

1000587 [2010] RRTA 284 (1 April 2010)

DECISION RECORD

RRT CASE NUMBER: 1000587

DIAC REFERENCE(S): CLF2006/142876, CLF2007/36128
CLF2007/57961, CLF2009/131059

COUNTRY OF REFERENCE: Serbia

TRIBUNAL MEMBER: Andrew Jacovides

DATE: 1 April 2010

PLACE OF DECISION: Sydney

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 Serbia, arrived in Australia approximately 10 years ago and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa approximately 8 years after arriving. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by fax.
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 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.
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, with the protection visa application and the delegate's decision, and the Refugee Review Tribunal (RRT) file 1000587, with the review application.
20. The Tribunal also has other Departmental files relating to other applications by the applicant.
21. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Serbian and English languages.
22. The applicant was represented in relation to the review by a registered migration agent.

Department's file CLF2009/131059

23. The applicant stated in his protection visa application that he was [Applicant Name], a citizen of Serbia. He indicated that he has lived in Australia for approximately 10 years, under the name of [Alias Name], a citizen of Country 1. He indicated that he used a false Country 1 passport to enter Australia. The applicant stated the date on which he was born approximately 40 years ago in Location A, Country 2.
24. The applicant stated that he previously lived in Serbia, Croatia, Bosnia, and Country 2. He indicated that he visited other countries. He stated that he was granted refugee status in Country 2 and he lived there for approximately 8 years until he left for Australia. The applicant indicated that he has been married and divorced, in Country 2 and Australia.
25. The applicant claimed that he was a member of *Arkan's Tigers* ['Serbian Volunteer Guard', ('Srpska Dobrovoljačka Garda' or SDG), commonly known as 'Arkan's Tigers' ('Tigers', 'Arkanovci' or 'Arkanovi Tigrovi') which was established on 11 October 1990 by Željko Ražnatović, popularly known as *Arkan*] during the war in former Yugoslavia. He indicated that he was one of Arkan's officers. He claimed that when he realised the "atrocities" Arkan was perpetuating he fled to Country 2. The applicant claimed that he was living in Country 2 with his wife Person 1 after he left Arkan's paramilitary group but when he learned that four of Arkan's bodyguards and other associates had been killed he became concerned that his wife's family might betray him. He claimed that he left his wife in the mid 1990s and 4 years later he assumed the identity of [Alias Name]. He indicated that he came to Australia as [Alias Name]. The applicant claimed that approximately 3 years ago he was told that a relative in Serbia had been approached by two police officers who were looking for him. He stated that he did not know why they wanted him.

26. The applicant claimed that he was afraid of “Arkan’s men”, because he was considered a traitor for running away from the group; he feared persons who may wish to silence him because he knows what Arkan’s men were doing during the war; and he feared persons who hated Arkan and were opposed to the SDG. He stated that there may be people in government, including the police and in other positions of power, who will recognise and kill him. He stated that he was also of a minority religion while Serbians were Orthodox.
27. The applicant indicated that 2 years after the formation of ‘*Arkan’s Tigers*’ he applied for and was granted refugee status in Country 2. He stated that he served in the Serbian Special Forces for a few years before Arkan’s Tigers.
28. The applicant’s adviser stated that the applicant was advised that he had been granted permission by the Minister to lodge a further protection visa application. She submitted a primary school certificate relating to the applicant; photographs of Arkan and his men; other photographs taken at “Arkan’s barracks” on the Croatian border; articles relating to Arkan’s Tigers; other articles relating to crime in Serbia and war crimes investigations.
29. The adviser submitted a letter from the Municipal Office of Public Order of Location B, Country 2, dated, which states that the applicant confirmed his name to be [Applicant Name], born approximately 40 years ago, in Location A, Country 2. The document lists his nationality as “former Yugoslavia” The document states that the applicant lived in Country 2 for approximately 10 years but he had no documents relating to that period and it is no longer possible to determine the applicant’s residency status. The letter states that the applicant returned to Country 2 as a refugee and he was granted a permit to remain in Country 2 The letter indicates that his permit was valid until he left the country. It indicates that the applicant gave notice of departure to the local authorities approximately 10 years ago. The author states that the applicant’s actual departure date is unknown.
30. The adviser submitted a letter from the applicant’s former primary school in Location C, Serbia, which states that the applicant attended the school and when he ceased to be a student.
31. The applicant indicated in a letter to his adviser that he was [Applicant Name], born in Country 2 approximately 40 years ago. He indicated that his grandparents were from Country 3, Country 4, and Croatia. He stated that after his parents divorced he lived with his father in Location D, Serbia. He stated that briefly he was taken by a grandparent to Country 2 but he was forced to return to Serbia by his father. He stated that he lived with his father and a grandparent until he was adult.
32. The applicant claimed that he served in the Yugoslav People’s Army for one year in the late 1980s He stated that he was subsequently homeless when war broke out in Yugoslavia and he joined the Serbian Volunteer Guard He stated that he served in the SDG for a couple of years and he was one of Arkan’s officers. He stated that he fled to Country 2 when he no longer wanted to be associated with Arkan’s criminal activities. He stated that he was permitted to remain in Country 2 until “the situation cleared itself in Yugoslavia”.

33. The applicant stated that he did not want to return to Serbia because he feared reprisals relating to his involvement with the SDG. He claimed that members of the group interrogated members of his family and they were seeking to find him so he was forced to change his name “to escape the group”. He indicated that in Country 2 he lived a “normal” life, he met his first wife, Person 1, and they had a child. He stated that they married but the marriage ended after a few months “due to family influences” He stated that he was offended by his wife’s mother who accused him of not being Serbian and she referred to him as a “Slovak”. He stated that after a few years he bought a Country 1 passport and he assumed the identity of the person on the passport, [Alias Name]. He stated that he used the passport to come to Australia and he subsequently lived here for approximately seven years claiming to be [Alias Name], a citizen of Country 1.
34. The applicant’s adviser made submissions to the Department. She submitted the original documents referred to above and other information relating to those documents She submitted a birth certificate extract issued in Country 2 which stated that the applicant was born in Country 2 approximately 40 years ago. The adviser asked the Department to refer to [Applicant Name] as [Alias Name] “given the sensitivity of his case”.
35. The adviser submitted a *Military Service Certificate* issued to [Alias Name] on a stated date, and a *Criminal Records Check Certificate*, in the same name issued at approximately the same time. The applicant told the Tribunal at the hearing that all the documents relating to [Alias Name] were fabricated.
36. The Department received a further submission from the applicant’s adviser. She submitted a *testimonium baptismi* then recently issued to [Applicant Name]. The adviser indicated that the applicant will fully co-operate with any inquiries the Department wants to make about him in Country 2 but he did not consent to any contact between the Department and the Serbian authorities regarding his case.
37. The applicant was interviewed by the Department. The Tribunal has listened to the interviews. The applicant described his background and essentially repeated his written claims. He indicated that he lived with his father in Location C, Serbia, after his parents divorced and when he finished primary school he went to secondary school in Location E. He indicated that he subsequently did his compulsory military service and he was released from the army
38. The applicant stated that after he completed his military service he was unable to get work and he moved around before he joined Arkan’s group. The applicant stated that he joined the SDG after a personal interview with Arkan. He provided details regarding his activities with the SDG. The applicant stated that he was a regular member of the group before he became an officer for Arkan for a period. He claimed that he went on approximately 15 missions with the SDG and during those missions he was involved in activities to secure territory for Serbia. He stated that civilians were killed by the SDG during those missions. He indicated that for the first year he was based in Location F and the second year he was based in Location E The applicant indicated that he did not always move directly with Arkan. He stated that he did not kill anyone during his involvement with the SDG but he witnessed others doing the killing.
39. The applicant stated that approximately 2 years after he joined the SDG he fled to Country 2. He stated that he no longer wanted to be implicated with the group’s illegal

and dangerous activities. He stated that he joined the group at the end of 1990 and he left it approximately 2 years later. The delegate commented that Arkan was in prison from late 1990 until June 1991. The applicant stated that the delegate's information was incorrect.

40. The applicant stated that he initially applied to come to Australia approximately 15 years ago using his Yugoslavian passport. He stated that the application was rejected. He stated that he then decided to purchase a Country 1 passport, adopt the identity of [Alias Name], and apply for an Australian visa as [Alias Name]. He stated that by using the Country 1 passport he was able to obtain an Australian visa and he came here approximately 10 years ago.
41. The delegate accepted the applicant's claim that he was [Applicant Name], a citizen of Serbia. She accepted the applicant's claims relating to his involvement with the SDG but found that the applicant's recollection regarding his involvement with the group was flawed. The delegate commented that Arkan was in prison from November 1990 until June 1991 and the applicant could not have been working for him during that period but she accepted that the applicant had some involvement with the SDG during the war. The delegate found that the applicant was living in Country 2 for approximately 8 years after he left the SDG and found that if he was a person of interest to either the SDG or anyone else they had access to him during that period. The delegate found that the applicant's claim that former members of the SDG were targeted and killed was not well-founded. She noted that persons who were involved with paramilitary groups during the war turned to organised crime after the war and they were targeted for their criminal activities rather than their activities during the war. The delegate found that the applicant was not implicated in criminal activities or organised crime in Serbia so he was not at risk of harm for these reasons. The delegate considered the applicant's claim that the Serbian authorities approached members of his family in Serbia and asked about his location. She was not satisfied that the police inquiry was related to the applicant's activities during the war or that it was indicative of ongoing interest about him by Arkan's associates or anyone else who was supporting or opposing the SDG. The delegate found that the applicant's fear that he will be harmed in Serbia because of his involvement with the SDG was not well-founded.

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42. The Tribunal received a submission from the applicant's adviser in which the adviser submitted documents which were previously submitted to the Department, including the letter from Country 2 relating to the applicant's residence there; his baptism certificate; and the extract from of birth certificate.

Department files CLF2006/142876, CLF2007/36128, CLF2007/57961, and CLF2006/142876

43. These files relate to previous applications by the applicant while he was using the name [Alias Name].
44. The applicant's sponsor for a spouse visa, Person 2, claimed that she met [Alias Name] in Yugoslavia several times over a few years. She stated that during those visits he "showed" her "around Yugoslavia". The applicant claimed that he had dual Country 1 and Yugoslav citizenship. He provided documents relating to his past, including a

military service certificate from Yugoslavia, issued to [Alias Name]. The applicant stated at the hearing that the claims made by his sponsor and the documents he provided in support of the application were false.

45. The applicant was granted the temporary spouse visa but the marriage ended before the permanent visa was granted. The applicant first applied for a protection visa approximately 4 years ago. He stated in that he was a citizen of Country 1 but claimed that the Country 1 authorities were refusing to recognise him as a citizen because he lost his passport. He stated that under the circumstances he was stateless. The delegate refused the application after finding that the applicant was a Country 1 citizen and he could enter and reside in Country 1.
46. The applicant's former wife, Person 2, was interviewed by the Department. A summary of the interview is on file. She indicated that she met the applicant in Australia and the information she provided in the spouse application, including claims of having travelled with him in Yugoslavia, were false.
47. The applicant was interviewed by the Department. A summary of the interview is on file. He stated that he was [Alias Name], citizen of Country 1, of Yugoslav background, and he had lived in Country 2. He stated at the interview that he did national service in Yugoslavia. He stated that he went "awol" and he did not want to return to Serbia. The applicant submitted various documents relating to his identity and Country 1 citizenship.
48. The RRT, differently constituted, found that the applicant was not a refugee. The Tribunal noted that the applicant did not wish to live in Yugoslavia, but he was willing to return to either Country 1 or Country 2. The Tribunal stated that the applicant did not raise any refugee claims relating to either of those countries.
49. The Minister decided in recent months that it was in the public interest for the applicant to be permitted to apply for a protection visa again after he admitted to being [Applicant Name] rather than [Alias Name].
50. Other documents on file relate to unsuccessful attempts by the applicant to be granted a bridging visa.

The hearing

51. The applicant attended the hearing with his adviser. He essentially repeated the claims he provided to the Department. He stated that he was [Applicant Name], a citizen of Serbia, born in Country 2 approximately 40 years ago. He indicated that he had no right to enter and reside in any country other than Serbia. He indicated that he had not investigated whether he can enter and reside in Country 2. He stated that he lived there as a refugee for approximately 8 years until he left for Australia. He stated that he was known as [Applicant Name] in Country 2 for 8 years and then he assumed the identity of [Alias Name]. He stated that the documents he submitted in support of earlier applications were fraudulent.
52. The applicant stated that he was involved with the SDG and he was afraid that supporters or opponents of the group will seek to kill him if he returns to Serbia. He stated that its supporters will seek to harm him for being a traitor and its opponents will

harm him for being implicated in the atrocities perpetrated by the group. He was asked if he feared any particular individuals. He did not provide names of particular individuals but referred generally to “people in power” He stated that Arkan’s political party is still in power in Serbia and his supporters and associates will seek to kill him because he is considered to be a traitor for running away from the group. He stated that they will also harm him because he has damning evidence regarding the group’s activities during the war. The Tribunal commented that the group’s activities during the war have already been exposed, documented, and investigated The Tribunal commented that it was unlikely that he had any information which had not been made public in either Serbia or Croatia since the war ended.

53. The applicant stated that he knew things which Arkan’s supporters which had not been exposed and there were still persons who would not want the information exposed. The Tribunal asked the applicant to explain what information he had which in his view would incite Arkan’s supporters to kill or harm him. He stated that he knew a lot of things. The Tribunal asked the applicant if he had damning information regarding any specific individuals he could name. The applicant provided vague responses. The Tribunal indicated to the applicant that the group’s activities during the war have been thoroughly examined and documented within Serbia and abroad. The Tribunal commented that it doubted that he had any information about the group which was not already known. The applicant stated that it has been many years since he left the group and his memory is fading.
54. The applicant repeated his claims relating to his involvement with the SDG. He indicated that he was homeless and unemployed at the time he was invited by Arkan to join the group. He stated that he went to Arkan’s place in Belgrade and asked to join the group. He stated that he needed the work. The applicant claimed that Arkan interviewed him and then he was invited to join the group as a regular soldier. He stated that after approximately one year he left the camp at Erdut and moved on to be one of Arkan’s officers. He stated that Arkan was regularly at the Erdut camp during that first year. The Tribunal indicated to the applicant that at the time he was claiming to have been personally interviewed by Arkan in Belgrade, and seen him at the camp in , he was in a Croatian prison (see for example, Svarme, F., ‘Arkanova ostavština’ [Arkan’s Legacy], *Vreme*, 14 January 2010 <http://www.vreme.com/cms/view.php?id=906970>; Pond, E., ‘Kosovo and Serbia after the French *Non*’, *The Washington Quarterly*, Autumn 2005; the references provided to the applicant’s adviser). The applicant stated that the Tribunal’s information was wrong and he was able to accurately recollect that at the end of 1990 he was interviewed and recruited by Arkan and he saw him at the camp during the first six months of 1991. The Tribunal commented that Arkan’s detention in Croatia from November 1990 until June 1999 comes from reliable sources and the applicant must be mistaken.
55. The applicant stated that he ran away from the SDG approximately 2 years after joining. The Tribunal asked him whether he “ran away” or he just left the group. He stated that he was expected to remain with the group. He was asked if he had a contract or some other agreement which required him to remain with the group indefinitely. He stated that he did not remember what conditions he agreed to when he joined the group but when he left it he was effectively running away.
56. The applicant stated that two men in official uniform went to his relative’s house asking for him in approximately 3 or 4 years ago. He stated that his relative then told relatives

in Country 2 and those relatives told him. He stated that when he heard about the incident he realised that his life was in danger. The Tribunal discussed the matter with the applicant but he could not recall exactly when the visit took place and he did not know exactly who was involved. He stated that he had a large extended family in Country 2 but they could not tell him anything more about the incident. The Tribunal asked the applicant if he contacted his relative in Serbia to ask her what happened. He stated that he did not dare contact her because he is afraid and in any event what more could she tell him. He stated that when the men were leaving his relative's house they commented that he might be in Australia or Country 5. He stated that he considered this statement to be very significant. The Tribunal tried to ascertain from the applicant why it was significant but he was unable to explain. He stated that they appeared to know where he was.

57. The applicant claimed that after he was told about the above incident he realised that his life was at risk and he subsequently decided to reveal his true identity and seek protection in Australia. The Tribunal commented that the applicant appeared to place great significance on the visit but he had extremely limited information regarding the incident and no information on which to conclude that the persons making the inquiries were seeking to harm him. The applicant stated that in his view it was proof that he was still a person of interest and that he could be harmed or killed if he returns to Serbia.
58. The Tribunal discussed with the applicant why he joined the SDG. He essentially stated that he did it for the money. He indicated that he did not get involved for political reasons.
59. The Tribunal commented that it had considered information from external sources regarding the SDG, its activities during the war, and what has happened to the group and its members since the war ended. The Tribunal gave the applicant's adviser a list of references which the Tribunal had read and indicated that those references were available on the Tribunal's internet site. The list included the following sources:
 - *The Prosecutor of the Tribunal v Zeljko Raznjatovic also known as 'Arkan'*, Indictment, 26 September, 1997, IT-97-27-I, International Criminal Tribunal for the Former Yugoslavia, <http://icr.icty.org/frmResultSet.aspx?e=wweb3digodsyth45d2pnrz55&StartPage=1&EndPage=10>
 - *Prosecutor of the Tribunal v Jovica Stanisic and Franko Simatovic*, Third Amended Indictment, 10 July 2008, IT-03-69-PT, International Criminal Tribunal for the Former Yugoslavia, pg 2,
 - Burg, S. L., Shoup, P. S., *The war in Bosnia- Herzegovina: ethnic conflict and international intervention*, M. E. Sharp, New York, 1999
 - International Crisis Group, *Serbia: the Milosevic Regime on the Eve of the September Elections*, ICG Balkans Report No. 99, 17 August, 2000, pg 7, <http://www.crisisgroup.org/home/index.cfm?id=1738>
 - Partos, G., 'Crime and politics meet in Serbia trail', 22 December, 2003, *BBC News*, <http://news.bbc.co.uk/2/hi/europe/3340021.stm>

- Partos, G., 'Serbia's elite enemy within', *BBC News*, 26 March 2003, <http://news.bbc.co.uk/2/hi/europe/2888943.stm>
- 'Obituary: Zoran Đinđić', *BBC News*, 13 March 2003, <http://news.bbc.co.uk/2/hi/europe/2844081.stm>
- Svarme, F., 'Arkanova ostavština' [Arkan's Legacy], *Vreme*, 14 January 2010 <http://www.vreme.com/cms/view.php?id=906970>
- Encyclopaedia Britannica, <http://www.britannica.com/EBchecked/topic/712386/Zeljko-Raznatovic>
- 'Delije', <http://en.wikipedia.org/wiki/Delije>
- Bosnian Institute, 'Book Review of Vasic, M., *Atenat na Zorana Dindica [The Assassination of Zoran Dindinc]*', *Politica*, Belgrade, 2005 translated and reprinted from Globus Weekly Newspaper, 18 March, 2005, Zargreb, http://www.bosnia.org.uk/about/bi_books/long_reviews.cfm?book=11723,-
- Pond, E., 'Kosovo and Serbia after the French *Non*', *The Washington Quarterly*, Autumn 2005
- BBC News, 'Arkan back in Belgrade', 26 March 1999, <http://news.bbc.co.uk/2/hi/europe/304559.stm>
- Human Rights Watch, *World Report 2010 - Serbia*, 20 January 2010, available at: Refworld, <http://www.unhcr.org/refworld/docid/4b586ce3c.html>
- Simons, M., 'Mystery Witness Faces Milosevic', *New York Times*, April 24 2003 <http://www.nytimes.com/2003/04/24/world/mystery-witness-faces-milosevic.html?pagewanted=1>
- <http://vukovar.50webs.com/arkanovitigrovi.html> (Serbian nationalist website)
- Office of the War Crimes Prosecutor, Republic of Serbia, *Press release*, 16 June 2005, http://www.tuzilastvorz.org.rs/html_trz/DRUGI_O_NAMA/DON_2005_06_16_LAT.PDF
- SENSE News Agency, Bosnia Institute, "'Arkan's Men' and 'Scorpions' under state security umbrella', The Hague, as reported in Helsinki Committee for Human Rights in Serbia, 31 August, 2009, http://www.helsinki.org.yu/tjbosnia_t04.html
- International Criminal Tribunal for the former Yugoslavia, *Public Transcript of Hearing August 24th, 2005* (English) Witness Examination, Vojislav Seselj, IT-02-54-T, pg 43089,
- Green, P., 'Belgrade Journal; For Partying Mobsters, the Morning After: Prison', *New York Times*, 5 May 2003, <http://www.nytimes.com/2003/05/05/world/belgrade-journal-for-partying-mobsters-the-morning-after-prison.html>

- <http://www.crveneberetke.com/> unofficial site of the Red Berets, - Accessed 3 March 2010, <http://fas.org/irp/world/para/sdg.htm>
- Simpson, J., 'Arkan 'victim of gang warfare'', *BBC News*, 11 June, 2000, http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/786799.stm
- Erlanger, S., 'Suspect in Serbian War Crimes Murdered by Masked Gunmen', 16 Jan, 2000, *New York Times Newspaper*, <http://www.nytimes.com/2000/01/16/world/suspect-in-serbian-war-crimes-murdered-by-masked-gunmen.html>
- Rowland, J., 'Serbia in fear after Arkan death', *The Guardian Newspaper*, 17 January 2000 <http://www.guardian.co.uk/world/2000/jan/17/balkans1>
- Immigration and Refugee Board of Canada, *Serbia and Montenegro: The Serb Volunteer Guard (SDG or Arkan's Tigers); their treatment of Muslims; current activities; whether former members were active in the district of Sandzak or surrounding area in June 2001*, 24 October 2003, YUG42093.E, available at: <http://www.unhcr.org/refworld/docid/403dd21814.html>
- Kroeger, A., 'Serbian warlord's ally shot', 22 July 2001, *BBC News*, <http://news.bbc.co.uk/2/hi/europe/1609003.stm>
- 'Defendants in Arkan murder trial accuse police of torture', *Centre for Peace in the Balkans*, 18 October, 2000, <http://www.balkanpeace.org/index.php?index=article&articleid=12863>
- 'Three convicted of Arkan murder', 26 October, 2001, *BBC News*, <http://news.bbc.co.uk/2/hi/europe/1622486.stm>
- <http://www.statemaster.com/encyclopedia/Arkan>
- Judah, T., 'Serbia still riven by feuds', 7 March, 2003, *BBC News*, <http://news.bbc.co.uk/2/hi/europe/3042724.stm>
- Knight, S., and agencies, 'Underworld boss jailed for Serbian PM killing', *Times Online*, 23 May, 2007, <http://www.timesonline.co.uk/tol/news/world/europe/article1830167.ece>
- BBC News, 'Full Text: Serbian Statement on Djindjic Killing', <http://news.bbc.co.uk/2/hi/europe/2845513.stm>
- 'Serb president's killers jailed', *BBC News*, 18 July 2005, <http://news.bbc.co.uk/2/hi/europe/4692591.stm>
- 'Đinđić trial witness murdered', *BBC News*, <http://news.bbc.co.uk/2/hi/europe/3546503.stm>
- Dimitrova, S., Jovanovic, I., 'Serbian government criticised after key Đinđić trial witness killed', *Southeast European Times*, 5 June, 2006, http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2006/06/05/feature-01

- Bliandzic, B., 'Twelve convicted in murder of Serb leader Djindjic', 23 May 2007, <http://www.reuters.com/article/idUSL2351147>
- Reuters, BBC, Radio B92, Serbian Government Website, 'Serbia-Montenegro Parliament Paves Way for New Extraditions', 16 April, 2003, *Southeastern European Times*, http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2003/04/030415-SVETLA-001
- AFP, 'Milosevic died a 'natural death': Dutch prosecutors', 5 April, 2006, *ABC News*, <http://www.abc.net.au/news/stories/2006/04/05/1609550.htm>
- *Serbia: Human Rights Defenders at Risk*, Amnesty International, September, 2009, Index: EUR 70/014/2009, <http://www.amnesty.org/en/library/asset/EUR70/014/2009/en/62eed1a1-0150-4999-aca5-6909720e053b/eur700142009en.pdf>
- 'Serb ex-paramilitaries held over journalist attack', Reuters, 9 May 2007, <http://uk.reuters.com/article/idUKL0971231020070509>
- International Criminal Tribunal of the Former Yugoslavia, 'About the Tribunal', <http://www.icty.org/sections/AbouttheICTY>
- Basic, N., 'You can't run away', as printed in Pouligny, B., Chesterman, S., & Schnable, A., (eds.) *After Mass Crime: Rebuilding states and Communities*, United Nations University Press, New York, p 159.
- Sells, M. A., *The Bridge Betrayed: religion and genocide in Bosnia*, pg 75, http://books.google.com.au/books?id=FAdxZ6F2uEAC&printsec=frontcover&dq=%22weekend+warrriors%22+AND+serbia+and+paramilitary&source=gs_similarbooks_s&cad=1#v=onepage&q=tiger&f=false - Accessed 3 March 2010, sourced through Google books. A hard copy can be provided on request.

60. The Tribunal commented that the above sources provided information regarding the formation of the SDG, its activities, what happened to its members at the end of the war, the assassination of Arkan and Arkan's ongoing political legacy. The Tribunal commented that these sources indicate that many of Arkan's associates were implicated in criminal activities before the war and they resumed those activities after the war. The Tribunal commented that some SDG members have been harmed or killed since the war and SDG leaders have been investigated by the authorities. The Tribunal commented however, that there appeared to be no ongoing interest in former members of the SDG or any targeting of its former members either by supporters of the SDG, opponents of the SDG, or the authorities in Serbia. The Tribunal commented that any targeting of former SDG members since the war appears to have been related to more recent activities, and in particular their criminal activities, rather than what they did during the war. The Tribunal commented that the applicant was not a member of a criminal gang either before or after the war and he was not implicated in any activities since the time when he left which would make him a person of interest to the SDG, its opponents, or the authorities in Serbia. The applicant stated that the visit to his relative proves that there is still interest in him. The Tribunal commented that he had such limited information regarding the visit, and no information to indicate that the persons making the inquiries were seeking to harm him, that the Tribunal found it difficult to

accept his conclusion that the visit related to his involvement with the SDG. The applicant did not directly comment.

61. The applicant's adviser commented that the applicant was not presenting his claims properly. She asked if she could offer an opinion and then stated that the applicant's fear was real. The Tribunal commented that it accepted that the applicant was afraid to return to Serbia but what it had to determine was whether his fear was well-founded. The Tribunal indicated that information from external sources did not support the applicant's fear that as a former member of the SDG, or as an associate of Arkan, he will be a person at risk of serious harm in Serbia.
62. The Tribunal referred to the BBC article by Simpson, J., 'Arkan 'victim of gang warfare'', *BBC News*, 11 June, 2000, and commented that even Arkan appears to have been killed for his criminal rather than his political activities. The Tribunal noted that he was murdered on 15 January 2000.
63. The Tribunal noted that the applicant was permitted to live in Country 2 as a refugee for approximately eight years. He was asked if he made any inquiries to ascertain whether he could return and live in Country 2. He stated that he had not made any inquiries other than to obtain the documents he provided to the Tribunal. He indicated that as far as he knows he cannot live in Country 2.
64. The adviser stated that the applicant had information regarding atrocities conducted by the SDG while he was member. She asked if the Tribunal wanted hear evidence regarding those activities. The Tribunal commented that further evidence on the subject was not required. The adviser stated that he witnessed horrific crimes and he still suffered nightmares because of the things he saw during his time with the SDG. The adviser asked the applicant to talk about those crimes. He provided some details.
65. The applicant's adviser stated that the applicant had evidence regarding Arkan and his associates which could implicate those persons in war crimes. The Tribunal commented that those war crimes have been documented and some of the perpetrators, including Arkan, were investigated after the war. The Tribunal commented that information from external sources did not support the applicant's claims that SDG members were either still investigated by the authorities or targeted for their activities in the war.
66. The Tribunal referred to the applicant's claim that he was of a minority religion while Serbians were mostly Orthodox. The Tribunal asked the applicant if he was a religious person. He stated that he did believe and he went to church 7 times since he arrived in Australia. The Tribunal commented that he was of a minority religion while he lived in Serbia and that did not appear to lead to any difficulties for him. He stated that nobody knew he was of this religion. The Tribunal referred to two US Department of State reports, the *2008 Human Rights Report: Serbia*, 25 February 2009 at <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119103.htm> and *International Religious Freedom Report 2009*, Serbia, 26 October 2009, at <http://www.state.gov/g/drl/rls/irf/2009/127335.htm>. The Tribunal commented that these reports provide a reliable assessment regarding the treatment of, and the circumstances of, this religious minority in Serbia. The Tribunal commented that the information does not indicate that people of that religion were either prevented from practicing their religion or subjected to circumstances which amounted to persecution by the Orthodox majority. The applicant stated that people of this religion are snubbed and ignored. He

stated that they have reduced employment opportunities. The Tribunal commented that neither the information provided by the applicant or the information obtained from external sources, indicated to the Tribunal that people of this religious minority in Serbia were subjected to circumstances which amounted to persecution.

67. The Tribunal asked the adviser if she wanted time to consider the information and provide further submissions. The adviser appeared unsure as to whether more submissions would be forthcoming. The Tribunal commented that it would wait for 2 weeks after the hearing for further submissions if the applicant or his adviser wished to make submissions.
68. The adviser subsequently contacted the Tribunal. She indicated that she had not had a chance to consider the information and she wanted more time to read it and make submissions. The Tribunal declined her request but indicated that if any submissions are received before the Tribunal makes its decision then those submissions will be considered by the Tribunal. No submissions were received.

FINDINGS AND REASONS

69. The applicant arrived in Australia approximately 10 years ago, claiming to be [Alias Name], a citizen of Country 1. He has subsequently claimed that he is [Applicant Name], a citizen of Serbia, born in Country 2 approximately 40 years ago. The Tribunal has considered the evidence provided by the applicant regarding his identity and nationality, including official letters from Country 2 and other documents from Serbia relating to his background, and it accepts that he is [Applicant Name], a citizen of Serbia. Accordingly, the country of reference in this matter is Serbia.
70. The applicant claims that he was involved with the paramilitary group the SDG for approximately 2 years, which was led by Zeljko Raznatovic who was commonly known as *Arkan*. He claims that during that period he witnessed human rights violations which were perpetrated by members of the SDG. He claims that in the second year of his involvement with the group he moved from the military camp in Erdut. He claims that he fled from the group and from Serbia because he no longer wanted to be involved with the SDG. He claims that he lived in Country 2 as a refugee for approximately 8 years until he left for Australia. The applicant claims that he now faces serious harm in Serbia because of his involvement with the SDG. He claims that he will be targeted by SDG members and supporters because he is considered a traitor; he will be targeted by Arkan's associates because he has information which implicates them in human rights violations during the war; as well as SDG opponents for being with the SDG during the war; and the authorities in Serbia for his involvement with the SDG. He claims that he will be further targeted in Serbia by the Orthodox majority because he is of a minority religion.
71. The Tribunal has formed the view that some of the dates which the applicant has provided regarding his involvement with the SDG are incorrect. He claims to have met and worked for Arkan at a time when reliable information from external sources indicates that Arkan was in a Croatian prison. Nevertheless, the Tribunal has formed the view that this can be attributed to the applicant's poor memory and it accepts that he was involved with the SDG during the war in the former Yugoslavia. The Tribunal accepts his claim that he acted as an ordinary member of the group and as an officer for its leader. The Tribunal accepts the applicant's claim that he fled from group and from

Serbia. It accepts his claim that he has not returned to Serbia since he left and that he is fearful of returning there because he anticipates harm from either supporters of the SDG, its opponents, or the authorities, because of his involvement with the SDG.

72. The Tribunal has considered information from external sources regarding the SDG's activities during the war, the circumstances of its former members after the war, and whether those former members are being targeted by the persons which the applicant claims to fear. The Tribunal is satisfied by the information from external sources referred to above that the applicant's claims in this regard are not well-founded. The Tribunal accepts that some former members of the SDG have been targeted since the war ended. However, the Tribunal has formed the view that the targeting related to their activities after the war rather than what they did during the war or as members of the SDG
73. The Tribunal is satisfied by information from external sources that criminal alliances and rivalries involving former SDG members has led to the targeting of some former SDG members after the war. However, the Tribunal is not satisfied that they were killed for their involvement with the SDG during the war. The Tribunal has noted that some SDG members were investigated after the war but it is satisfied that it was only the leaders who were investigated. The Tribunal finds that the applicant did not have a prominent leadership role with the SDG, and he has not been implicated in any activities during the war, or since, which will now or in the reasonably foreseeable future attract the adverse interest of either former SDG members, or SDG opponents, or the authorities in Serbia. Accordingly, the Tribunal finds that the applicant's fear in this regard is not well-founded.
74. The Tribunal has considered the applicant's claim that he is of a minority religion while most Serbians are Orthodox. He claims that in Serbia he will be ostracised and discriminated against for being in a religious minority. However, after considering information from external sources referred to above, relating to the treatment and circumstances of people of this religious minority in Serbia, the Tribunal has formed the view that despite some tensions between this minority and the Orthodox majority, people of this religious minority in Serbia are not commonly subjected to treatment which amounts to persecution for Convention purposes. Accordingly, the Tribunal finds that the applicant is not at risk of persecution in Serbia because he is of a religious minority. The Tribunal finds that he will be able to practice his religion freely and safely in Serbia.
75. The Tribunal has considered the applicant's claim that approximately 3 or 4 years ago two officials visited his relative in Serbia. He claims that this incident is proof that he is still a person of interest to the persons he fears in Serbia. However, the Tribunal has formed the view that the applicant's knowledge regarding this matter is so limited that no conclusions can be reasonably drawn from it. The Tribunal accepts that the applicant's relative in Serbia was approached approximately 3 or 4 years ago and asked about the applicant's location. However, the Tribunal is not satisfied on the available information that the inquiries were related to the applicant's involvement with the SDG or that the persons making the inquiries were seeking to locate and harm the applicant. The Tribunal has formed the view that the applicant has insufficient information regarding this matter on which to conclude that the incident supports his view that he is at risk of harm in Serbia and it finds that it is mere speculation on his

part that he is a person of interest to either former members of the SDG, or opponents of the SDG, or the authorities in Serbia, because of his involvement with the SDG.

76. The Tribunal considered the applicant's claim that he has information which can implicate former SDG members in human rights violations during the war. However, after discussing this claim with the applicant it became apparent to the Tribunal that the applicant did not have any information regarding individual members of the SDG which will implicate them in human rights violations or any information which has not already been exposed and investigated since the war ended. The Tribunal has formed the view that the applicant greatly exaggerated the information he has about individual members of the SDG and the risk he now poses to those members. The Tribunal is not satisfied that the applicant has the relevant information or that he is at risk of harm by persons associated with the SDG because he has information about their SDG activities during the war.
77. The Tribunal accepts the applicant's claim that he witnessed distressing incidents during his involvement with the SDG and those incidents continue to cause him distress. The Tribunal accepts the applicant's claim that he fled from Serbia and he has no desire to return there. However, the Tribunal's role is limited to determining whether the applicant faces a real chance of suffering persecution in Serbia for a Convention reason and in this regard it finds that there is no real chance that the applicant will be subjected to persecution in Serbia, by either former members or supporters of the SDG, or opponents of the SDG, or the authorities in Serbia, because of his previous association with the SDG. The Tribunal further finds that the applicant does not face a real chance of suffering persecution in Serbia by the Orthodox majority because he is of a minority religion.
78. Accordingly, and in view of the above findings, the Tribunal finds that there is no real chance that the applicant will be subjected to persecution in Serbia for reasons of political opinion or religion or any other Convention reason.

CONCLUSIONS

79. 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

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

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