

**1102732 [2011] RRTA 715 (19 August 2011)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1102732

**DIAC REFERENCE(S):** CLF2010/126987

**COUNTRY OF REFERENCE:** Turkey

**TRIBUNAL MEMBER:** Paul Fisher

**DATE:** 19 August 2011

**PLACE OF DECISION:** Melbourne

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

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Turkey, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] April 2010 and applied to the Department of Immigration and Citizenship for the visa [in] September 2010. The delegate decided to refuse to grant the visa [in] March 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] March 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of 'refugee'**

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

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression ‘the protection of that country’ in the second limb

of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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

## **CLAIMS AND EVIDENCE**

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

### **Background**

20. The applicant is a [age deleted: s.431(2)] national of Turkey. He appears to have first arrived in Australia as a seaman on a Turkish ship in 2009, although there is no departmental movement record of his arrival on that occasion, only of his departure [in] December 2009. He returned to Australia [in] April 2010, and after being immigration cleared as the holder of a subclass 988 Maritime Crew visa, he failed to depart with his vessel.
21. The applicant's claims are set out in the protection visa application lodged [in] September 2010, and are summarised in the decision of the delegate, a copy of which was attached to the review application, as follows:

#### **3. CLIENT HISTORY/MIGRATION HISTORY**

The applicant was issued on [date].07.2009 with Turkish passport No. [number] that was valid until [date].05.2010. On [date].09.2009 the validity was extended until [date].05.2012.

On [date].08.2006 the applicant was issued with a seafarer's book No. [number] by the Director of Sea Affairs, Istanbul.

The applicant was granted a Maritime Crew (ZM 988) visa on [date].12.2009. There is no record of his initial arrival in Australia. He departed Australia on [date].12.2009 and re-entered on [date].04.2010.

On [date].04.2010 the applicant deserted the vessel "[name]" in the port of [Port 1], Queensland.

On [date].09.2010 he applied for a Protection visa and [date].10.2010 was granted a Bridging (WA 030) visa which is in effect.

#### **4. CLAIMS FOR PROTECTION**

The applicant detailed his claims in his PV application (5:1, ff40-51; 87-99), and they are summarised as follows

The applicant claims that:

- In 1999 he worked as the personal driver for the manager of [Department 2] Istanbul Council;
- In May 2006 he was arrested and detained at the Police station accused of involvement in the theft of food associated with a food business he conducted;
- On [date].12.2006 he ceased employment after receiving death threats;
- In 2008 he unsuccessfully attempted to officially change his name and to sever any family connection;

- He bribed a government official to provide DNA evidence that he was related to [name];
- His intention was to relocate in Turkey under an assumed identity and avoid harassment from [Family A];
- He started a real estate business and a tea house as well as operating a scrap metal business;
- His real estate business closed 6 months after leaving Turkey but the tea house still operates under his partners' names:
- Between 2001 and 2004 he lived in Germany with a temporary visa when his second wife [Ms B] sponsored him as her husband;
- After eventually breaking up with her he had to return to Turkey;
- His claims are based on his circumstances related to his marriage to two sisters;
- Although he loved his neighbour [Ms B], he married her younger sister [Ms C] following her attempted suicide after she had realised her love for him was unrequited;
- The two women's parents had pressed him into the marriage;
- On [date].11.1995 he married [Ms C] and divorced her on [date].11.2001;
- He has a daughter from that marriage and she lives with her mother in Germany;
- [Ms C] remarried but that relationship also failed,
- [Ms C]'s father is a fruit and vegetable wholesaler and has connections with the Turkish mafia:
- During this time, [Ms B] married her cousin and lived in Germany where she became a citizen;
- While still married, [Ms B] entered into a relationship with him during her frequent visits to Turkey on the pretext of visiting her family;
- On [date].12.2001 he married [Ms B] and he returned to Germany with her;
- On learning of his marriage to [Ms B], [Ms C] campaigned against him and finally he divorced [Ms B] on [date].11.2005;
- [Ms B]'s family were very upset at the circumstances and on many occasions threatened to kill them both;
- Family friends or cousins made threatening phone calls, or made hand gestures from passing cars threatening death;
- He finally reported all the incidents to Police;
- [Family A] has influential friends in the Police and also the Turkish courts where he claims someone arranged to have the matters disappear;
- In 2007 when he reported to the Public Prosecutor's office he was advised no record of his complaint exists apart from information that he is Kurdish, a PKK supporter and was told that he must not pursue the matter further; as a result, he no longer relies on Police for protection;
- Fearing his ex-wives' family he followed a friend's advice to leave Turkey by working as a crewman:
- In 2009 with a \$AU 15,000 bond, he signed on to a seven months contract with [company] which excluded port visits to Turkey;
- Around late 2009 he developed pneumonia but there was no doctor on board for medical treatment and the master refused to arrange for an onshore doctor to attend,
- He made a phone complaint about the Captain who ordered him to cancel it:

- The "third in charge" officer had access to the medicine box and provided him with pain-killers;
- He made several complaints about his treatment and when the vessel arrived in [Port 1] Australia the Captain informed he would cancel his work contract and he would be repatriated back to Turkey;
- On [date].04.2010 he deserted the vessel in [Port 1] and flew to Brisbane where he met another Turkish man [name], who drove him to Sydney the following day;
- He moved around NSW and another Turkish friend [name], advised him to seek Immigration advice from the migration agent who had represented him to DIAC.

...

The applicant was interviewed on [date] January 2011 in relation to his claims for protection. He was asked about the reason for his travel to Australia and about details relating to his application seeking protection in Australia.

The applicant presents several events regarding his claim of persecution:

- He was arrested for involvement with a food theft racket from his own kebab restaurant. The charges were dropped when no evidence could be presented. He was detained for three days.
- The applicant's unusual marital circumstances. His neighbour, [Ms C], had attempted suicide after learning the applicant loved her sister [Ms B]. Family pressure from [Ms C]'s parents influenced the applicant to marry [Ms C] instead of [Ms B], who married her cousin. The applicant's marriage to [Ms C] was unsuccessful and so was [Ms B]'s. Both parties ultimately divorced their respective spouses and the applicant finally married [Ms B], however, this union also was unsuccessful. The applicant claims bad will exists between him and [Family A] who have Turkish Mafia connections and have turned the whole thing to an honour dispute.
- The applicant has made complaints to police and has initiated court action against threats received from [Family A's] relatives. He claims the documents were deliberately misplaced through corrupt police and court officials who were influenced by [Family A].
- He was retrenched from his job as a driver for the [Department 2] Manager following the influence by [Family A].
- He presents details of his adverse experiences as a crew member aboard a Turkish vessel.

22. The applicant's statement of claim also raises the discrete Convention claim of an adverse political opinion having been imputed to him.

23. In support of his protection claims, the applicant provided certified copies of the following documents in Turkish, with authorised translations:

- Ministry of Defence Notice stating that the applicant was discharged from military service [in] September 1992 on the grounds of unsuitability;
- Memo dated [in] December 2006 from the applicant's manager at [Department 2] to the Director of Human Resources, recommending the termination of the applicant's employment on the basis that his performance has been inadequate due to *personal and special reasons (family problems, overwork, stress and also owing a lot of money to people)*.
- High Court Grounds of Appeal, lodged [in] April 2007, in which the applicant sets out his reasons for challenging the lower court's decision to reject his unfair dismissal claim against [Department 2]. The applicant asserts that he had provided medical evidence for

his absence for 20 days, and that these documents and the evidence of his witnesses have not been taken into account by the lower court;

- [Suburb 3] Family Court decision dated [in] December 2008 concerning an application for the applicant to be removed from the family records of his step father [name deleted: s.431(2)] and added to the record of his biological father [name deleted: s.431(2)], with whom his mother was in a de facto relationship which produced the applicant before they split acrimoniously, with the result that the applicant's father's name was not noted on his birth records. The decision notes that DNA testing has proven the applicant to be 99.99% likely to be the son of his claimed father, and that the various parties involved all agree with the proposed course of action. The decision states that the applicant's two records should be merged, and that he has every right to be issued with a new Turkish ID card, but concludes that it does not in fact have jurisdiction, and that the case should be referred to the [Suburb 3] First Instance Court to be finalised there.

24. The applicant was interviewed in connection with his claims [in] January 2011, and essentially reiterated his written claims, and also noted that he had been slapped by the police during his brief detention in 2006.
25. It is apparent from departmental file notes that various documents evidencing the applicant's identity, namely copies of his Turkish passport, ID card and Seaman's Book, had been lodged with the Department, either when he arrived in Australia or when he failed to rejoin his ship before it departed. Copies of the applicant's Turkish passport and Seaman's Book appear on the departmental file at folios 100-105, having been provided to Onshore Protection not by the applicant but by the Seaports section of the department in Queensland.
26. The application was refused as the delegate was not satisfied that the applicant's claims involved serious harm and systematic and discriminatory conduct. The delegate concluded that the applicant did not have a genuine fear of harm, and that there was not a real chance of persecution occurring.

### **Review Application**

27. [In] March 2011 the Tribunal received an application for review of the delegate's decision, accompanied by a copy of the primary decision.
28. [In] May 2011 the Tribunal invited the applicant to attend a proposed hearing [in] May 2011, an invitation which the applicant accepted by fax the following day.

### **First Tribunal Hearing**

29. The applicant appeared before the Tribunal [in] May 2011 to give evidence and present arguments, via videolink from Sydney. The Tribunal hearing was conducted with the assistance of an interpreter in the Turkish and English languages. The applicant was represented in relation to the review by his registered migration agent.
30. After explaining its role, and the purpose of the hearing, and the Convention definition of a refugee, the Tribunal indicated that the matters in issue were as follows:
  - whether the applicant's claims with respect to what he says has happened in the past are true;

- whether there is a real chance he will experience serious harm capable of amounting to persecution in the reasonably foreseeable future if he returns to Turkey;
  - whether there is any Convention basis for the harm feared; and
  - whether he could reasonably relocate within Turkey to avoid the harm feared.
31. The applicant identified himself, providing his full name, address and date of birth. He confirmed that he is a national of Turkey, and stated that he has no other nationality.
  32. Asked whether he had any preliminary comments, the applicant indicated that he has studied the possibility of living elsewhere in Turkey, and tried to relocate. He also took court proceedings to change his name by having his natural father's name placed on his birth certificate. In an attempt to save his own life he told the authorities that his father was not in fact his natural father. Asked whether the basis of that claim was genuine or not, the applicant explained that it was not, that the claimed father was not in fact his biological father. The Tribunal indicated that it would come back to the question of relocation.
  33. The applicant was asked whether he had had any contact with family members since arriving in Australia. He replied that he has limited contact with his daughter [name deleted: s.431(2)] in Germany, and last spoke to her about one month ago. Asked whether he is on speaking terms with [his daughter]'s mother, the applicant replied that he is not.
  34. The applicant was asked where his four siblings in Turkey reside. He initially replied Istanbul, and then explained that he had initially made up an address in Istanbul for the purpose of the court case, but that they don't actually live there. In any case, they have ostracised because they believe the rumours about him and actually see him as a traitor to his own country. Asked how they had found out about these allegations, the applicant replied that they know what happened, and think he works for the PKK.
  35. The Tribunal observed that the applicant had made various claims in support of his application, and that it wished to clarify precisely which of these are said to give rise to a risk of persecution.
  36. Asked whether he claims to fear any ongoing problems as a result of his experiences as a seaman, the applicant replied that he doesn't know.
  37. The Tribunal observed that the applicant claimed to have paid a deposit, and queried whether, in light of what had happened, the deposit would be forfeited and that would be the end of the matter. The applicant replied that he hadn't thought about the money; he just didn't want to go back to Turkey. He had to jump ship because his life was more important than the problems he'd face as a result of doing so.
  38. Asked whether he was saying that the only ongoing risk arising out of the voyage he took was the risk of being returned home, the applicant replied in the affirmative.
  39. With respect to the problems in Turkey the applicant claimed had been caused by [Family A], the Tribunal noted that he had submitted various documents about his discharge from military service, dismissal from his job, and efforts to have altered the name of his father on his birth records. However, he had produce no evidence linking him to the two sisters he claimed to have married. The applicant was asked whether he has any documents to confirm this connection, such as marriage or divorce papers. The applicant replied that he can provide the divorce papers, as they are here in Australia.



40. The Tribunal sought confirmation that the applicant was saying that the family of his ex-wives is at the root of all his problems. The applicant confirmed that this was correct. Asked whether they had ever harmed him physically, the applicant confirmed that from time to time he had been pushed and shoved. On one occasion he was pushed and fell down, but the some neighbours came out, otherwise he could have been beaten up.
41. Asked the last time he was actually threatened, the applicant replied that it was in 2008, via the telephone. They found out where he was working and then they threatened him.
42. The applicant was asked whether he believed that [Family A] was behind the allegedly unfair dismissal from his job as a driver at the Istanbul Municipal Office. The applicant confirmed that he used to be a chauffeur. Part of his job involved taking food to families in need. There were some Kurdish families in need, and they were discriminated against. He took meals to them regardless, and maybe he did the wrong thing. It could be partly for this reason that he was dismissed. However, he believes that his in-laws were also involved in the decision.
43. Asked how he knows this, the applicant replied that his issue with them was a family issue, but they have many connections. They spread rumours to try to influence the decision to sack him. In reality his problem is a family problem, but his in-laws put him into conflict with the government.
44. The Tribunal noted that in the applicant's claims he stated that he had been working in this job from 1999 to 2006, and yet he also stated that he was living in Germany from January 2002 to May 2004. Asked to clarify this, the applicant explained that as he was a union member, he was entitled to six months' leave without pay. The Tribunal pointed out that the applicant had taken more than two years' leave. He replied that on each occasion when it had been about to expire, he had returned to Turkey and had the leave extended. He has documents to demonstrate this.
45. The Tribunal noted that applicant claimed to have married [Ms C] in November 1995 and divorced her in November 2001, that he then married [Ms B] 12 months later and returned with her to Germany, and that this marriage broke down and he returned to Turkey in 2004 and were finally divorced in 11/2005. The applicant confirmed that this was correct.
46. The Tribunal noted that the applicant had also claimed that this had become an honour crime, and led to [Family A] using its power to cause problems for him. The applicant confirmed this, observing that it was [Family A] who made that decision, and referred to it as an honour crime.
47. Asked whether anything had happened to either of his ex-wives, the applicant replied that it had not.
48. The Tribunal queried why the applicant believed he would face persecution now, given that nothing serious appeared to have happened to him in the five years since his marriage to the second sister broke down and he returned to Turkey. The applicant replied that after 2008, when his court attempt to change his name failed, he lost all hope. Putting aside the family problems, he has been tarred with certain political views, as a result of which he will experience problems wherever he goes in Turkey. This is what he lived through.
49. The Tribunal noted that the applicant claimed to have been running a business at the same time as he had been working as a driver. He confirmed that this was the case. The business was a kebab shop. Asked whether there were in fact any thefts from that business, the

applicant replied that there had not been, and noted that it would make no sense for him to steal from his own business. [Family A] had put the police up to this.

50. The Tribunal observed that the applicant appeared to have been released after a few days. He agreed that was the case, although he had been mistreated while he was detained. The police slapped him around a bit, but they also subjected him to some other shameful treatment, which he didn't mention at the departmental interview. The applicant was crying as he gave this evidence.
51. When the applicant had composed himself, the Tribunal asked whether the police had said anything which might suggest that [Family A] was involved. The applicant said that they had not, but they did accuse him of having helped the Kurdish Association and betraying the Turkish state.
52. The applicant was asked whether he was subjected to any ongoing reporting conditions after his release. He replied that he was not, however the police did come to his home on one occasion, about one week after he was released in May 2006, and then once to his work, some time later. After this he lost his faith and started running.
53. Asked where he had run to, the applicant replied that he didn't have a registered address, and couldn't even open a telephone account. He stayed at various addresses at [suburbs deleted: s.431(2)]. and [Suburb 3].
54. Asked what work he had done during this period, the applicant replied that he had worked in real estate, at a coffee shop, and had ownership stakes in business in other people's names. He also dealt in scrap metal. He worked under false names.
55. The applicant also noted that he had trouble obtaining a passport. Asked what sort of problems, he indicated that the authorities had not wanted to issue him a passport. When he asked why, he was told that they could not give him the details, but that he had been banned. He consequently paid a bribe of €7000.
56. The Tribunal observed that this claim had not been mentioned in the protection visa application. The applicant replied that he could not recall whether it had or not.
57. The applicant's representative then advised that his partner had assisted the applicant to complete the form, and that although she is usually very thorough she may have overlooked this. He reviews the completed forms, and this question escaped his attention.
58. The applicant was asked whether he had tried relocating outside of Istanbul. He replied that he had, a few times, but that he had found that his name was registered in the computers in the police stations. The Tribunal noted that the applicant had not previously raised this claim, and asked him to describe his efforts to relocate outside Istanbul. He then stated that he had tried to go to Bursa, but that as his identity card was marked he couldn't go there. That is the reason he didn't leave Istanbul.
59. The applicant was asked whether the threat against him was not serious enough to at least prompt him to try relocating. The applicant replied that the threat was serious, but his psychological state was very poor, and it still is. He couldn't think very clearly.

60. The Tribunal noted the documents submitted by the applicant suggested that the court accepted the basis for his claim to have his name changed in principle, but had found that it did not have jurisdiction, and that the case should be transferred to a civil court,
61. The applicant indicated that the first court application took 1½ years, and in the end the court said it did not have jurisdiction. He then went to the [Suburb 3] first instance court, and was told it would take another 1½ years, and the applicant decided it was too risky to await the outcome. He had to leave the country, and that's when he went and joined the shipping company.
62. Asked whether the matter is ongoing, the applicant replied that he has no idea, but he thinks the case would have been dismissed in the meantime. Also, on reflection, he doesn't think that it would have made any difference. Even if he had been granted a new ID card, the old details would have still been on the record. He wasn't thinking very healthily at that time.
63. The Tribunal noted that the court documents bear the applicant's home address. He explained that this was not his legal address, and neither were the addresses he listed as belonging to his siblings. He used as postal address an address he had previously lived at a long time ago, and arranged with a postman to have mail which was sent to him at that address delivered to where he was actually living.
64. The Tribunal observed that as the applicant had been engaged in two public court cases during 2007 and 2008, it might be inferred that if people wanted to find the applicant he could have been found. The applicant agreed that would have been the case if there had been some legal basis for the interest in him, but he is talking about illegal threats and assaults. The Tribunal responded that it was for this same reason that it was not evident that the applicant's in-laws would be able to make problems for him throughout Turkey. The applicant replied that as this is an honour case, the family will pursue him wherever he goes. He has two problems, namely that his in-laws are after him and the government thinks that he is a traitor.
65. With respect to the applicant's fear of his in-laws, the Tribunal noted that [Family A] did not seem to have taken any serious action against the applicant, to which he replied that he knows the problems he will face if he returns to Turkey.
66. With respect to the risk of harm from the authorities themselves, the Tribunal noted that in this case too there appeared to have been a failure to take any further action against him. The applicant replied that after he is dead this explanation will be of no assistance to him. He has the right to live, and he wants to exercise that right.
67. The applicant's representative then noted that they would be happy to produce any additional documents which might assist the applicant's case.
68. The Tribunal inquired whether there was any evidence or information which might support the inference that [Family A] is as powerful as the applicant has claimed. The applicant replied that there were some newspaper reports, but it may not be possible for him to find them now. Asked what sort of issue has been reported, the applicant replied that he thinks there is a wholesale fruit and vegetable market which is run by the Mafia, and that his ex-wives' father and nephews work there. There was a gunfight, and one of the nephews was mentioned in the papers. They have family connections by marriage to the mafia.

69. Asked whether there was any evidence to demonstrate the family's ability to influence the police or the courts, the applicant replied that they have very strong connections of this type, and also exert political influence. Throughout his marriages they always tried to hide their relationship to him, as his Kurdish background was always on the table. He knows that the family personally knows members of parliament.
70. The Tribunal suggested to the applicant that the mere fact of having a Kurdish mother does not make him persona non grata in Turkey, observing that there are some pro-state Kurds who have close links to the Turkish government. The applicant replied that although he wasn't convicted, he was suspected (of having links to the PKK).
71. The Tribunal observed that the applicant's skills would appear capable of securing him employment were he to relocate within Turkey. He replied that the problem was that all of his businesses had to close because they wouldn't leave him alone. He doesn't believe that it was possible to live outside Istanbul, or he would have tried it. He didn't want to leave his own country, but he was forced to do so. Even in Australia he cannot sleep at night.

#### Post-hearing

72. [In] June 2011, the Tribunal received a letter from the applicant's representative asserting that the applicant risks persecution for a combination of reasons involving his failed marriage into [Family A] and his Kurdish ethnicity. The letter encloses two newspaper articles. The first is in the Turkish language and accompanied by an authorised translation. It is from the [date deleted: s.431(2)] October 2010 edition of [publication and title deleted: s.431(2)]. The article describes the arrest of police officer [Mr D], who had been sacked from the police force because of his connection with the mafia, having acted as a money collector for underworld figure [Mr E].
73. The second article is in English and is dated [in] October, although it does not give a year. The title is given as [title deleted: s.431(2)], and describes the arrest and transfer to Istanbul of [Mr E] and some others, in an article which also mentions [Mr D]. This article appears to be the product of an internet-generated translation of the article [title deleted: s.431(2)], which appears at [website deleted: s.431(2)]. **Error! Hyperlink reference not valid.** When the Tribunal located the article on *Google* and engaged the *translate this page* function, the heading came up as [title deleted: s.431(2)]. Both English language versions of this article, the one submitted by the applicant and the one accessed by the Tribunal, are somewhat incoherent, but tend to show, nevertheless, the link between former policeman [Mr D] and gangster [Mr E].
74. [In] June 2011 the Tribunal wrote to the applicant inviting him to a further hearing scheduled [in] July 2010.
75. [In] July 2011, just prior to the hearing, the Tribunal received a report by a registered psychologist dated [in] July 2011. The report is addressed to the applicant's general practitioner, and indicates that the author has had one consultation with the applicant. It describes the applicant as presenting with symptomology consistent with a major depressive disorder with some anxiety. The symptoms, which were described as moderate to severe, include: tearfulness, disturbed sleep, sadness and depression most of the time, social withdrawal, hopelessness, concerns about the future low self-esteem, lack of concentration and low motivation. The report recommends further consultation with the general practitioner, cognitive behavioural therapy and supportive counselling, and pharmacological treatment.

## Second Tribunal Hearing

76. The applicant was asked whether, apart from Istanbul, he had ever lived anywhere else in Turkey, either temporarily or permanently. He replied that he had not.
77. Asked once again whether he had ever attempted to relocate within Turkey to avoid the problems he claims to have experienced in Istanbul, the applicant replied that he had thought about it, but had not actually tried, because it would have been easy for the police to learn his contact details wherever he went. He originally thought that changing his surname would help with this, but [Family A] has contacts with the police, so they could easily learn his contact details wherever he goes. If he sought to relocate outside Istanbul, he would not be able to have any official registration or he would risk discovery. He fears that this situation would continue as nothing has changed.
78. The Tribunal noted that the applicant had submitted an article in English entitled [title deleted: s.431(2)]. The article does suggest links between the police, [Family A], and organised crime, but also notes that the policeman in question was sacked from the police force and had been arrested, which challenges the applicant's claim about the extent of the family's support within the police. The applicant replied that the article just confirms the claimed links between [Family A] and the police. He asserted that they have many other contacts. He recalls that in the period 2006 – 2008 some of their relatives were arrested for involvement in brawls and altercations, but were subsequently released, which shows the influence they have.
79. The applicant was asked whether he had any difficulty getting his passport. He replied in the affirmative, indicating that he had initially applied at [suburb deleted: s.431(2)], but was told that there was a note on the system stating that he couldn't leave the country. Then he reapplied through a friend's acquaintance, a police officer, who had recommended lodging the application in a different district, and in reliance on this advice he reapplied in [suburb deleted: s.431(2)].
80. Asked whether any other requirements had to be met before the passport could be issued, the applicant explained that he had to find someone he could bribe, he had to find the policeman in question at [suburb deleted: s.431(2)]. He knows he is not actually being pursued by the police for any offence, and yet there is obviously an adverse note about him on the system. When he went to the airport to depart Turkey in order to travel to Korea to join the ship he had been assigned to, he was fearful he would not be permitted to leave.
81. The applicant was asked whether this was the first passport he had held, to which he replied that there had been a previous one, but because it was so old he had to renew it. Then when he did renew his passport he lost it when he left the boat.
82. The applicant's representative then clarified that in fact when the applicant arrived in Australia his passport had been held by the captain of the ship. They tried to get it back, but he understands that it is in the possession of the department.
83. The Tribunal observed that there is only a partial copy on the departmental file, and asked the applicant where the original was, to which he replied that it has in fact been returned to him by DIAC.

84. The passport was extended at the same location, using the same policeman he had previously bribed contacted through the same middle man.
85. The applicant was asked whether it was at this time that he first decided to seek work on a ship. He replied that he can't recall when it was exactly, but he remembers it was after a cousin of his wife had warned him about the situation he faced. He had never worked on a boat before that.
86. Asked whether he could recall when the seaman's book was issued, the applicant replied that he could not. Asked whether he had any difficulty obtaining it, the applicant replied that he did not have any specific difficulty with the seaman's book itself, but that he had experienced difficulty with the process generally, because he had previously gained exemption from military service for medical reasons, and the shipping company obtained these reports and had reservations about employing him.
87. Asked where the original seaman's book is, the applicant replied that the department had returned it to him along with his passport.
88. The Tribunal noted that the dates in the seaman's book indicated that it had been issued in 2005 or 2006, and asked why, if the applicant was experiencing problems in Turkey, he had not moved sooner to make use of this means of escaping those problems. The applicant explained that his problems existed from 2001 or 2002. After he returned from Germany in 2004, he was fearful and thought he might have difficulty escaping. It was then that he first thought about joining the merchant navy. However, he also made other attempts to resolve his problems. Even after getting his seaman's book he complained to the public prosecutor's office.

*Section 424AA Invitation*

89. The Tribunal then put certain information to the applicant for the purposes of s.424AA of the Act.
90. The Tribunal noted that the applicant's seaman's book states shows dates in 2005 and 2006, and indicates that his city is Bursa. This information was said to be relevant because it contradicts the claim made in the applicant's original statement to the effect that he first sought to join the merchant navy in 2009 as a means of escaping the problems he claimed to have been experiencing in Turkey, and also the claim not to have lived outside Istanbul.
91. The Tribunal also noted that the applicant's passport states that it was issued [in] July 2009 and extended [in] September 2009. This information was said to be relevant because the fact that the passport was renewed could undermine the applicant's claim to have had difficulty obtaining the passport and to be a person of adverse interest to the Turkish authorities.
92. The Tribunal also noted that the passport includes the notation "nufusa kayitli oldugu yer – Bursa", which the Tribunal understands to mean "Registration place – Bursa", consistently with the seaman's book. This information was said to be relevant because it also contradicted the applicant's claim not to have lived outside Istanbul, because it shows his city to be Bursa.
93. The information about both the passport and the seaman's book was also said to be relevant because it cast doubt on the truth of the applicant's claims generally.

94. The Tribunal indicated that as a consequence of relying on this information it would, subject to any response or comment by the applicant, reject his protection claims on credibility grounds, and affirm the primary decision on the basis that he is not a person to whom Australia has protection obligations
95. The applicant was invited to respond to or comment on the information, and offered the opportunity of an adjournment. After briefly conferring with his representative, the applicant elected to respond immediately.

*Section 424AA Response*

96. With respect to the passport, the applicant replied that the passport had been held by the Shipping Ports Directorate. He asserted that the Tribunal had not actually asked when the passport had been issued but when he had boarded the ship, and he doesn't remember the date when he did so.
97. With respect to the date of issue of the seaman's book, the applicant indicated that he knew when this had occurred, but he also knew that the Tribunal would see the document, and queried why on that basis he would attempt to misrepresent the situation. The Tribunal observed that it was not clear that the applicant had known that the seaman's book would be seen by the Tribunal, as it was not provided to the department by the applicant but by the ship's captain.
98. The applicant then stated that Bursa was simply a place where his birth had been registered, but all of the addresses where his residence had been recorded were in Istanbul. It is not that he has never been to Bursa; he has visited from time to time, such as when he was involved in the legal proceedings to try to change his name, and had to go there to get documents issued, However, he has never actually lived there.
99. The applicant's representative then observed that he had asked the applicant about this a number of times, and he had been instructed that the applicant had had the book since 2005, but only first used it in 2009 when he boarded the ship in Korea.
100. The applicant then added that there may have been a lack of information or some miscommunication, but he has not sought to mislead. He has been in a poor psychological state, and has found it difficult to articulate his claims. He asked not to be sent back to danger, as he has set up his life here, and has a partner here, but he has nothing to go back to in Turkey.
101. The Tribunal reiterated the concerns expressed at the commencement of the first hearing, at paragraph [30]. The applicant replied that wherever he resides in Turkey he will face these problems. This has also affected his physical and psychological health, and his doctor has told him that these problems are related to the stress and fear
102. If he relocates within Turkey he understands that he will still have to register with the district registrar or Muhtar, notifying his new address. The Muhtar then has to forward this information to the police.
103. Asked whether he is saying that this process will necessarily result in the information being passed on to [Family A], the applicant confirmed that this is what will happen. The Tribunal expressed doubt that this would occur if the applicant were to relocate to a different area of Turkey, given that they would appear to have had taken advantage of opportunities to harm

the applicant in Istanbul. The applicant replied that he was always in hiding in Istanbul, and couldn't live a normal life. If he returns he will have to go into hiding again, as they will still be looking for him. In fact the matters have now been aggravated.

104. Asked how this had happened, the applicant replied that the government is now involved because they have declared him to be a supporter of the PKK, and so the government is also after him.
105. The Tribunal reiterated that it had concerns about this claim, given that the applicant had managed to obtain a passport, and had departed Turkey without hindrance. The applicant responded to this by asserting that the recent threats were quite serious, and had he not had the money to pay for the passport, he would have had nowhere to hide, and he would have been killed by now. He is sure that he will be killed if he returns to Turkey. He has no doubts about this.

### **Country Information**

106. Turkey has a very poor human rights record. The United States Department of State's 2010 Country Reports on Human Rights Practices in Turkey, published on 8 April 2011, and available at <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>, includes the following:

There were reports of a number of human rights problems and abuses in the country. Security forces committed unlawful killings; the number of arrests and prosecutions in these cases was low compared to the number of incidents, and convictions remained rare. During the year human rights organizations reported cases of torture, beatings, and abuse by security forces. Prison conditions improved but remained poor, with overcrowding and insufficient staff training...

During the year there were some positive developments. On April 11, the political parties law was amended to allow campaigning in languages other than Turkish, including Kurdish.

Approximate numbers based on reports from the security forces (military, Jandarma, and Turkish National Police (TNP)) indicated that 25 civilians were killed and 50 were injured in armed clashes related to the struggle against the terrorist PKK during the year. Approximately 108 members of the security forces were killed and 244 were injured, and 149 terrorists were killed and five were injured. Most of the clashes between terrorists and security forces occurred in the southeast. The number of civilian deaths and injuries decreased from 2009, while deaths of security forces increased.

On several occasions throughout the year, the Turkish government used military aircraft to attack areas where the PKK, a terrorist organization, was active in northern Iraq. According to press reports, one civilian was killed and two others were injured in Iraq by artillery fire on June 18.

The CPT visited PKK leader Abdullah Ocalan in Imrali prison on January 26-27. Its report published on July 9 stated that the conditions of imprisonment for Ocalan had improved compared with 2007. It also noted improved access to the prison for Ocalan's lawyers and family members...

On October 10, the first session of a case against 151 suspects, including several elected mayors, political party officials, and human rights activists, began in Diyarbakir. The suspects were charged in a 7,578-page indictment with disrupting the integrity of the state; being members and/or administrators of the Kurdish Communities Union (KCK), the political branch of the terrorist PKK; and assisting and sheltering a terrorist organization, among other charges. Human Rights Watch stated that the case raised concerns about the right of individuals to participate in political activities. The case continued at year's end...

The constitution provides for freedom of movement within the country, foreign travel, emigration, and repatriation; however, at times the government limited these rights in practice. The September 12 constitutional amendments state that only a judge may limit the freedom to



travel and only in connection with a criminal investigation or prosecution. The government reduced substantially the number of roadway checkpoints in the southeast, where it maintained a heavy security presence. The government generally cooperated with the UNHCR and other humanitarian organizations to provide protection and assistance to internally displaced persons, refugees (recognized as such with certain geographical limitations on country of origin), returning refugees, asylum seekers awaiting resettlement to third countries, stateless persons, and other persons of concern.

The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and some officials engaged in corrupt practices with impunity.

The law provides a single nationality designation for all citizens and does not recognize national, racial, or ethnic minorities. In November the EC's progress report observed the country's approach to respecting and protecting minority and cultural rights remained restrictive.

Citizens of Kurdish origin constituted a large ethnic and linguistic group. Millions of the country's citizens identified themselves as Kurds and spoke Kurdish dialects. Kurds who publicly or politically asserted their Kurdish identity or promoted using Kurdish in the public domain risked censure, harassment, or prosecution. In practice, children whose first language is Kurdish could not be taught in Kurdish in either private or public schools.

On April 11, the political parties law was amended to allow campaigning in languages other than Turkish, including Kurdish. Several private television and radio stations were allowed to broadcast in languages other than Turkish, including Kurdish, Arabic, and Armenian, and newspapers published in Kurdish, Armenian, and Farsi were allowed to function without administrative obstacles.

On October 11, Mardin Artuklu University began a three-month Kurdish literature and culture course for 50 graduate students under its "Living Languages Institute."

The country's law is interpreted to recognize only three religious minorities--Armenian Orthodox Christians, Jews, and Greek Orthodox Christians--and no other ethnic and religious minorities, such as Alevis, Yezidis, Assyrians, Catholics, Protestants, Kurds, Jafaris, Circassians, Laz, or Roma. These other groups were prohibited from fully exercising their linguistic, religious, and cultural rights and continued to face intense pressure to assimilate.

## **FINDINGS AND REASONS**

### **Nationality**

107. The applicant claims to be a citizen of Turkey. He entered Australia on an apparently valid Turkish passport issued by declaring him to be a citizen of that country, and the Tribunal finds on this basis that he is a national of Turkey and has assessed his claims accordingly.

### **Assessment of Protection Claims**

108. The applicant claims that [Family A] family will harm him for a combination of reasons involving his failed marriage into that family and his Kurdish ethnicity, and that the Turkish authorities will not protect him from the harm feared. He also states that the Turkish authorities have imputed him with an adverse political opinion and racial profile.
109. At the hearing the applicant explained that although he had experienced ill-treatment while employed as a seaman, this was unconnected to his problems in Turkey, and did not give rise to a discrete protection claim. The Tribunal therefore finds that he does not have a subjective fear of persecution on this basis, nor one which is objectively well-founded.

110. The Tribunal essentially found the applicant to be a credible witness. He gave evidence in a forthright and convincing manner, and also displayed what appeared to be genuine fearfulness about the prospect of returning to Turkey. The applicant's claims have been presented in a reasonably consistent manner, and his presentation was also consistent with the symptomology described in the psychological report submitted prior to the second hearing, which in turn appears consistent with the background events the applicant claims to have experienced.
111. The applicant has submitted documentary evidence which corroborates or is consistent with some of his claims, including having been dismissed from his government job and commenced legal proceedings in an attempt to change his name and thereby avoid the problems he had been experiencing. At the hearing the applicant acknowledged that he had eventually realised that this process was unlikely to have achieved its intended objective, a conclusion which was perhaps apparent from the outset, but which evidently only dawned on him after much time and effort had been expended.
112. The applicant also tendered a newspaper report tending to show links between [Family A], the Turkish police and organised crime, although as explained at the hearing, those reports do not appear to the Tribunal to support the applicant's perceptions as to the extent of that influence, given that they state that the police recently dismissed and then arrested a member of the family for reason of his corrupt dealings with an organised crime figure.
113. Subject to the qualifications set out below, the Tribunal accepts the applicant's account of what has happened to him in the past. Specifically, the Tribunal accepts that the applicant was married to and divorced from the two sisters in the circumstances claimed, that this has led to a vendetta against him by [Family A], who have subjected him to ongoing threats of violence. The Tribunal finds on balance that it was the influence of this family which caused him to be arrested on trumped-up embezzlement charges relating to his own business. The Tribunal accepts that the applicant was detained in May 2006 before being released without charge, that he was seriously abused during his brief period in detention, and that on two occasions soon afterwards the police visited his home and his workplace, causing the applicant to change his address.
114. The Tribunal also accepts that the applicant was dismissed from his employment at the Istanbul municipal office at the end of 2006, although it does not accept that this occurred at the instigation of [Family A]. The applicant himself acknowledged that he had been abusing his position by making unauthorised food deliveries to disadvantaged Kurds, and the Tribunal finds that this was the reason he was dismissed.
115. Finally, the Tribunal accepts that when the applicant did seek to complain about this behaviour to the police, nothing happened because [Family A] was able to exert their influence to make the complaint which he had lodged against them disappear, and that a record was placed on his files which appears to have made it difficult for the applicant to obtain a passport in the normal manner. The Tribunal also accepts that this made it necessary for the applicant to pay a bribe in order to be issued with a passport
116. However, the Tribunal does not accept that the applicant has been barred from departing Turkey, given that once he did obtain a passport he was able to leave that country without difficulty.
117. Similarly, the Tribunal does not accept the applicant's claims that the government is "after him" and that he has been "declared to be a supporter of the PKK"; although it accepts that he

was *accused* of supporting the PKK, he was subsequently released without charge and had various subsequent interactions with the government which, in their totality, are not consistent with the conclusion that the government is 'after him'.

118. In summary, the Tribunal accepts that the applicant has experienced serious harm caused either directly or indirectly by [Family A] in the past, and accepts that there is more than a remote possibility that he will experience further serious harm from them in the reasonably foreseeable future if he returns to Istanbul.
119. However, for the following reasons the Tribunal does not accept that this threat brings him within the scope of the Convention definition of a refugee.
120. Firstly, the Tribunal does not accept that the harm feared would be for a Convention reason. The evidence does not support the proposition that the applicant's ethnicity or race was a significant motivating factor in [Family A]'s desire to harm him in the past. The applicant's statement indicates that he married and divorced two sisters, that the second marriage was secret, and that the first wife's discovery of the second relationship caused her to turn her family against him and begin threatening him. The Tribunal considers that if the applicant's race had been an issue for the family, they would not have agreed to the first marriage. In the view of the Tribunal, the essential and significant reason for this threat of harm to the applicant is personal vengeance, because the applicant is perceived to have insulted or dishonoured [Family A], and not for any specific Convention reason such as race or membership of a particular social group. In the case of the latter, no such group has been identified or articulated, and in any case, as the motivation is personal, the requisite nexus of the harm being feared *for reason of* membership of a particular social group would be lacking.
121. Where the harm feared is from non-state agents, the claim can nevertheless come within the scope of the Convention where, for a Convention reason, the state is unwilling or unable to protect an applicant. In the present case, the applicant asserted that he no longer relies on the police for protection because they have recorded him as being a Kurd and a PKK supporter. However, as explained in the following paragraph the Tribunal does not accept that the applicant has a significant Kurdish or pro-PKK profile with the State. To the extent that the State detained and mistreated the applicant in the past, and subsequently failed to process or act on complaints which the applicant made, the evidence indicates and the Tribunal finds that essential and significant reason for this was corruption and criminality on the part of those involved. This is consistent with both the applicant's own claims as set out in the original statutory declaration, at [58] – [59], that *[Family A] has some very influential friends in the police force and the Turkish Courts. They managed to have the complaint that I made to the police which was sent to the court for a hearing disappear*, and with the news report submitted by the applicant suggesting that a member of that family was dismissed from the police force and arrested in 2010 for corruption and links to organised crime. The Tribunal is therefore does not accept on this evidence that that state protection against [Family A] has been or will be discriminatorily withheld from the applicant for a Convention reason.
122. It has also been argued by the applicant that the state will harm him directly for reason of his race and imputed political opinion, as he is half Kurdish and claims to have been falsely attributed with the profile of being Kurdish and a suspected PKK supporter. Country information indicates that even suspected PKK supporters as well as *Kurds who publicly or politically asserted their Kurdish identity or promoted using Kurdish in the public domain*

*risked censure, harassment, or prosecution* The applicant gave evidence that he was accused of having Kurdish separatist links while being held on suspicion of embezzlement in May 2006, and the Tribunal accepts that the applicant was subjected to serious harm by the police on this occasion. However, he was released without charge after three days. The applicant claims that after the police came on two further occasions to his home and his workplace, he lost his nerve and moved, and yet he remained in the same government job until the end of 2006, from which the Tribunal infers that the police no longer maintained any significant interest in the applicant, because if they had such an interest he could easily have been located. The applicant states that in 2007 he was told of an adverse record having been placed on his file, and yet he nevertheless remained in Turkey for a further two years without experiencing any significant problems from the Turkish authorities. During this period he had various interactions with those authorities, including pursuing legal proceedings and obtaining and extending a passport, albeit with the payment of bribes. He then departed Turkey legally without hindrance. In light of this history, and despite the applicant's claim that even members of his own family have ostracised him because they falsely think he supports the PKK, the Tribunal finds that the applicant does not have a significant Kurdish or pro-PKK profile with the State, and finds therefore that there is only a remote chance that he applicant will face serious harm from the Turkish authorities in the reasonably foreseeable future, should he return to Turkey, and finds that his fear in this respect is not well-founded.

123. The Tribunal accepts that the applicant has a strong subjective fear of serious harm in Turkey. However, having carefully considered the evidence before it, the Tribunal finds that there is only a remote chance that he will encounter serious harm capable of amounting to persecution for the purposes of s.91R *for a Convention reason* in the event that he returns to Istanbul in the reasonably foreseeable future, whether from [Family A] or from the Turkish authorities.
124. Furthermore, even if the applicant were at risk of Convention persecution in Turkey, the Tribunal is of the view that he could in fact avoid any such persecution by relocating within that country, and that in all the circumstances it would be reasonable to expect him to do so, having regard to both the evidence of his physical and psychological state, but also his evident preparedness and ability to relocate within Istanbul in the past, and his history of having worked in a number of different fields and to have established a number of businesses, including a real estate business, a scrap metal business and a tea house. Although he claimed at the hearing that he was forced to close all of these down, this was at odds with the original statutory declaration indicating that the tea house was still operating under his partner's names.
125. The Tribunal notes that the applicant has never lived outside of Istanbul. He gave equivocal evidence about whether he had actually attempted to relocate elsewhere in Turkey away from the source of his problems. At the first hearing, he suggested that he had tried to relocate but found that his name was registered in computers at Bursa, and his ID card was marked so that he could not go there. He also stated that his psychological state was very poor. On the other hand, at the second Tribunal hearing the applicant acknowledged having returned to Bursa (his birthplace) from time to time, including in connection with his court case to have his name changed and to get documents issued, but conceded that he had not actually tried to relocate. The Tribunal therefore does not accept that the applicant has actually tried to relocate outside Istanbul.
126. The applicant asserts that to attempt do so would be futile, on the basis that [Family A] will use its influence and police contacts to track him down wherever he is in Turkey, and that he

would have to live in hiding. However, the newspaper report relied on by the applicant suggests that the influence of this family is not as great as the applicant believes, or else is diminishing, as one family member who was a member of the police force was dismissed from his position and arrested in later 2010.

127. Furthermore, despite making numerous threats against the applicant in Istanbul, both over the phone and in person, as indicated at paragraph 55 of the statement which accompanied the Protection visa application, [Family A] evidently failed to carry out those threats. During this time, the applicant had various interactions with the Turkish authorities of a similar type to those which he now asserts would expose him to the risk of discovery if he attempted to relocate.
128. The Tribunal therefore finds that there is only a remote possibility that if the applicant moved to another part of Turkey his whereabouts would come to the attention of [Family A] and they would locate and harm him, even if he were to formally register his new address with the local authorities. It finds therefore that relocation would be reasonable in all the circumstances.

### **CONCLUSIONS**

129. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

### **DECISION**

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