

0806382, 0806818 [2008] RRTA 448 (2 December 2008)

DECISION RECORD

RRT CASE NUMBERS: 0806382; 0806818

DIAC REFERENCES: CLF2008/128510; CLF2008/97692

COUNTRY OF REFERENCE: Fiji

TRIBUNAL MEMBER: Luke Hardy

DATE: 2 December 2008

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decisions not to grant the two Applicants Protection (Class XA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATIONS FOR REVIEW

1. These are applications for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the two Applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The Applicants are brothers born in Australia. They were born to two Fijian nationals.
3. The Applicants' father arrived in Australia on a temporary visa and he was entitled to remain in Australia for two months. The Applicants' mother and their siblings were permitted to arrive in Australia around the same time.
4. The Applicants' mother applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa She named the Applicants' father and siblings as dependent ("Part D") applicants, whose fate as far as the protection visa application was concerned depended on the success of her claims. A delegate of the Minister decided to refuse to grant the visas The Applicants' mother applied for review by the RRT
5.
[Information deleted in accordance with s 431 of the Migration Act as this information could identify the applicant].
6. Later, with the whole family facing deportation at the time, the Applicants' father lodged a further protection visa application with the Department. This was a considerable period after the two review Applicants were born. The Applicants' father named them, their mother and their siblings as dependent ("Part D") applicants.
7. The Department wrote to the Applicants' father advising him that s.48 of the Regulations barred him, his wife and his elder children from lodging fresh protection visa applications.
8. The Department advised the Applicants' father that they, however, were eligible to apply, but also advised that their current application was invalid because they had not lodged claims of their own (since they were included as "Part D" applicants).
9. The Department advised that if the Applicants wished to lodge their own claims it would be necessary for them both to lodge "Part C" protection visa applications. The Department advised that the Applicants' father could do this on their behalf and included two "Part C" forms with its letter.
10. The Applicants' own applications for protection visas were received by the Department.
11. The delegate decided, in separate decisions, to refuse to grant the visas and notified the two Applicants of the respective decisions and of the Applicants' review rights by letter
12. The delegate refused the visa applications on the basis that the Applicants were not persons to whom Australia had protection obligations under the Refugees Convention.
13. The Applicants, through their father, applied separately to the Tribunal for review of the delegate's decisions.

14. The Tribunal finds that the delegate's decisions are RRT-reviewable decisions under s.411(1)(c) of the Act. The Tribunal finds that the Applicants, through their father, have made valid applications for review under s.412 of the Act.
15. The Tribunal wrote to the respective Applicants advising them both that it was unable to arrive at decisions favourable to them on the basis of the material in their respective files alone, and inviting them to attend a hearing before it.
16. The Applicants' father and mother attended the hearing via a video-link. No other members of the family attended. In view of the Applicants being infants, the Applicant's father formally advised the Tribunal that he would speak to their claims in this matter on behalf of them both.
17. The hearing was assisted by a telephone interpreter in the English-Fijian medium. The Applicants' father occasionally spoke English and responded to questions before they were translated. There were some logistical and other issues arising throughout the hearing in relation to speech overlap and the need for questions and concerns to be repeated. These occasional issues were dealt with as they arose, allowing for questions and responses, *etc.*, to be repeated where required. At the conclusion of the hearing the Applicants' father confirmed to the Tribunal that in his view his claims on behalf of them had been heard.
18. The Applicants' mother advised the Tribunal before the commencement of the hearing that she did not wish to speak or give evidence.
19. Notwithstanding this, the Tribunal invited her address some concerns about past claims and put its concerns to the Applicants, through their father, under the protocols of s.424AA at a later stage of the hearing. The Applicants' father opted to address the Tribunal's concerns (about what was, and was not, claimed in the Applicants' mother earlier application) at the hearing itself, without need of further time to comment or respond.
20. Late in the hearing, the Applicants' father notified the Tribunal that he wished to submit some written material in the form of some letters and a newspaper article. The Tribunal advised the Applicants' father that the question of what he wished else to submit was a matter for him. After some discussion it was agreed that the Applicants' father would either submit this material at a later agreed date or advise the Tribunal if he was not.
21. The Tribunal received two letters by FAX later the same day.
22. The Tribunal also received a further (unsolicited) submission from the Applicants' father, along with a copy of the newspaper article he had discussed at the hearing.

RELEVANT LAW

23. 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.
24. 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).

25. 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’

26. 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.
27. 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.
28. 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.
29. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
30. 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.
31. 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.
32. 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.

33. 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.
34. 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.
35. 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

36. The Tribunal has before it the Department’s file relating to the Applicants. The Tribunal also has had regard to the material referred to in the delegate’s decisions, and other material available to it from a range of sources.
37. The Tribunal will first give a summary of the claims lodged on behalf of the rest of the Applicants’ family, by and through their mother’s original protection visa application, before they were born.

Previous protection visa application

38. The Applicants’ mother originally claimed that she and the Applicants’ father were abused by rebels loyal to George Speight who led a coup in Fiji in 2000.
39. A short summary of relevant events appears in a UNHCR Refworld report of 4 October 2000:

On 19 May 2000 a group of native Fijian rebels led by businessman George Speight staged a coup, seizing Parliament and taking Prime Minister Mahendra Chaudhry and many other legislators hostage (AP 2 June 2000; *ibid.* 3 Aug. 2000). The rebels, unhappy with the ethnic Indian-led government, wanted the Prime Minister removed from power and ethnic Indians barred from leading the country again (*ibid.*; AP 2 June 2000). A nationalist rally in Suva that same day turned into a riot, with a rampaging mob looting and burning Indian-owned shops and businesses (*ibid.*; *ibid.* 3 Aug. 2000). In the days following the coup, armed gangs attacked Indian homes and businesses in Suva and outlying districts (*ibid.* 2 June; *ibid.* 3 July 2000; *ibid.* 3 Aug. 2000). On 29 May 2000 the army, reacting to the coup attempt and the violence, seized power and imposed martial law (*ibid.* 2 June 2000; *ibid.* 3 July 2000).

(<http://www.unhcr.org/refworld/topic,463af2212,469f2d914d,3df4be3114,0.html>)

40. The Applicants' mother claimed that the supporters of the coup oppressed her and the Applicants' father even though they were native Fijians. She said she and the Applicants' father used to help ethnic Indian Fijians and count many as their friends. She said this attracted harassment from the Rabuka junta regime after the first Fijian coup and also did so during what the Tribunal observes (from information above) to have been a very short-lived political siege by George Speight.
41. The Applicants' mother said she played a vital role with ethnic Indians during the George Speight coup trying to "save" them. She indicated that she did so consistent with her membership of a Marxist group. She said she and the Applicants' father were threatened by their own indigenous Fijian people and abused their children at school. She described the authorities as slow or unwilling to respond to her calls for help in dealing with the harassment she claimed to have received. She said this was why the family decided to leave the country.
42. The Applicants' family remained in Fiji for several years after the George Speight coup. After the coup was dispersed and while Speight and his cronies were being tried and sentenced (in Speight's case to death, but later to life).
43. It is reasonable to conceive that Speight's coup was welcomed by some Fijians who were not happy to see government won by a party led by an ethnic Indian, who were happy to see that this government did not remain in power after the coup and the subsequent general elections and who continue to have generalised or other discriminatory feelings against Fiji's ethnic Indian community. The Applicants' mother said that she continued to encounter harassment because she continued to help and "save" Indians for some unspecified period after the coup.
44. To sum up here, the original claims from this indigenous family involved fear of harm from the supporters of the 2000 Speight coup for reasons of the family's affiliation with ethnic Indians.

The Applicants' father application

45. In claims made to the Department, the Applicants' father said he used to work for a government department. He said he left Fiji because he sensed that the military and the government were at loggerheads in such a way as reminded him of the state of affairs just before coups that occurred in 1987 and 2000.
46. The Applicants' father said that after spending some time in Australia and assessing the situation, he decided not to return to Fiji and applied here for refugee status. He was apparently referring to the protection visa application lodged under his wife's name.
47. The Applicants' father said that soldiers threatened him with guns a couple of times. He said that in view of the latest coup in 2006, which he foresaw before he left Fiji, he will not have a stable future because government workers, in his view, would surely be the first targets of the Fiji military.
48. The Applicants' father said the soldiers might harm him in Fiji as they did before. He said he did not support the takeover of government by the military. He said he could not obtain protection in Fiji because the military has all the power and even has soldiers spying in mufti.

The Applicants' own applications

49. After being advised that he could not lodge a further application on his own behalf, and that his wife and elder children were ineligible to apply again for protection visas, the Applicant's father revised the application, identifying the Applicants as "Part C" applicants.
50. The Applicants' father claimed on the Applicant's behalf that if he returned to Fiji they would have to go with him and suffer as a result of what fate he might meet there.
51. The Applicants' father made a new claim about having been threatened in telephone calls just before he left Fiji.
52. The Applicants' father said on their behalf that he had publicly voiced support for Fiji's Reconciliation Bill before he left Fiji.
53. The Reconciliation Bill was touted by the Qarase government some years ago, probably some time before the Applicants' family left Fiji. It was vehemently opposed by the military and is widely considered to have provided a motivation for the late 2006 coup. The Bill was formally introduced into parliament until November 2006, some years after the Applicants' family left Fiji, and the latest coup happened a few days or weeks after that (Islands Business, "PM says government won't withdraw controversial legislation," 9 November 2006, www.islandsbusiness.com/news/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=130/focusContentID=6894/tableName=mediaRelease/overrideSkinName=newsArticle-full.tpl)
54. The Applicants' father said on their behalf that because of all the pressures on him, including the Reconciliation Bill issue, he had to leave Fiji. He claimed that just after the coup by Commodore Bainimarama, he spoke to the local media where he has been living and working. He said he criticised the unlawful coup.
55. The Applicants' father said on their behalf that if they have to return to Fiji he will be killed by soldiers like those who, it was now claimed, had ordered him at gunpoint to lie down on the ground.
56. The Applicants' father referred again on their behalf to his support for the Reconciliation Bill, saying after he voiced this he received a number of threats from the military. He said the same soldiers are still in the military and have additional power now that they have installed the new government, and listed various offices held by military personnel. He said he received a lot of telephone calls from friends telling him not to return to Fiji.
57. Through their father, the Applicants thus claim fear of persecution in Fiji for what appear to be Convention-related reasons of "political opinion".

The RRT hearing

58. At the RRT hearing the Applicants' father said that if anything happens to him in Fiji the Applicants will grow up without a father and that this would not be good for them.
59. The Applicants' father told the Tribunal that he was nearly shot three times back during the George Speight coup. He revised this claim during the hearing that on a couple of occasions some soldiers who were armed spoke to him forcefully and, on one of these occasions, ordered him and others to lie down.

60. The Applicants' father said he was not really sure why the army harassed him back during the George Speight coup because he was not a supporter of the coup.
61. When asked to provide more detail, the Applicants' father said that there were a few individual occasions on which he encountered members of the army who were on those occasions in the middle of trying to suppress the George Speight coup.
62. The Applicants' father described one individual occasion when some soldiers came to a business he was overseeing and ordered him to let them commandeer some government vehicles which they wanted to use to assist their effort to arrest George Speight and end his coup. He said he told the soldiers at the time that he did not have authority to release the vehicles to them and that they threatened to shoot him if he tried to stop them. He said never meant to get caught up in politics and was only doing his job at the time and did not understand why the army was so harsh with him at the time. From what he claimed at the hearing, the military succeeded in accessing the garage and the vehicles they sought, and he kept his job until he left Fiji several years later.
63. The Applicants' father described another individual occasion, which he said also took place during the 2000 Speight coup, when some soldiers denied him access to a place of work and he tried to argue with them, showing them his access ID, whereupon they brandished guns and ordered him and the others to lie on the ground.
64. The Tribunal put to the Applicants' father that these episodes appeared at best to be examples of heated misunderstandings during a long-since resolved crisis back in 2000, involving a besieged parliament and politicians taken hostage, when the army was trying to restore law and order and trying to avoid being frustrated by regular, day-to-day logistics and processes.
65. In response, the Applicants' father said the army never forgave him for frustrating their work on those occasions and that the same people now run Fiji. He indicated that his attempts to do his job and account for those things over which he was responsible caused the army to impute that he was a supporter of George Speight, and that the army has never forgotten this. Although he did not specifically say as much, his claims about supporting the Reconciliation Bill appear to be claims to the effect that he has given the army, which took over shortly after the bill was officially introduced into the parliament in late 2006, additional reasons to impute that he favours or is soft on George Speight.
66. However, the Applicants' father appeared confused at the hearing when he said that the current coup-installed government is "still the same coup" as the one Fiji experienced in 2000. Clearly, the Applicants' father argued in his own evidence, at other stages of the hearing, that the Fijian army opposed George Speight's (arguably civilian) coup in 2000 and helped to restore the democratic process in that year, whereas it supported Commodore Bainimarama's (military) one just over six years later.
67. The Tribunal put to the Applicants' father that over the years after the George Speight coup he evidently kept his job and that this suggested he was not of any ongoing interest to powerful forces in Fijian society. In response, he said that during those years there was a democratically-elected government in power and that even during that time he received threatening telephone calls "from wherever" He said that now the military was in power he was not sure what might happen.

68. The Tribunal raised the subject and substance of the claims originally made by the Applicants' mother.
69. The Tribunal went through the differences between the claims made by the Applicants' mother in her application and the claims now being made by the Applicants' father: the Applicants' mother claimed that the sources of persecution were those who supported George Speight against the Indian-led government of the day, and who opposed the Applicants' family helping ethnic Indians in Fiji; whereas, the Applicants' father claimed that the sources of the persecution they feared were the military that had suppressed the George Speight coup and imputed that he had been trying to support it by thwarting them.
70. Adhering to the protocols of s424AA, the Tribunal put to the Applicants through their father, who was speaking on their behalf, that the claims in the present application and the claims presented in the previous application were significantly different. The Tribunal put to him that if these differences were not satisfactorily explained, it might lead to the Tribunal being unsatisfied as to the credibility of substantive claims in the present matter and to the Tribunal finding that the Applicants were not entitled to protection visas. The Tribunal invited the Applicants' father to elect whether to respond immediately or to ask for more time to respond; after a little more discussion about what issues needed to be addressed, he responded immediately.
71. The Applicants' father said he came to Australia before the rest of his family. The Tribunal notes he came here on a temporary visa. He said his family wanted to come to Australia to visit with him. He said that he then went to a migration agent.
72. The Applicants' father said he told the migration agent all about his problems in and after 2000 with the military. It appears from this that the Applicants' father and the migration agent discussed lodging a protection visa application. The Applicants' father claimed the migration agent had told him that because he had already been in Australia more than 45 days he would not be eligible for permission to work. He claimed the agent suggested that the family lodge an application with the Applicants' mother as the main ("Part C") applicant apparently since she had been here less than 45 days and would therefore be eligible for work permits for herself and the husband who would then be dependent on *her* application.
73. The Applicants' father said that this was why the agent told him and his wife that it was better for the wife to make claims on behalf of the family, making him dependent on her application, and that for this reason the migration agent persuaded them to lodge claims specific to *her*. He claimed the agent told him that after his wife lodged claims about herself he would later be able to make his claims about himself.
74. This struck the Tribunal as odd because the mother's and father's respective claims seemed so markedly at odds with each other: on one hand, they feared persecution from Speight supporters; on the other, they feared persecution from the forces that arrested and saw to the prosecution of Speight.
75. The Tribunal confirmed with the Applicant's mother that she was aware of having lodged the claims that were included in her protection visa application to the Department. She indicated that she was aware of them. She confirmed that the claims about being a Marxist and about helping and "saving" ethnic Indians were all false claims.

76. Adhering to the protocols of s424AA, the Tribunal put to the Applicants' father, in his capacity as the person who was speaking on the Applicants' behalf, that the claims made in their mother's earlier application were not true.
77. The Applicants' father also said that his wife's claims were not true and that he had learned a big lesson today.
78. The Tribunal put to the Applicants' father that this meant he and his wife had previously presented unreliable claims to the Department. He agreed. He went on to say that he believed that what the army did to him 2000 and several years later over the telephone was what they would continue to do to him. He said that anyone who condemns the military government of Bainimarama would be killed.
79. The Applicants' father then drew the Tribunal's attention to his having spoken to reporters in a subsequently published exchange in which he criticised the Bainimarama junta. He said his friend was granted protection in Australia after he criticised the coup and implied that he should too. He said he had wanted to tell the Tribunal his claims but had been closed off from all angles.
80. The Applicants' father thanked the Tribunal for hearing his (or his sons') case and the hearing ended.

Post-hearing submissions

81. The Applicants' father submitted a letter purporting to be from an official of the SDL Party offices in Suva, Fiji.
82. The letter refers to the Applicants' family having left Fiji several years ago after their father had worked for the government for many. It states they left "due to the political climate".
83. The letter introduces a new claim to the effect that the Applicants' father was a supporter of the SDL Party in Fiji who was frequently victimised for his political affiliations and activities. No detail was provided about this. The Tribunal notes that the SDL is the party formerly led in government by Qarase who was voted in after the Speight disruption was resolved, who proposed the Reconciliation Bill and who was ousted by the Bainimarama coup.
84. The letter states that during the 2000 coup, the Applicants' father was "subjected to a lot of incidents that both threatened his life and family and also his property."
85. The letter states that political uncertainty still obtains in Fiji such that the safety of people like the Applicants' father can never be guaranteed.
86. In the same submission the Applicants' father provided a handwritten letter, purportedly signed by the nightwatchman at a Fijian government department site who attests to the occasion, during the response to the Speight coup, on which some soldiers ordered the Applicants' father to lie down on the ground. He said that *as soon as he told the soldiers who the Applicants' father was the soldiers let him go.*
87. The Applicants' father submitted a statement asserting that the family's original migration agent charged \$3,000 and issued no receipt, telling him and his wife not to tell anyone they

had received migration assistance. He asserted that this man told him he was not eligible to lodge a protection visa application as he had already been in Australia over 45 days.

88. This claim is not consistent with what the Applicants' father said at the RRT hearing, where he said that this man had reportedly told him merely that he would not be entitled to a work permit were he to lodge a protection visa application after having been in Australia more than 45 days.
89. The Applicants' father told the Tribunal now that he would have applied under his own name and included his own claims several years ago had he know that he was eligible to apply. This claim did not appear to sit with what the Applicants' father said at the RRT hearing where he indicated that the issue at stake at the time was whether or not he would be able to receive a work permit upon applying for a protection visa.
90. The Applicants' father said he and his wife trusted this man when he suggested they make claims on her behalf rather than on his. He said he later asked a DIAC officer if he could lodge his own claims and that he was told by her that he should wait until after his wife's case was decided. He provided no evidence to support this claim, or to support the claims made in the immediately preceding paragraphs.
91. The Applicant's father submitted extracts from a newspaper in which appears a report of the son of ousted Prime Minister Qarase rushing back to Fiji to be with his father in the critical aftermath of the coup. In the report the Applicants' father is identified as an ex-official of the Fijian community in the area and reported as having condemned the coup as unlawful and uncontrolled. He is quoted as being a supporter of democracy and as being concerned about Fiji's economic and social health in the wake of yet another coup. He is reported as foreshadowing a community petition to Bainimarama calling for the early restoration of democracy.
92. The Tribunal has regard to the fact that the Bainimarama administration is still in power some years later.
93. The Tribunal consulted the "Fiji" chapter of the US Department of State's Country Reports on Human Rights Practices for 2007 (Washington DC, 2008). The Tribunal notes that there has been some harassment of senior public servants and other prominent persons, including members of the ousted Qarase government, who criticised the Bainimarama coup:

... in December 2006 armed forces commander Commodore Voreqe Bainimarama overthrew the government of Prime Minister Laisenia Qarase of the Soqosoqo Duavata ni Lewenivanua (SDL) party in a bloodless coup d'etat, announced the establishment of an interim military government, and dissolved Parliament. On January 5, the interim military government was replaced by a nominally civilian interim government ("the interim government"), headed by Bainimarama as prime minister. Bainimarama and his Military Council controlled the security forces. There were numerous instances in which elements of the security forces acted independently.

During the year the interim government denied citizens the right to change their government peacefully. A state of emergency in effect for half of the year significantly restricted constitutional provisions for freedom of expression, movement, and assembly and subjected the right to privacy to the military's interpretation without recourse to the courts. The state of emergency was lifted on May 31 but was reimposed for 30 days on September 6 when Qarase returned to the capital from his home island. Under the interim government, the military and police arbitrarily detained and sometimes abused individuals, resulting in three deaths; conducted searches without warrants; engaged in intimidation of the media; and restricted the right to assemble peacefully. Other problems during the year included poor prison conditions; attacks against religious facilities,

particularly Hindu temples; government corruption; deep divisions between indigenous Fijians (57 percent of the population) and Indo-Fijians (38 percent); violence and discrimination against women; and sexual exploitation of children...

Coup opponents detained by the military for questioning and intimidation were typically held in cells at the main military barracks in Suva for short periods, generally overnight. No independent human rights observers were permitted to visit the military detention cells...

In most cases the interim government took no action against military or police personnel alleged to have committed abuses against coup opponents and prodemocracy activists...

Two senior civil servants accused of contributing to a blog were suspended from duty and subjected to disciplinary action. At least two persons were arrested for allegedly authoring or forwarding e-mail messages critical of the interim government...

The constitution provides for freedom of association. During the year the interim government did not restrict persons from joining NGOs, professional associations, or other private organizations, but it targeted for threats and harassment prominent members of the political party of the deposed prime minister and members of NGOs who criticized the coup...

Government officials were only cooperative and responsive to the views of NGOs that avoided criticizing the coup and the interim government...

94. It appears from the foregoing report that mistreatment of persons who stated their opposition to the coup was focused mainly upon prominent persons or person in senior political or administrative positions, and during the designated "state of emergency" periods.
95. The Applicants' father told the Tribunal that a lot more happens in Fiji than is reported and that people like himself have been killed or crippled for criticising the government. He did not support this particular claim.

FINDINGS AND REASONS

96. The Tribunal accepts that the Applicants are nationals of Fiji, or that they, for want of evidence to the contrary, have undisputed access to official recognition of their Fijian nationality by Fijian authorities in view of having been born to two Fijian nationals.
97. The Tribunal is satisfied that the Applicants' father is competent to speak on behalf of the Applicants. The Tribunal accepts that the Applicants' mother was happy to leave this role to her husband and that she did not wish to speak on behalf of her children. The Tribunal draws no negative inferences from her stated unwillingness to speak at the RRT hearing.
98. The Tribunal does, however, have regard to the comments she gave in response to its concerns about the difference between the claims she raised on behalf of the Applicants' family in her application and the claims now being raised by her husband on behalf of the present Applicants. It is fair to observe that the 2006 coup had not occurred at that stage, so that is one factual element that the Applicants' mother could not logically have been in a position to discuss or even reasonably predict, but that does not satisfactorily explain why the Applicants' mother claimed that her family was being harassed by Speight supporters over all those years, whereas her husband later claimed that they were being harassed by the forces that were actually trying to break up the Speight *putsch*.

99. The Tribunal gives weight to the fact that the claims lodged by the Applicants' mother, and also evidently subscribed to at the time by the Applicants' father (according to what he said to the presently-constituted Tribunal in oral evidence and in writing), were denounced by both of the Applicants' parents, at the RRT hearing, and by the Applicants' father in writing later on, as *false claims*.
100. The Tribunal has considered the various and sometimes contradictory explanations give by the Applicants' father for the presentation of those false claims. The overall impression the Tribunal has of all this is that the Applicants' father was more interested, at the time of the first protection visa application, in manipulating things so that he would be able to work in Australia than in telling the truth about life back in Fiji.
101. Having considered this, the Tribunal is of the view that the Applicants' parents have both disclosed that they are and/or have the great potential to be unreliable witnesses in matters such as this and that that the new claims, presented on behalf of the present Applicants by their father, should be approached with great caution.
102. The Tribunal accepts that the Applicants' father worked for a government department in Fiji for many years before coming to Australia on a temporary visa He thus stayed in his government job for several years after the George Speight coup, and the Tribunal considers this to be strong evidence that politically and socially influential forces in Fiji took no significant interest in him.
103. The Tribunal, with some difficulty, accepts that the Applicants' father had some cross moments with soldiers during the days in mid-2000 when they were trying to squash the Speight initiative and restore order. The Tribunal registers its difficulty it has because the Applicants' father plainly exaggerated what happened when he said the soldiers tried to shoot him three times. The Tribunal has had regard to the SDL official's letter which states that during the 2000 coup, the Applicants' father was "subjected to a lot of incidents that both threatened his life and family and also his property." This however is a vague, unexplained and fairly bald assertion.
104. On the evidence before it, the Tribunal gives no weight at all in this review to what happened to the Applicant's father during the army's response to the Speight coup. The Tribunal certainly does not accept the Applicants' father's claim about the army or any other significant element in Fiji coming to regard him as a Speight supporter. The Tribunal gives weight to the transience and fluidity of the events described: the army was evidently just trying to get an important and critical job done in as little time as possible; the Applicants' father's evidence shows that they were seeking logistical support rather than searching for Speight supporters. The Tribunal gives great weight to the evidence of the witness who said in writing that once the soldiers knew who the Applicants' father was, on the occasion they ordered him to lie on the ground, they let him go.
105. The Applicants' father claims that the attitude the army took against him over the ensuing years was to a great extent a result of their having imputed that he was a Speight supporter during the Speight coup. Similarly, he claims that the army now would remember his opposition to them and this would be part of why they would want to persecute him in the event of his returning to Fiji Since the Tribunal does not accept that these views were formed about him back then, the Tribunal logically finds that a significant basis for the army's suspicion of the Applicants' father does not exist.

106. The SDL official's letter, when referring to the Applicants' father family being harassed and to its property being affected, appears to be referring to what happened as a result of the army forming negative imputations about the Applicants' father's behaviour during the coup. The Tribunal gives no weight to the letter on this point as the Tribunal does not accept that the army developed any significant, negative imputations about the Applicants' father during the 2000 coup. Rather, as suggested by the other witness, when the army found out he was a government worker (who was probably just trying to do his job) they treated him with more respect and let him get on with his day.
107. The Applicants' father claimed that he supported the Reconciliation Bill. This claim is vague, in that it provides no suggestion as to the capacity and manner in which he supported it, and entirely unsupported. In light of some of the other unsupported and unreliable claims about politically courageous acts supposedly (but, in fact, never) performed by the Applicants' parents in Fiji in and after 2000, such as the claims about publicly "saving" and helping ethnic Indians and facing threats as a result, the Tribunal does not accept as fact that the Applicants' father ever took a public stand in regard to the Reconciliation Bill or that he ever attracted criticism from the army or anyone else for doing so or seeming to do so.
108. With great difficulty, the Tribunal is prepared to accept that the Applicants' father was a supporter of the SDL Party in Fiji. He did not directly claim that the Applicants face persecution directly or indirectly due to his having been a supporter of the SDL. The only evidence suggesting that the Applicants might be affected by their father's support for the SDL appears in the SDL official's letter where it states, vaguely and without detail, that he was frequently victimised for his political affiliations and activities. When asked to explain himself why he thought the army wanted to hurt him it was not any affiliation with the SDL that the Applicants' father mentioned but, rather, George Speight. Having considered all of the evidence before it, including the evidence of the Applicants' father's propensity to subscribe to false and/or exaggerated claims, the Tribunal gives the factor of his reported support for the SDL no weight. This is notwithstanding that the SDL is the party of the ousted Qarase.
109. The Tribunal notes that the Applicant's father took no steps to leave Fiji until several years after the George Speight coup. He says this was because the government was democratically elected and because he threatening telephone calls from the army or "wherever" did not start until later on. The Tribunal gives these claims no weight.
110. The Tribunal does not accept that the Applicants face a real chance of Convention-related persecution arising from anything that occurred before the Applicants' family departed Fiji.
111. What yet needs to be considered is the newspaper article in which the Applicants' father in his capacity as an official of the local Fijian community was asked for and gave an opinion about the Bainimarama coup.
112. The Tribunal must first consider whether the conduct of the Applicant's father in disseminating an opinion against the 2006 coup is conduct to be disregarded under s.91R(3) of the Act.
113. S.91R(3) of the Act states:
 - (3) For the purposes of the application of this Act and the regulations to a particular person:

- (a) In determining whether the person has a well-founded fear of being persecuted for one or more of the reasons mentioned in Article 1A(2) of the ... Convention ...

disregard any conduct engaged in by the person in Australia unless:

- (b) the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee within the meaning of the ... Convention ...

114. The Tribunal draws no negative inferences from the Applicants' father having held a position in the local Fijian association. This evidently happened before the 2006 coup and in spite of the Applicants' father saying that he had already predicted that coup several years earlier, before he came to Australia, the Tribunal finds that it was not something anyone could surely and accurately predict. Accordingly, the election of the Applicants' father (by others) to a post of community official took place prior to the coup, and should not be disregarded under s.91R(3).
115. The Tribunal is of the view that the Applicants' father would naturally have been approached by others at the time for comment on the cup and that to withhold an opinion could have put him under terrible pressure from the community that elected him. He would not have been in control of the way or context in which it was published.
116. For these reasons the Tribunal does not consider it appropriate to disregard to the conduct of the Applicants' father in providing an opinion about the 2006 coup to a local newspaper around that time.
117. For want of evidence to the contrary, this was an isolated comment and in spite of the suggestion that the Applicants' father might participate in a petition to Bainimarama, there is no evidence before the Tribunal that he has positioned himself, or been portrayed by others, as a critic-in-exile of the coup or of Bainimarama's "interim government".
118. The Tribunal notes that critics of the coup in Fiji have lost their jobs and in some cases, during the "state of emergency" periods, been briefly detained. The Tribunal notes that treatment towards critics who were public servants has resulted in demotion within or expulsion from the public service. The Tribunal notes that the Applicants' father has long since abandoned his career in the Fiji public service.
119. The Tribunal is not satisfied on the evidence before it that the Applicants' father would suffer serious disadvantage or harassment in Fiji for having made this statement on behalf of the Fijian community in his local area at the time of the coup. The Tribunal is not satisfied that this evidently isolated statement would give rise to the imputation that the Applicants' father is a significant opponent of the coup. The Tribunal is of the view that the Applicants' father would probably not get his old job back, but it is hard to conceive that he still would have had the job open for him after failing to return to it following his temporary visa period or for the years since.
120. The Applicants' father's claimed profile as a critic (of the army and Bainimarama) of some standing is based in part on claims it has already dismissed. The Tribunal does not accept that he was active with the SDL or a vocal supporter of the Reconciliation Bill, or, naturally, an active supporter of the Indian community in Fiji. He described himself as a fairly low-ranking public servant who only wanted to do his job when he was back in Fiji and not get into

trouble, and the Tribunal gives great weight to this. Therefore the Applicants' father's comments to a local newspaper do not, on the evidence before the Tribunal, add to any pre-existing political profile.

121. Although the Tribunal accepts that the Applicants' father did criticise the coup on one occasion, and that he probably did so sincerely, his comments stand in this body of evidence as a one-off, solicited from him by a local newspaper in Australia at the height of the 2006 coup. Given the singularity and brevity of this pronouncement, and given that the Applicants' father was not a senior figure of any kind in Fiji, and given that when people were being arrested and briefly detained for opposing the 2006 coup and "interim government" such detentions tended to occur during declared states of emergency, the Tribunal does not accept on the evidence before it that he would face serious mistreatment in Fiji as a result of his comments or position or even as a result of the petition activity he foreshadowed in the newspaper article.
122. Consequently, the Tribunal is not satisfied that the Applicants would face significant detriment in Fiji as a result of what their father has said, been and done in Australia. The Tribunal can well imagine that they may suffer economic detriment with their parents trying to set up home in Fiji after so long an absence and with new young children added to the family, but this is irrelevant to the matter under review.
123. All in all, the Tribunal is of the view that this case is without merit. The Tribunal is not satisfied that the Applicants face a real chance of Convention-related persecution in Fiji. The fear of Convention-related persecution in Fiji, claimed on their behalf, is not well founded. They are not refugees.

CONCLUSIONS

124. The Tribunal is not satisfied that the Applicants are persons to whom Australia has protection obligations under the Refugees Convention. Therefore the Applicants do not satisfy the criterion set out in s.36(2)(a) for protection visas.

DECISION

125. The Tribunal affirms the decisions not to grant the two Applicants Protection (Class XA) visas.

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 *Migration Act 1958*

Sealing Officer's I.D.