came to Country T, there was an incident. It was an incident that revealed the relationship between the government and organised crime. As a result of this incident, my sibling (Child 2) was in a protest march. He/she was arrested. He/she was studying at the time. He/she was suspended. [Information deleted: s.431]. He/she would tell me how he/she would be walking down the street and the authorities would cut him/her off and [Information deleted: s.431] generally harass him/her. I believe that my sibling (Child 2) has experienced worse things than this but he/she does not tell me everything because it is upsetting.

My relatives were murdered in the early 2000s. My father tried to go to their funeral. The authorities were restricting close relatives from attending the funeral because they were fearful there would be some sort of a protest or rally. As soon my father went back to Province H, the authorities met him at a location and took him in for interrogation. The authorities swore at him and told him this is what happens when you cause trouble, this is the end you will have if you cause trouble. The authorities told him he should retire from his job and work for the authorities undercover. They offered to provide a better salary and conditions if he worked for the authorities. Around the same time they forced him to retire. He was being held and released, held and released.

[Information deleted: s.431]. Being here without my family and knowing about the pressures my family were under, even snippets of information, was very stressful. I knew my family were not telling me the worst of it. [Information deleted: s.431]. It also affected my relationship with my partner. There were problems with my health.

I remember a conversation with my father over the phone where he told me about an issue at the business he ran. [Information deleted s.431].

My father relocated to Province K. There is a Muhtar in the local neighbourhood. You have to register with the local Muhtar when you leave or go into a new area to live. When my father registered with the local Muhtar in Province K he had a lot of trouble. The authorities again put pressure on him to come and work for them. The authorities told him 'if you aren't going to help us you can fuck off back to the east'.

My family didn't always tell me details of what was happening over the phone. [Information deleted: s.431]. My father's sibling told my parents that I was not doing well and my parents therefore didn't tell me all the news in case it upset me. It would only be when I pushed the issue that they would tell me what was going on.

My father went back to Country N. He went there to stay and not come back. My mother was staying with my grandparents. When my father was in Country N, the authorities came and asked 'where has your husband gone?' Once they pushed my mother. My grandparent was elderly but it really affected him/her when he/she witnessed my mum being treated like that. He/she had a medical condition which got a lot worse over this time. My mum told my father about my grandparents' health. He couldn't stand it, that's why he came back.

My father went back to Turkey. Around that time there was serious talk about my relative's celebration occurring in Australia. During this time my grandparent passed away. My father decided to leave for to Australia.

After my father went to Australia, the authorities went to my siblings (Child 2) house asking about my father. We sent her to stay at a relatives' village.

My father was never someone who wanted to go overseas. He is very upset that he has had to leave his country.

The Department received a statutory declaration made by the first named applicant's Sibling (Sibling A) in which he stated:

...has been amended in accordance with s431 of the *Migration Act 1958*].

I am the first named applicant's sibling (Sibling A). I make this statutory declaration in support of his application for a protection visa.

[Information deleted s.431]. I live with my partner and one of our four children. My other three children live with their families.

I grew up with several siblings. Three of my siblings are now in Country N. Four of my siblings are in Turkey. My parents are recently deceased.

In the early 1960s my family moved from Province I to Province J. I was in school. Most of the other children at school wore normal attire. My siblings and I wore the

village dress. We spoke both Turkish and Kurdish. The accent we spoke Turkish in was a giveaway that we were Kurdish and Alevi. There were many occasions where the teacher would ask questions of students. I was not allowed to answer these questions. If I tried to answer I was told to be quiet. I was told I didn't know anything because I was Kurdish. This every day degradation was common.

I attended gatherings of the Left while I was at school. In my experience the majority of Leftist activists were Kurdish and Alevi. There were also Jews and Kurdish Muslims (Sharfi). We protested against unfair practices at universities. We protested against the government because they had business dealings with the United States that we were against. Identity was an issue. What we wanted for the Kurds was this - if we fought for the country, we wanted equality amongst citizens, the quality of life that was available to Turks. We would protest if a person was killed for no reason by the authorities. The MHP would bomb and shoot and knife people. The government would see this and wouldn't take any preventative measures. When things like this happened, some members of the Left would retaliate with violence. I was not involved in this violence but I was aware that it happened.

My siblings were also involved in protests. Sibling B probably attended the most protests. He/she is the youngest of my siblings.

I was taken into custody by the authorities many times. The authorities would generally pick me up after I had attended a protest. They would often come to my home at night and take me. The authorities would take me to into custody and I would be physically and verbally abused. The authorities would say 'why were you at this protest?', 'why are you involved with these people?'

Sibling B was held in custody because he/she went to a protest where there was a bombing. The authorities said he/she was handing out leftist newspapers at this protest [Information deleted s.431]. When we asked Sibling B, he/she told us that he/she was at the protest [Information deleted s.431].

Our family was especially targeted after Sibling B was detained. On a weekend, when I should have been at home spending time with my family, the authorities would come and take me into custody for a few hours and a day or two. They would say Sibling B has done this and Sibling B has done that.' I didn't know what the truth was and what was a lie. There was very heavy duty swearing. The authorities would say 'give me a list of Sibling B's associates and we will let you go.' They also offered me money to tell them about Sibling B's friends and associates. I didn't have anything to tell them. [Information deleted: s.431]. They would call me and other worse things. I was sometimes told by non Kurdish associates that I should tell the authorities what they wanted to know and they would stop harassing me. They didn't understand that the authorities would use any reason to harass me.

In Turkey I worked in various industries. I worked for a government company, apart from periods when I was in detention. I worked in Province J. My brother, the first named applicant worked in Province I. I would speak with him over the phone. When he was working at the government company he travelled a lot for work, especially regional areas [Information deleted: s.431]. The authorities were pressuring him - they wanted him to connect with people who might be involved with PKK and do them

in. The authorities wanted him to inform on people who were assisting the PKK in any way. He told them he didn't want to do that.

He told the authorities he didn't want to do what they were asking. He was often taken into custody. He found it very difficult - not just the physical beatings, but the mental torture of being constantly targeted and harassed. He often told me that he couldn't bear the constant harassment. I told him he would have to learn to bear it, there was nothing else we could do. I told him that we just had to wait and hope that things would get better.

My eldest sibling was taken into custody many times. He/she had a medical condition. He/she collapsed in custody at one point after being beaten and because he/she was so ill and after that they mostly left him/her alone.

I was persecuted many times in Turkey. I have already provided details about my experiences to the Department.

When my brother, the first named applicant went to Country N in the early 1990s, he was going to apply for refugee status. We insisted that he give up on that because we thought things would change. Child 2 was studying, Child 4 had just returned from the service, he/she had his own business. We told him to go back to Turkey because we thought this was the right choice.

The day that Abdullah Ocalan was caught, I protested with others [Information deleted: s.431]. He called me to discuss the protest. I told him the phone may be tapped and I didn't want to discuss what had happened over the phone. I told him to call me from a phone booth.

I told my brother, the first name applicant about the incident. I reassured him I wouldn't take it any further so that there wouldn't be repercussions for him and his family. However, my brother was approached at his business and taken into custody. He was tortured because of this incident. They shut his business down. The MHP started to harass him. I told him that if people came around, he should ask for identification. It could have been the MHP who shut the business down. We don't know if he was taken by the authorities or MHP party members. Neighbours who live in the same street were swearing at him. [Information deleted: s.431].

[Information deleted: s.431]

[Information deleted: s.431]

Kurds are still degraded in Turkey. Unfortunately to this day, the Turkish government's attitudes have not changed. There have been thousands of Kurdish citizens killed - guerrillas, journalists, ordinary people. There is an informal civil war within the country. Most of Turkey's citizens do not want bloodshed. There are intermarriages, people trade with each other, on the ground level we try to find ways to get along.

Recently there was a bombing and Kurdish children were killed. Completely unnecessary - they were children. My point is that one of these kids could have been my sibling's grandchildren. If my brother was to return to Turkey today, he would not

be left alone, he would be harassed and harmed by the authorities. The authorities are aware of every step we take.

CLAIMS MADE TO THE TRIBUNAL

The Tribunal received further submissions from the applicants' representative together with a further statutory declaration from the applicant made in response to the delegate's decision to refuse the visa. He stated:

...has been amended in accordance with s431 of the *Migration Act 1958*].

I make this statutory declaration in response to the decision made by the delegate of the Department of Immigration and Citizenship.

In her decision the delegate states that I have falsely declared my financial situation in support of my application for assistance payments. I was not given a chance by the delegate to explain my financial situation in more detail.

[Information deleted s.431]

[Information deleted s.431]

5. [Information deleted s.431]

[Information deleted s.431]

[Information deleted s.431]

8. [Information deleted s.431]

9. [Information deleted s.431]

[Information deleted s.431]

[Information deleted s.431]

[Information deleted s.431]

In her decision the delegate states that she does not believe that I was deliberately sent to areas where there was PKK when I was employed by the government company. She believes that as the government company operates in the areas I was sent to I would have known when I was employed by them that I would have to go to these areas. She states that I have used my employment locations to support false claims of persecution. This is not true.

It was not my intention to imply and I do not think I have implied in my statutory declaration that I was sent to areas by my employers that were not areas that the company should have covered. I do not dispute that my employer operates in areas where there are PKK.

I stated that some of these locations were areas only I and friends from work who are also Kurdish and Alevi would be sent to. I stated that my employer seemed to be sending people such as me into these areas on purpose so we would face risks. My point was that not all employees were sent to these areas. My point was that I was sent to these areas all the time. I do not remember any non Kurdish employees being sent to these areas - they were sent to areas where there wasn't terrorism.

In my statutory declaration, I provided information about how the authorities attempted to get me to become an informant against the PKK. By sending me to work in areas where there was PKK, they could put this pressure on me.

The delegate states in her decision that if I had been persecuted in my job, I wouldn't have worked there for many years. What was I to do? I had to work because I had a wife and four children to look after. Even if I had worked in different places, there would be no guarantee that I would not be persecuted. Private companies do not provide the rights that the state sector provides, like health cover. The private sector also doesn't give you as big a lump sum payout when you retire.

In her decision the delegate states that she does not believe that I was forced to retire, because the normal retirement age in Turkey around that time was 51. I did not say in my statutory declaration that I was forced to retire before the retirement age. I stated that I was forced to retire early when I didn't want to yet. I wanted to keep working so that I could accumulate a better payout and pension when I did retire and therefore be in a better position to support my family financially.

In her decision the delegate makes findings that I have falsely claimed to have suffered financially through unfair reductions to my salary and pension pay out. I have stated that when I was transferred from Province J to Province H, my position grading was reduced. This was unfair. If I was allowed to retire at my pension would have been higher.

On retirement I received a pension as well as a lump sum. If I had retired later, I would have received a much greater lump sum payout than what I received when I was forced to retire - because I would have worked for longer.[Information deleted s.431].

The delegate states that if things were really bad I should have applied for asylum in Country N in the 1990s and again years later. She says that going back to Turkey because my parent was sick was not a good reason because my parent was very old and I should have expected I would never see them again. His/her identification recording his/her birth date was wrong - this is not uncommon in Turkey. I told my lawyer about this when we were filling out forms for the Department.

When my siblings went to Country N, they were single. They did not have an immediate family to worry about. In the early 1990s when I went to Country N with the purpose of applying for protection, my siblings gave me a lot of things to think about. My siblings told me it would take a long time to process my application and I would be separated from my family indefinitely. Raising four children without a husband would have been extremely difficult for my wife. If my family was targeted in this time, I would never have forgiven myself.

In the early 1990s I had been a government employee for many years. If Country N did not accept me and I had to go home, I would not be entitled to any money from the government and my family would be in an even worse position. My siblings told me to try moving to another location in Turkey - that things may be better there.

When I went to Country N with the purpose of applying for asylum, my wife and my parent became very unwell. My wife was being harassed and threatened by the authorities while I was away. I had a responsibility to my family to look after them. What would be the point of applying for protection if my wife did not survive? I had looked after my parent for several years. I felt that I had no choice but to go back.

The situation was very bad for me at these times but there were so many things I had to take into account. My family and I have suffered for so many years. My mind was trying to find ways to get away from all of this suffering and I had to make difficult choices.

The delegate states in her decision that the authorities would protect us if we went back to Turkey. How can she say this? They are the ones responsible for treating us this way. [Information deleted: s.431].

The delegate states that I never opened a business. I didn't provide information about the business in my visa application because I didn't consider it 'work.' My 'work' was the work I did for the government company. In Turkey, after you retire from your job, you can do additional activities for money as long as you pay tax on the money you earn. That is what I did.

The delegate states in her decision that if we had not been able to impart our Kurdish identity and culture, than Child 1 would not have been politically active. Child 1 is the oldest of our children. He/she had an awareness of his/her Kurdish identity as he/she grew older - we could not hide it because abuse and discrimination was going on all around us. We did not tell our children when they were young that they were Kurdish. Our younger three children, Children 2, 3 and 4, did not have an understanding of their Kurdish identity until they finished middle school. Once they started senior school they became politically aware.

When our children were growing up they would ask questions about being different, for example around Ramadan. Other people would be fasting but we would not and our children would say 'why aren't we fasting?' I would tell them 'we're different.' I didn't teach my children about Kurdish culture or traditions. It is very difficult to deny your identity like this, but I wanted to protect my children. My children can not speak Kurdish. I grew up knowing Kurdish but because I did not speak it around my children, I cannot speak it fluently now.

The delegate treats my religion, being Alevi, as if it is separate to being Kurdish. In Turkey there are two types of Kurds. Sunni Kurds and Alevi Kurds. Sunni Kurds are more acceptable in Turkey because they have the same practices as Turkish Sunnis. I cannot separate my identity in this way. The people who have persecuted me don't care whether they are persecuting me because I am Kurdish or because I am Alevi. They persecute me for being both. They also persecute me because I come from Province I. In this area, the Kurds fight for Kurdish rights. They have a reputation. Once the authorities know you are from Province I, they pre-judge you. My birth place is on my identity card.

I can not say absolutely everything there is to say in a statutory declaration - there is too much. It is distressing to me that the Department of Immigration didn't give me a chance to explain things. I can explain when asked. I can't put every detail about every circumstance in a statutory declaration. My mind does not work in this way.

I have ongoing health problems because of the torture I have been through. I am distressed psychologically, as is my wife, because of what we have been through.

How can the Department of Immigration make a decision without meeting us, without speaking with us?

Evidence at the hearing

At the hearing the applicant told the Tribunal that he was born in District P in Province I. He had 2 children in Country T and 2 children in Province H in Turkey. They have been harassed by the authorities since he came to Australia and he said Child 4 was in a particularly bad emotional state. He also has three siblings in Turkey. His wife's relatives live in Province M.

The applicant gave evidence consistent with the documents outlined above. He said his two siblings (B and C) in Country N had left Turkey in the late 1970s and the late 1980s respectively. Sibling B had been politically active and was involved in an organisation. He said he himself started experiencing problems in the early 1980s after Sibling B was placed in custody. Both himself and other members of his family were regularly interrogated and abused verbally and physically. He said that in the early 1990s he went to Country N for a celebration. He considered seeking asylum but said his situation was different from that of his 2 siblings (B and C) who had been single when they went to Country N. He on the other hand was a married man with four children and he thought that his family would be in danger if he stayed in Country N so he returned. Instead of applying for asylum in Country N in the early 1990s he returned to Turkey and moved to another location within the country in a year later (to Province H) thinking that maybe life would be better for Kurds there. He said a short time after he arrived there he was harassed by the authorities and questioned about political activities. He said his position was even worse than in Province J because at least there he was in a respectable position. However in Province J he had been threatened by both elements of the PKK and the Turkish authorities about his work and what he knew. He said that when he arrived in Province H and was threatened by the authorities he went to an organisation but they could not really help him and he was again picked up by the authorities and tortured and questioned. He said the authorities regarded him as a member of a Kurdish political organisation because he was a Kurdish Alevi from the south east and suspected of moving to another area within the country for political reasons.

The applicant told the Tribunal that after Ocalan was arrested in the late 1990s, Sibling A was protesting and as a result he was again detained and tortured. He said that he and his family were regularly threatened and harassed after the late 1990s. The Tribunal asked him if he was involved in any Kurdish political organisations and he said he was not but he did celebrate on 1 May and for NewRoz.

The Tribunal put to him the delegate's view that his retirement from the government company would have been voluntary and normal at his age and he said that his pay and classification was lowered because he attended a demonstration in the early 1980s and he would have preferred to have stayed longer. He said he was forced to leave the government company because the authorities kept threatening him and wanted him to give them information about PKK activity. The Tribunal asked the applicant why he did not leave Province H in the early 2000s when he left the government company rather than open a business there. He said he had relatives there and it was difficult to

start in a new town yet again having lived there for many years. [Information deleted s.431].

The applicant told the Tribunal that between the late 1990s and early 2000s he was taken away by the authorities several times and verbally and physically abused. He said he left the government company because of this rather than because he was at the normal retirement age as claimed by the delegate. He then ran a business. He said most of his clientele were Kurdish and they were harassed by the authorities. {Information deleted s.431}.

The Tribunal asked the applicant why he moved to Province K and he stated that his parent and siblings lived there and he thought maybe he would get peace there. His children stayed in Province H while he and his wife went to Province K. He could not get work there because he was a Kurd from Province I.

The Tribunal asked the applicant why he had not applied for asylum when he went to Country N again the second time. He stated that when he was in Country N his parent was very ill and his wife asked him to return to Turkey because she could not look after his parent. The Tribunal put to him that if his situation in Turkey was as he had described it the Tribunal had difficulty understanding why he did not seek refuge in Country N when he had the chance. He said that while he was in Country N he was told that a relative was going to celebrate a special occasion in Australia and he asked that he be invited. He thought that if he could get to Australia together with his wife they would be able to apply for asylum together whereas in Country N he was on his own and he would be leaving her subject to abuse in Turkey. His Country N visa did not expire until sometime later and he thought at the time that he may be able to return there if he could not obtain a visa to Australia.

The Tribunal asked the applicant about his experiences in Province K. He said after he arrived he was questioned while at his parents house and verbally abused but the situation was not as bad as it had been in Province H. The Tribunal asked him why he did not stay in Province K. He said that by then his parent had died and he had received the visa to Australia. The Tribunal asked him for more details of his parents' illness and death and he said that his parent needed an operation but was not able to have it. He said further evidence would be submitted.

The Tribunal asked the applicant how being an Alevi Kurd differed from Sunni Kurds and he stated that they had different customs (for example they only fasted for 12 days at Ramadan and did not cover themselves as much) and often were targeted by Sunni fundamentalists because of these differences. The Tribunal put to him country information that Alevis could practise their religion freely and he stated that they don't go to mosques but pray in houses and whilst they can practise in private houses they still were often ostracised for being Alevi.

The Tribunal asked the applicant what he thought would happen if he returned to Turkey now. He stated that the situation would be worse for him and he would again be interrogated and tortured. He said he was now a member of the Kurdish Association of City U. The Tribunal put to him certain country information that suggested that the treatment of Kurds in Turkey had improved recently because

Turkey wanted admission to the European Union. He said that while the government said that there were still problems for Kurdish people.

The Tribunal put to him country information that suggested that there were many Kurds in certain parts of Turkey particularly in places like Province K and that their situation was good. He stated that they did not function well there and many had to live like hermits to not attract trouble.

The applicant told the Tribunal that his life would be in danger if he returned and he would be tortured like before. He said that he was at risk because he was an Alevi Kurd and his family was on a black list because of their political activities which meant he was suspected of similar activities.

The applicant's wife was extremely upset while giving evidence to the Tribunal. She told the Tribunal that while her husband was away in Country N and she lived in Province K, their house was often raided by the authorities who treated her badly. This happened on several occasions. The Tribunal asked her why her husband had not applied for asylum in Country N and she replied that she was very depressed and could not cope on her own and had begged her husband to come back to Turkey. The Tribunal asked her why Turkish authorities would target her husband and she said it was because the authorities wanted her husband to help them and he refused. She was asked why they had moved to Province H in the early 1990s and she stated it was because of the pressure that they were under and they thought they would have a better life far away from their previous place of residence. She said her husband stopped working in early 2000s because he was subject to pressure from the authorities. She said she had limited contact with her two children in Turkey because they constantly moved around to avoid the authorities. She said Child 4 was seriously suffering from depression.

Sibling A, told the Tribunal that he/she had lived in Country T since the late 1980s [Information deleted: s.431]. He/she had returned to Turkey on a few occasions namely when his/her parent died and in years prior when his/her other parent had been very ill. He/she did not stay with them long in Turkey on either occasion. He/she said that he/she used to telephone the applicant regularly and had heard that the applicant started to experience problems with the authorities in the early 1990s. He/she said that he/she had also worked at a government company and had experienced similar problems to those experienced by the applicant. He/she said Turkish authorities had put pressure on him/her and were now putting pressure on the applicant to betray the Kurdish people. He/she said that the applicant had gone to Country N in the same year to attend a celebration but also had the intention to apply for asylum there. However the family made him return to Turkey because his family were being harassed there and his parents needed him to return to Turkey. He/she said that his siblings in Country N forced the applicant to return to Turkey. He/she said that the situation for his/her brother got worse and in the early 2000s he left his job and the family relocated to Province H. He/she said that after Ocalan was arrested [Information deleted: s.431], the authorities detained and harassed his/her brother more. He/she said that when the applicant went to Country N the second time he intended to apply for asylum but his wife then suffered harassment from the authorities and was alone with the children so the applicant returned to be with her in Turkey. Sibling A told the Tribunal that he/she disagreed with the delegate's assertion that the situation for

Kurds in Turkey was improving and stated that the problems for Kurds were actually getting worse.

Child 1 had also volunteered to give evidence but was unable to do so as the Turkish interpreter had to leave. Had it been critical to the case, the Tribunal would have had a further hearing to hear his/her evidence.

At the conclusion of the hearing the applicants' representatives sought further time to provide additional evidence which was granted. Further requests for extensions were made and granted to submit this material.

The Tribunal then received a range of evidence including:

- Psychological Report made by a medical professional, of a medical specialist organisation. In an extensive report the medical professional states that he/she had been counselling the first named applicant regularly and that his symptoms warranted a finding of Post Traumatic Stress Disorder. It was his/her opinion that the applicant's symptoms were a result of torture and long term exposure to abuse and threat which were maintained and exacerbated by numerous factors including his genuine belief that return to Turkey would result if further persecution and abuse. It was stated that the applicant demonstrated a consistent and genuine fear of return to Turkey and that he would suffer significant psychological harm if returned to an environment of threat;
- Medical report from a GP, stating that the applicant had scars on his body consistent with being kicked and punched while in detention [Information deleted s.431]. The GP stated that the applicant suffered from nightmares and flashbacks to his detention and torture and he/she considered that the applicant was suffering from a Post Traumatic Stress Disorder as a result of his detention and torture;
- Psychological Report made by a psychiatrist, of a medical specialist organisation. The psychiatrist states that the applicant wife is his/her patient and was suffering from major depression and was being treated with antidepressants and psychotherapy;
- Letter from the Kurdish Association of City U stating that there was an arson attempt on the premises;
- Death Certificate and Permission for Burial (with English translation) stating that the applicants parent died on in the early 2000s;
- [Information deleted s.431];
- [Information deleted s.431].

EVIDENCE FROM OTHER SOURCES

The OSCE provides a general summary of the Human Rights situation in Turkey in 2006:

...process of reforming and improving human rights protection in Turkey slowed down in 2006.

...use of indiscriminate and excessive force by security forces as well as bomb attacks by non-state groups resulted in numerous deaths. Resurgence of the armed activity against the authorities seemed to bolster the nationalist reaction in the government structures, media and the civil society, and human rights activists were both harassed by the authorities and threatened by paramilitary groups. Independent journalists and human rights groups in Turkey observed a proliferation of racist and isolationist groups engaged in hate propaganda against minorities, liberal intellectuals and human rights activists.

...reforms were still needed to ensure the independence of the judiciary and legal proceedings conforming to international standards, and efforts to prevent and remedy torture remained unsatisfactory. Members of ethnic minorities and IDPs were also the targets of aggressive nationalism and mob violence, which the authorities often failed to condemn and the perpetrators of which rarely were brought to justice. (International Helsinki Federation for Human Rights 2007, 'Human Rights in the OSCE Region: Europe, Central Asia and North America Report 2007 (Events of 2006).

The Minorities at Risk project provided this summary, last updated 2004:

...situation of the Kurds in Turkey has slightly improved in the past few years, although significant obstacles remain and Kurds still face serious discrimination. Kurds are denied autonomy and although military skirmishes have greatly lessened in the wake of Ocalan's arrest in 1999, occasional fighting occurs between the PKK and government forces (having claimed more than 30,000 victims to date). Turkey's Kurds still suffer from discrimination that includes serious restrictions on their language and any expression of Kurdish culture, as well as restrictions on non-violent political organizing. These restrictions are enforced at times by mass arrest...

...discussion of discrimination of Kurds in Turkey must be qualified, because if a Kurd renounces his culture, all forms of social progress are open to him. Yet unassimilated Kurds face a great deal of cultural, economic, and political discrimination in Turkey...(‘Assessment for Kurds in Turkey’ 2004, Minorities at Risk website, <http://www.cidcm.umd.edu/mar/assessment.asp?groupId=64005> – Accessed 6 June 2007.

The ECRI report stated:

...is pleased to note that the constitutional and legislative changes in the field of human rights and fundamental freedoms should help to give the Kurds greater freedom of expression, freedom of assembly and freedom of association. It notes, however, that in the case of the Kurds, such freedoms are still severely curtailed, especially in practice. ECRI notes in particular reports that Kurdish students have been arrested and/or expelled from university for having signed petitions or demonstrated in support of the teaching of Kurdish in universities... In some cases, however, persons who have expressed their Kurdish identity by peaceful means have been acquitted. ECRI hopes that the new laws will pave the way for a rapid improvement in this area. It notes that parents are now permitted by law to give their children Kurdish first names, even though a circular prohibits them from choosing names incorporating the letters Q, W or X, which exist in the Kurdish language but

not in the Turkish alphabet.” [76] (p22) (UK Home Office 2007 ‘Country of Origin Information report: Turkey’, 12 March.

The US State Department reported that expressing views about Kurdish could result in prosecution:

...could not criticize the state or government publicly without fear of reprisal, and the government continued to restrict expression by individuals sympathetic to some religious, political, and Kurdish nationalist or cultural viewpoints. Active debates on human rights and government policies continued, particularly on issues relating to the country's EU membership process, the role of the military, Islam, political Islam, the question of Turks of Kurdish origin as "minorities", and the history of the Turkish-Armenian conflict after World War I; however, persons who wrote or spoke out on such topics, particularly the Armenian issue, risked prosecution. The Turkish Publishers Association (TPA) reported that serious restrictions on freedom of expression continued despite legal reforms related to the country's EU candidacy. (US State Department 2007 ‘Country Reports on Human Rights Practices - 2006 – Turkey’ 6 March.

The Minorities at Risk project reports that:

...example, authorities often censor pro-Kurdish newspapers, particularly in the southeast Kurdish region (POLIC101-03=2). In some towns, local authorities prohibited Kurdish New Year celebrations, and arrested scores of persons for participating in the celebrations (CULPO401-03 = 2; REP0203 = 2). The government continued to arrest many Kurdish activists and leaders (REP0201-02 = 1; REP0301-03= 1), and many unsolved killings occurred in the southeastern region (REP0801-03 = 3). Kurds face restrictions on speaking, publishing, and instructing in their native language (CULPO203 = 2; CULPO303 = 3) as well as forming organizations that promote Kurdish culture (‘Assessment for Kurds in Turkey’ 2004, Minorities at Risk website, <http://www.cidcm.umd.edu/mar/assessment.asp?groupId=64005> – Accessed 6 June 2007).

The Canadian Immigration and Refugee Board in 2004 reported in relation to the treatment of PKK/KADEK/Kongra-Gel Members, Supporters, Sympathizers that

...the period between April 2003 and September 2004, numerous suspected PKK/KADEK/Kongra-gel members and supporters were detained or arrested by Turkish authorities on suspicion of their involvement in terrorist activities carried out in eastern Turkey (BBC 19 Apr. 2003; AFP 10 Nov. 2003; *ibid.* 2 Aug. 2004; Anatolia 10 July 2004; *ibid.* 1 Sept. 2004), on suspicion of their plotting of armed attacks (AFP 17 Nov. 2003; Anatolia 26 Feb. 2004; *ibid.* 5 Mar. 2004; *ibid.* 20 May 2004; AFP 1 June 2004; *ibid.* 12 July 2004), on suspicion of their involvement in recruiting members for the PKK/KADEK (Anatolia 11 Jan. 2004; *ibid.* 16 Apr. 2004), for their involvement in illegal or pro-PKK/KADEK demonstrations (TRT2 Television 22 Jan. 2004; Anatolia 12 Mar. 2004; AFP 15 Feb. 2004; *ibid.* 19 Jan. 2003), for their involvement in violence (TRT2 Television 22 Jan. 2004; Anatolia 12 Mar. 2004) or on charges of "membership [in] an illegal organization" (AI 8 June 2004; Anatolia 1 Sept. 2004). (‘Turkey: situation and treatment of members, supporters and sympathizers of the Kurdistan Worker's Party (PKK) and Hezbollah by

state and non-state agents (January 2003 - September 2004)' 2004, Research Directorate, Immigration and Refugee Board, Ottawa website, 21 September, http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=444478 – Accessed 6 June 2007).

The Canadian Immigration and Refugee Board in 2004 also reported that:

Asylum Aid report, written by a delegation responsible for an investigation conducted in 2000 on the situation of Kurds in Turkey, indicated that Kurds are at risk of arbitrary detention by the security forces because they are suspected of supporting the Kurdish national movement (Feb. 2001, 15)....

95 per cent of people detained by the police in Turkey are released without charge, indicating a high rate of arbitrary detention, particularly for Kurds and Alevis (ibid., 17-18). If charges are not laid, detainees have no proof of their detention (ibid., 18). ('Turkey: Authorities with whom Kurds in Istanbul could file a complaint of harassment or extortion by nationalists or the police; the protection offered to such complainants' 2004, Research Directorate, Immigration and Refugee Board, Ottawa website, 29 January, http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=444510 – Accessed 6 June 2007).

According to the International Helsinki Federation for Human Rights Report 2005: "Despite the legislative improvements, Turkey's laws and practices in 2004 still fell short of international standards for the protection of human rights. The main concerns were institutionalised impunity for human rights violations, extra-judicial killings, the situation of more than one million internally displaced persons (idps), torture and ill-treatment, violence against women and children, child labour, the situation of asylum seekers and refugees, inhumane prison conditions, restrictions on minority rights and restrictions on freedom of expression and freedom of peaceful assembly.

According to a Human Rights Association (HRA) report on human rights violations in Turkey in 2004, over 40 persons were killed extra-judicially, over 30 in prisons and five in police custody under suspicious conditions. A large number of civilians were killed in alleged clashes with or during military operations against armed organizations, mainly the former PKK (kongra-gel). Furthermore, 61 persons were killed by unidentified perpetrators or under suspicious circumstances suggesting political motives"

The report goes on to state: "At least 134 persons were sentenced to prison terms for participating in peaceful demonstrations. The government also started closure cases for 23 human rights related, community-based, Kurdish or left-wing ngos and political parties. Most of the measures aimed at closing the ngos were initiated by the military or the police"

The European Association of Lawyers for Democracy and World Human Rights found that Turkey is still far from fulfilling constitutional, human rights and democratic minimum standards. In this context the following points were mentioned as particularly severe:

- The role of the army above all state powers, interfering in all state activities, without parliamentary control.
- The violation of elementary fundamental rights, in particular the right to live, the right of physical integrity (in particular by torture), the personal and political liberty.
- The political penal law, that is used by the executive and the courts for arbitrary punishment of political opponents, in particular of left-wing and Kurdish activists
- The ill-treatment of prisoners by the kind of accommodation, the treatment by the prison staff, and insufficient nourishment.
- The severe violation of minority rights, in particular those of the Kurds.

According to the US State Department Country Reports on Human Rights practices - 2006 (released by the Bureau of Democracy, Human Rights, and Labour, March 6, 2007):

of the security forces occasionally tortured, beat, and otherwise abused persons. Prison conditions remained poor, with problems of overcrowding and insufficient staff training. Law enforcement officials did not always provide detainees immediate access to attorneys as required by law. The executive branch at times undermined independence of the judiciary, and the overly close relationship of judges and prosecutors continued to hinder the right to a fair trial. Excessively long trials, lasting several years, were a problem. The government limited freedom of expression through the use of constitutional restrictions and numerous laws, including articles of the penal code prohibiting insults to the government, the state, "Turkish identity," or the institution and symbols of the republic”

The Human Rights Foundation (HRF) reported that, in late March and early April, the police and military killed 14 persons, including five children, when they fired into crowds of demonstrators during rioting in the south-eastern city of Diyarbakir.

According to the HRF, security forces caused three deaths when they raided houses during the first eight months of the year. Incidents of torture and abuse declined during the year but remained a problem. There was a decline in the severe ill-treatment that prisoners encountered in prior years, but incidents of ill-treatment during police/gendarmerie custody continued, according to the council of Europe’s September 6 report on the European Committee for the Prevention of Torture and Inhuman or Degrading treatment or punishment (CPT). Courts rarely convicted security officials accused of torture and tended to issue light sentences when they did convict.

According to the HRF, there were 338 cases of torture or abuse reported at its five national treatment centers during the year. Of these, 227 cases involved torture or abuse inflicted during the year; the rest involved incidents that occurred previously. HRF stated that there were 10,449 credible reports of torture or abuse from 1990 to 2005. A number of human rights observers claimed that only a small percentage of detainees reported torture and abuse because they feared retaliation or believed that complaining were futile.

In their 2006 overview of human rights developments, Turkey Human Rights Watch stated:

“The government of Prime Minister Erdogan failed during 2006 to implement key reforms necessary to consolidate the human rights progress of the past years. entrenched state forces, including the military, continued to resist reform. Illegal armed groups, as well as rogue elements of the security forces, conducted violent attacks that threaten the reform process, although clashes decreased after the Kurdistan Workers’ Party (PKK) declared a ceasefire in October.”...

“There was a sharp increase in indiscriminate and disproportionate use of lethal force by security forces in dealing with protestors, as well as during normal policing. In March youths attending the funerals of PKK militants clashed with police, throwing stones and petrol bombs. During the ensuing street battles in Diyarbakýr and other cities police fired bullets, gas grenades, and stones at rioters, killing eight people, including innocent bystanders and four children under 10 years of age. In other incidents during 2006, police shot and killed 13 persons either in error or because they were deemed not to have heeded orders to stop.

Instead of conducting an inquiry into the use of lethal force resulting in these deaths, in June the government amended the anti-terror law, authorizing security forces “to use weapons directly and without delay.”

“Reports of torture and ill-treatment remain much lower than in the mid-1990s. However, during the march disturbances in Diyarbakýr, hundreds of people were detained and allegedly tortured, including approximately two hundred children. Almost all those detained during this time reported being beaten, stripped of their clothes, hosed with cold water, or deprived of food”
“The supreme council for radio and television finally took the important step of permitting television and radio broadcasting in Kurdish, although only for one hour a day. Other restraints on minority languages in the public arena remain. In April, for example, a Diyarbakir court closed the Kurdish democracy culture and solidarity association (kürt-der) for infringing the associations’ law by conducting its internal business in Kurdish”
“The EU progress report on Turkey published in November referred to the “significant political influence” exercised by the military and suggested that military leaders should confine public statements to military and defence matters. The report criticized continuing violations of freedom of expression and concluded that Turkey had made little progress in ensuring the rights of minorities”

In September the council of Europe’s Committee for the Prevention of Torture (CPT) reported on its December 2005 visit to Turkey. it noted “encouraging” signs in the fight against torture, but expressed concern about continued cases of abuse, which included beatings and squeezing of testicles, in some police stations. The CPT also criticized the widespread use in mental institutions of electroconvulsive therapy without anaesthetic and muscle relaxants, and recommended the introduction of a comprehensive mental health law. During 2006 the European Court of Human Rights issued approximately 200 judgments against Turkey for torture, unfair trial, violations of free expression, extrajudicial execution, and other violations. in january, for example, the court

found the Turkish government had violated the right to life of Fahriye and Mahmut Mordeniz, a married couple who “disappeared” after being taken from their Diyarbakır home by police in 1996 (Mordeniz v. Turkey). Turkey was visited by three UN Human Rights monitors in 2006. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, visited the country in February. Commenting on the situation in the southeast, he noted that Turkey’s experience shows that “certain counter-terrorism measures taken by the state may have consequences that are incompatible with human rights.” At the conclusion of its visit to Turkey in October, the UN working group on arbitrary detention expressed “great concern” about the fact that the new legislative safeguards against torture and arbitrary detention introduced in 2005 did not apply to individuals held on suspicion of terrorism related crimes, creating “in practice two criminal justice systems in Turkey.” Research by the Immigration and Refugee Board of Canada in 2003 looked specifically at the situation of Kurds in western Turkey. It states:

...to a fact-finding report on Turkey in October 2000 by Asylum Aid, Kurds are routinely turned down by landlords or employers because employers or landlords “prefer to employ or rent to Turks rather than [to] Kurds” (ibid.). Turkish Daily News 24 January 2001 cited one Kurdish man as stating: ““When the site owners [employers] find out I’m from Mardin, they come up with loads of excuses and don’t give me a job”” (26 Jan. 2001).

A March 2002 report by the Council of Europe entitled Humanitarian Situation of the Displaced Kurdish population stated that:

...have received no compensation for lost property and mostly have no prospects of employment. These disastrous living conditions among young people contribute to increase in crime and support for radical movements.

Referring to life in an Izmir slum one man said “we live in fear... the police give us a scolding every day. (Turkish Daily News 24 January 2001). Contrasting information was provided by a Professor of Political Science at Ankara University, there is a general discrimination against anyone who has no profession, wealth and a function to perform in a more modern setting. Those people [who come from] impoverished eastern provinces with no money, professional expertise, little education feel very ... left [out] of the mainstream city life. But this is not due to their ethnic background, rather they are not equipped with the skills and knowledge to answer the demands of modern life and a competitive new world. (Immigration and Refugee Board of Canada 2003, TUR41724.E -Turkey: Follow-up to TUR41129.E of 8 May 2003; situation of Kurds, particularly in western Turkey, 11 November [http](http://www.irb.gc.ca) – Accessed 6 November 2006).

FINDINGS AND REASONS

The applicants travelled to Australia on Turkish passports. The Tribunal accepts that the applicants are national of Turkey.

The Tribunal accepts that the applicants are Kurds who were born in Province I in Turkey.

The applicants' main claims relate to their Kurdish ethnicity and the applicant's real or imputed pro-Kurdish political opinion. The applicant claims he lived in Province I from the mid 1990s until when he went to Province H in another area of Turkey. He claims while living in Province I and in Province H he was frequently questioned by the authorities about PKK activity. The applicant claims that while in Province I he was arrested, detained and tortured on a number of occasions. He claims that many members of his family were similarly treated over a long period of time [Information deleted: s.431].

The applicant's claims about what happened to him and his family in Province I is consistent with the independent country information before the Tribunal.

[Information deleted s.431]

The applicant submitted evidence to support his claim that he had been arrested, detained and tortured. The applicant submitted a report from a psychologist from a medical specialist organisation together with medical evidence of his physical injuries. The report from the medical specialist organisation was very detailed and based on regular counselling sessions with the applicant. It was the psychologist's professional opinion that the symptoms the applicant exhibited at interview were the result of the applicant's detention and torture by the Turkish authorities. The report concluded that the applicant exhibited symptoms consistent with post traumatic stress disorder and major depression. The Tribunal places considerable weight on the above report from the applicant's psychologist. Given the applicant's claims of his arrest and torture in Turkey are consistent with the independent information and supported by documents he submitted to the Tribunal, the Tribunal accepts the applicant's claims that he was arrested detained and tortured because of a political opinion imputed to him; that is, support for Kurdish identity and Kurdish rights. The Tribunal finds that the treatment the applicant suffered amounted to persecution.

The applicant claims that because of the treatment he and his family suffered in Province I they relocated in the mid 2000s. The applicant claims that that they were harassed by the authorities, detained, interrogated and tortured. His situation is supported by the country information referred to above. Given the above independent information the Tribunal accepts the applicant's claims that when he first relocated to Province H and then to Province K he was harassed by the authorities. The Tribunal accepts that the applicant was detained in Province I, Province H and Province K for reason of a political opinion imputed to him, that is support for Kurdish identity and Kurdish rights.

The Tribunal has considered what would happen if the applicant returned to Turkey. The Tribunal accepts that the applicant and his family are regarded as having been involved in supporting Kurdish social and political activities in Province I, Province H and in Province K, largely because of the applicant's family history. The Tribunal accepts that as the applicant has maintained an ongoing involvement in supporting Kurdish social and political activities in City U he would continue his involvement if he returned to Turkey. The Tribunal finds that if the applicant continued to support

Kurdish social and political activities there is a real chance that he would be arrested, detained and mistreated by the Turkish authorities. The Tribunal finds that there is a real chance that the applicant would face treatment amounting to persecution for the reason of a political opinion imputed to him.

The Tribunal has considered whether the applicants could relocate to another area of Turkey to be free from the risk of persecution. The Tribunal accepts that the Turkish population at large are subjected to random ID checks. The applicants' ID cards indicate that they are from the province of Province I. The Tribunal accepts that if the applicants were subject to a random ID check the applicant's past involvement with the Turkish authorities could be revealed which could lead to further ill treatment by the Turkish authorities. The Tribunal finds that the applicant would not be safe anywhere in Turkey because of the possibility of being identified through a random ID check. The Tribunal finds that relocation would not lessen the risk of serious harm to the applicants by the Turkish authorities. The Tribunal finds that the applicant's fear of Convention related harm in Turkey is therefore well founded.

Taking into account all of the evidence, in particular the documents the applicant has submitted to the Tribunal to support his claims, the Tribunal accepts that the applicant was arrested, detained and tortured in Turkey for the reason of a political opinion imputed to him. The Tribunal accepts that when the applicant migrated to another area in Turkey he continued to be so adversely treated by Turkish authorities for an imputed political opinion. The Tribunal accepts that there is a real chance the applicant would be detained and mistreated by the Turkish authorities. The Tribunal finds that there is a real chance that the applicant would face treatment amounting to persecution for the reason of a political opinion imputed to him. The Tribunal finds that the applicant's fear of Convention related persecution in Turkey is well founded.

The applicant visited Country N, in the early 1990s and mid 2000s. He has provided reasons why he did not apply for asylum on these occasions and the Tribunal has accepted those reasons. The Tribunal is not satisfied that he has a legally enforceable right to enter and reside in any country other than Turkey. The Tribunal therefore finds that he is not excluded from Australia's protection by section 36(3) of the Act.

The Tribunal has also considered all of the evidence in relation to the applicant's wife. The Tribunal accepts that she too has been subject to adverse treatment by Turkish authorities for the reason of a political opinion imputed to her husband. The Tribunal accepts that when the applicants migrated to another area in Turkey they continued to be so adversely treated by Turkish authorities for an imputed political opinion. The Tribunal accepts that there is a real chance the applicant's wife would be mistreated by the Turkish authorities as she has been in the past because of her husband. The Tribunal finds that relocation is not a safe and reasonable option for the applicant's wife for the same reasons as outlined above. The Tribunal finds that there is a real chance that the applicant would face treatment amounting to persecution for the reason of the political opinion imputed to her husband combined with her membership of a social group namely her husband's family. The Tribunal accordingly finds that her fear of Convention related persecution in Turkey is well founded.

CONCLUSIONS

The Tribunal is satisfied that the applicants are persons to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act, being persons to whom Australia has protection obligations under the Refugees Convention.