

1503022 (Refugee) [2016] AATA 3957 (3 June 2016)

**DECISION RECORD**

**DIVISION:** Migration & Refugee Division  
**CASE NUMBER:** 1503022  
**COUNTRY OF REFERENCE:** Malaysia  
**MEMBER:** Chris Thwaites  
**DATE:** 3 June 2016  
**PLACE OF DECISION:** Melbourne  
**DECISION:** The Tribunal affirms the decision not to grant the applicants Protection visas.

Statement made on 03 June 2016 at 5:02pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

## 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 to refuse to grant the applicants Protection visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Malaysia, applied for the visas [in] November 2014 and the delegate refused to grant the visas [in] February 2015.
3. On 2 March 2015 the applicants applied to the Tribunal for review of that decision.

### CONSIDERATION OF CLAIMS AND EVIDENCE

4. The Tribunal has before it the Department's file relating to the applicants' protection visa application and the Tribunal's file relating to the review application.
5. The visa application forms indicate the first named applicant has made his own claims for protection, and the second named applicant (the wife of the first named applicant) was included in the visa application as a member of the same family unit who does not have her own claims for protection.
6. The first named applicant's written reasons for claiming protection are contained in the visa application forms. The first named applicant indicates he left his country because he had been blackmailed by mafia gangsters and had received threats. The first named applicant indicates he has experienced harm in his country and states the mafia gangsters threatened him and used a knife and hurt him. The first named applicant indicates he fears returning to his country and states the mafia gangsters say that if they saw him again they will cut him into pieces. The first named applicant indicates he thinks the mafia gangsters may harm or mistreat him if he goes back to his country. He thinks this will happen because his [sibling] told him the mafia gangsters go every day to his house looking for him. They also tell his [sibling] that if he didn't pay the protection money that he owes them they will not stop looking for him. The first named applicant indicates he does not think the authorities of his country can and will protect him if he returns, and states that he went to the police station to make a report but the police didn't do anything to protect him and his family because the mafia gangsters keep on coming to harm him.
7. [In] February 2015 the delegate refused to grant the applicants protection visas.
8. The delegate's decision record indicates the first named applicant did not contact the Department to arrange an interview and therefore the decision was made on the information before the delegate. The delegate found the first named applicant's claims vague and limited in detail and not substantiated. The delegate also considered the applicant's failure to take up an opportunity to attend an interview to discuss his application raised strong doubts as to the genuineness of his claims. On the information before her, the delegate did not accept the applicant experienced harm or threats in Malaysia, and did not find the authorities all over Malaysia would fail to provide him with protection. On the information before her, the delegate did not accept the first named applicant experienced, or is likely to experience, harm in Malaysia. The delegate was not satisfied the first named applicant had a real chance of being persecuted for a Refugees Convention reason, and therefore was not satisfied the first named applicant had a well-founded fear of persecution. The delegate was not satisfied Australia had protection obligations to the first named applicant under the Refugees Convention and as a result found the first named applicant did not meet the criteria under s.36(2)(a). The delegate was also not satisfied there were substantial grounds for believing

that, as a necessary and foreseeable consequence of the first named applicant being removed from Australia to Malaysia, there was a real risk he would suffer significant harm. Therefore the delegate was not satisfied Australia had protection obligations to the first named applicant under s.36(2)(aa), and refused to grant him a protection visa. The delegate subsequently also refused to grant the second named applicant a protection visa.

9. As noted above, on 2 March 2015 the applicants applied to the Tribunal for review of that decision.
10. The applicants appeared before the Tribunal on 30 May 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
11. During the hearing the first named applicant provided a copy of a photograph of his [business] in Malaysia. He told the Tribunal he feared returning to Malaysia because when he ran his own [business] selling [goods] he had a problem with the local mafia who demanded money from him, and when he was unable to pay they beat him. The applicant told the Tribunal he feared returning to Malaysia because he had disobeyed the local mafia and did not pay them and fought with them and they have threatened that if he returns they will hurt him in a very bad way. He told the Tribunal if he returns to Malaysia his family will try to protect him and they may be harmed and he would be unable to run his business. The second named applicant told the Tribunal if they return to Malaysia she is concerned for her husband, the first named applicant, and they will be unable to run their business and will have no protection because they are of Chinese ethnicity.

#### **RELEVANT LAW**

12. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.

#### **Refugee criterion**

13. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of 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).
14. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
15. 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.



16. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
17. 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)). Examples of 'serious harm' are set out in 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.
18. 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.
19. 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.
20. 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 being persecuted for a Convention stipulated reason. 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.
21. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
22. Whether an applicant is a person in respect of 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.

### **Complementary protection criterion**

23. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

24. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
25. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **Section 499 Ministerial Direction**

26. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

### **Member of the same family unit**

27. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa of the same class as that applied for by the applicant. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Regulations for the purposes of the definition. The expression is defined in r.1.12 of the Regulations.

## **FINDINGS AND REASONS**

### **Nationality**

28. The applicants claim to be citizens of Malaysia and provided a copy of their Malaysian passports to the Department. On the basis of these passports, the Tribunal finds that the applicants are nationals of Malaysia. There is nothing in the evidence before the Tribunal to suggest that the applicants have a right to enter and reside in any country other than Malaysia. Therefore the Tribunal finds that the applicants are not excluded from Australia's protection by subsection 36(3) of the Act. As the Tribunal has found that the applicants are nationals of Malaysia, the Tribunal also finds that Malaysia is the applicants' "receiving country" for the purposes of s.36(2)(aa).

### **Credibility**

29. During the hearing the applicants confirmed they are married, and that they completed the visa application forms themselves and did not wish to add or change anything to the forms. The Tribunal discussed with the applicants their background in Malaysia, family composition, employment and travel history. The Tribunal questioned each applicant in detail about the

incidents with the local mafia and why they decided to close their business and leave Malaysia and what has happened since that time.

30. During the hearing the Tribunal raised its concerns about differences between the first named applicant's oral evidence and the second named applicant's oral evidence. These differences included differences in the number of assaults on the first named applicant, when those assaults occurred, the nature of the injuries, and when they decided to close their business, and what happened after that. The Tribunal also raised its concerns about the difference between the first named applicant's oral evidence and the information he had provided in his visa application form. The Tribunal also raised its concern that country information did not support their claims, and raised concerns about the applicants' delay in making their protection visa application after they arrived in Australia. The Tribunal finds the applicants are not witnesses of truth and the Tribunal is not satisfied they have told the Tribunal the truth in relation to critical aspects of their claims. The reasons for this finding are discussed in more detail below.
31. During the hearing the first named applicant told the Tribunal that at the end of 2012 [a number of] people came to his [business] with a knife and asked for protection money. The applicant told the Tribunal it was [in] the morning, and when the applicant refused they beat him up. On further questioning the applicant told the Tribunal he had been paying people protection money for the last six months, but on that day they asked for more and the first named applicant was only able to give them [amount] Malaysian ringgit. He told the Tribunal that he would normally pay them [amount] Malaysian ringgit each day, and when business was good he would pay [amount] Malaysian ringgit. He told the Tribunal that on this day, at the end of 2012, more people than usual came to his [business] and they wanted more than [amount] Malaysian ringgit. The first named applicant told the Tribunal that after they beat him he went to the police station to report the incident. The first named applicant told the Tribunal that when the police asked who was involved he told them the people who attacked him were Muslim. The police told him that as he was Chinese they couldn't help and that he needed to deal with the situation himself.
32. On further questioning the first named applicant told the Tribunal he was scared so he quit his business straight after this incident. On further questioning the first named applicant told the Tribunal there was more than one incident, and the day after the first incident he returned to his business and these people attacked him again using a knife and they cut him [which] really hurt him. He told the Tribunal he did not see a doctor or hospital because he was scared if he did go to the hospital they would report the matter to the police, and he didn't want the police involved, as they were unable to help him previously. He told the Tribunal he ended his business at that point, and stayed away and hid in his own home. On questioning the first named applicant told the Tribunal that a few weeks after he closed his business people started to come to his house, threatening if they found him and he didn't pay, they would hurt him. He told the Tribunal it was at this point he decided to come to Australia. On further questioning the first named applicant told the Tribunal people visited his house several times before he left for Australia. He told the Tribunal that after he left these people visited his [sibling]'s home from the end of 2013 onwards, and they continue to visit his [sibling]'s home two to three times a week. On questioning the first named applicant told the Tribunal these people do not visit anywhere else, but still visit his [sibling]'s home looking for him.
33. During the hearing the second named applicant told the Tribunal that she worked with her husband, the first named applicant, in their business selling [goods] every day, weather permitting. She told the Tribunal that they ceased the business in March 2013 because of an incident that happened to her husband. She told the Tribunal that on that day, around noon, she was away from the [business], and on her return she saw lots of people around the [business]. She found her husband with a [wound]. She told the Tribunal they went to the



police station to fill in a report. She waited outside the interview room while her husband was interviewed. She told the Tribunal the police would not take a report unless they were paid some money and because they were Chinese, and they were advised to settle the matter themselves. The second named applicant told the Tribunal that her husband decided to stop their business at that time, and subsequently they both were jobless. On questioning, the second named applicant told the Tribunal since they arrived in Australia her husband has called home and been told by his [sibling] that a few people have come to her house asking for him.

34. During the hearing the Tribunal raised concerns about the differences between the applicants' oral evidence.
35. The Tribunal raised its concerns with the first named applicant, noting that the second named applicant's oral evidence was different to his oral evidence. The Tribunal noted the second named applicant's oral evidence was different in relation to how many times the first named applicant was assaulted, and when that assault occurred. The Tribunal noted the second named applicant's oral evidence made no mention of a knife wound to the first named applicant's [body part] , and was different in relation to when he decided to close the business. The Tribunal also noted the second named applicant's oral evidence also failed to mention that people came to their home after the business was closed, looking for the applicant, and threatening that if they see him and he did not pay he would be hurt.
36. In response the first named applicant told the Tribunal he can't remember everything in detail. The Tribunal notes the first named applicant had told the Tribunal he had a problem with his short-term memory. On questioning if the applicant had seen a doctor or had a medical condition or was taking any medicine the might affect his memory and ability to recall things, the applicant told the Tribunal he did not. The Tribunal notes the first named applicant was able to confirm that dates he left Malaysia and when he arrived in Australia and when he made his protection visa application. He was able to give detailed evidence in relation to his family composition, and where his family members lived, as was as detailed evidence about his education and work history; including years and dates he spent working in different positions. On the evidence before it the Tribunal does not accept the first named applicant has a problem with his memory.
37. While the Tribunal does not expect the first named applicant to recall exact dates, it remains concerned that the first named applicant's oral evidence was significantly different to the second named applicant's oral evidence. As noted above those differences included the number of times he was assaulted, the injuries he sustained, the year and month those assaults occurred, and when the business was closed. The Tribunal considers the difference between the first named applicant's oral evidence and the second named applicant's oral evidence reflects poorly on his credibility and the reliability of his evidence.
38. During the hearing the Tribunal raised the same concerns with the second named applicant. The Tribunal noted the second named applicant's oral evidence was different to the first named applicant's oral evidence. The Tribunal noted the first named applicant's oral evidence was different to her oral evidence in relation to how many times the first named applicant was assaulted, and when that assault occurred. The Tribunal noted the first named applicant had told the Tribunal he had sustained a knife injury to his [body part] during the second assault and the Tribunal raised its concern the second named applicant had failed to mention this assault and the knife injury. The Tribunal noted the first named applicant's oral evidence was different to the second named applicant's oral evidence in relation to when he decided to close the business. The Tribunal also noted the first named applicant had told the Tribunal that people came to their home after the business was closed looking for the applicant and threatening that if they see him and he did not pay he would be hurt, which the second named applicant had failed to mention in her oral evidence .

39. In response the second named applicant told the Tribunal she recalls that she was not working, and stayed home most of the time, and that she did not go outside most of the time, and her husband handled everything. She was scared that if she goes outside something would happen again. She told the Tribunal she can't remember exact dates and when she mentioned March, that is when they stopped the business, and she can't remember the exact date of the incident.
40. The Tribunal noted the first named applicant had told the Tribunal he stopped the business after the assaults at the end of 2012, which was different to the second named applicant's oral evidence. In response the second named applicant told the Tribunal she was not at the [business] when the first incident happened, and only worked at the [business] when it was really busy.
41. The Tribunal is not persuaded by the second named applicant's response to its concerns. While the Tribunal has taken into account the second named applicant's oral evidence that she was not at the [business] at the time of the first incident, and may not have worked at the [business] for as long as the first named applicant did every day, the Tribunal does not consider this explains the difference between her oral evidence and the oral evidence of the first named applicant. While the Tribunal does not expect the second named applicant to recall exact dates, it notes that the differences between the second named applicant's oral evidence and the first named applicant's oral evidence includes the number of times the first named applicant was assaulted, the injuries he sustained, the year and month those assaults occurred, and when the business was closed, and whether people visited their home after the business was closed looking for the applicant. The Tribunal considers the difference between the second named applicant's oral evidence and the first named applicant's oral evidence reflects poorly on the second named applicant's credibility and the reliability of her evidence.
42. During the hearing the Tribunal also raised its concerns about the difference between the first named applicant's oral evidence and his visa application form. The Tribunal noted the first named applicant had told the Tribunal that after he left Malaysia people had continued to visit his [sibling]'s home looking for the applicant, and on further questioning he told the Tribunal they did not visit anywhere else. The Tribunal raised its concerns that the first named applicant's oral evidence was different to the information in his visa application form, which indicates his [sibling] told the applicant the mafia gangsters visited his house everyday looking for him. The Tribunal notes the applicant had earlier told the Tribunal that he and his [sibling] did not live in the same house.
43. In response the first named applicant told the Tribunal that sometimes he can't think clearly, and sometimes he could not tell the difference between every day and a few times. On questioning if the applicant had a medical condition or was taking any medication that affected his thinking, the first named applicant told the Tribunal he was not. The Tribunal notes the first named applicant was able to confirm the dates he left Malaysia and when he arrived in Australia and when he made his protection visa application. He was able to give detailed evidence in relation to his family composition, where his family members lived, as well as evidence about his education and work history, including years and dates for different positions. The Tribunal does not accept the first named applicant was unable to think clearly, and the Tribunal is not persuaded by his response to its concerns. The Tribunal considers the difference between his oral evidence and the information in his visa application forms reflects poorly on the first named applicant's credibility and the reliability of his evidence.
44. During the hearing the Tribunal also raised its concerns with the first named and second named applicants, in relation to their delay in making their protection visa application after they arrived in Australia. The Tribunal noted their visa application forms indicate they left



Malaysia [in] May 2013, and arrived in Australia [in] May 2013. During the hearing both applicants confirmed those dates as correct. The Tribunal raised its concerns that the applicants did not make their protection visa application [until] November 2014, over one year and five months after they arrived.

45. In response the first named applicant told the Tribunal that they didn't know they could apply for a protection visa application when they arrived in Australia. He told the Tribunal it was only after he saw it on the news that he found out. On questioning the first named applicant told the Tribunal he saw on the news that a person from Malaysia had applied for protection, and he saw this news item about one year after the first and second named applicants arrived in Australia.
46. The second named visa applicant told the Tribunal she recalled her husband mentioning the news item about protection visas. She had then browsed the departmental website and they decided to apply for a protection visa at that time.
47. The Tribunal is not persuaded by the applicants' response in relation to their delay in making a protection visa application. While the Tribunal accepts the applicants may not have been aware of the protection visa application process when they arrived in Australia, the Tribunal would expect people in their claimed situation, to have left Malaysia in fear of harm, and to fear returning to Malaysia, would have sourced information about protection in Australia with less delay. The Tribunal considers the applicants' delay in making their protection visa application reflects poorly on their credibility and the reliability of their evidence to fear returning to Malaysia.
48. During the hearing the Tribunal also noted country information, specifically the Department of Foreign Affairs and Trade Country Report *Malaysia*, published 3 December 2014, (DFAT report), did not support the applicants' claims. The Tribunal noted the DFAT report referred to credible local and international sources which considered the Royal Malaysia Police to be a professional and effective police force. The Tribunal also noted the report indicated that Malaysian Chinese constitute one of the largest Chinese communities in the world and the second largest ethnic group in Malaysia. The report indicates there are no laws or constitutional provisions directly discriminate against ethnic Chinese in Malaysia. The Tribunal noted DFAT assesses that ethnic Chinese generally do not experience discrimination or violence on a day-to-day basis.
49. In response the first named applicant told the Tribunal that with the police in Malaysia, only money talks. Only the rich and wealthy are helped and only money talks. He told the Tribunal he has lived in Malaysia for [years] and felt like a second class citizen and has experienced discrimination, and the report is only paper work. The second named applicant told the Tribunal that she had also lived in Malaysia, and the report was just to show off to the rest of the world, and that they had experienced discrimination in everyday life in Malaysia.
50. The Tribunal notes the DFAT report states the report is based on DFAT's on-the-ground knowledge and discussions with a range of sources in Malaysia, including the government of Malaysia, civil society, religious and community groups and professional organisations, and takes into account relevant credible open source reports including publications from the Office of the High Commissioner of Human Rights, the UN High Commissioner for Refugees, the UN Development Program, UNICEF, the World Health Organisation, the World Bank, the OECD, Transparency International, Human Rights Watch, Amnesty International, and the United States State Department. The Tribunal considers the DFAT report is an authoritative source in relation to the situation in Malaysia. While the Tribunal notes the DFAT report indicates ethnic Chinese may face low levels of discrimination attempting to gain entry into state tertiary systems or the civil service, and that police officers

wages are low and corruption has been identified as a concern, the country information before the Tribunal does not support the applicants' claims that only rich or wealthy people are assisted by the police in Malaysia, or that the police refuse to help ethnic Chinese Malaysians because of their ethnicity or because their complaints are against Muslim Malaysians. The Tribunal considers this reflects poorly on the applicants' credibility and the reliability of their evidence.

**Refugee criterion: s.36(2)(a)**

51. The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is 'well-founded' or that it is for the reason claimed. Similarly, that an applicant claims to face a real risk of significant harm does not establish that such a risk exists, or that the harm feared amounts to 'significant harm'. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70.)
52. As noted above, the Tribunal finds the applicants are not witnesses of truth, and it is not satisfied the applicants have told the Tribunal the truth in relation to critical aspects of their claims.
53. While the Tribunal accepts the applicant and his wife may have run a small business selling[goods], on the evidence before it, the Tribunal does not accept the first named applicant was required to pay protection money to the local mafia in order to continue his business, or that he was assaulted and beaten when he refused to pay an increased amount of protection money. The Tribunal does not accept the applicants tried to report the incident to the police, (as the Tribunal does not accept the incident occurred) or that the police refused the matter because the applicants were of Chinese ethnicity and/or complaining about Muslims. The Tribunal does not accept the first named applicant was attacked a second time, or that he suffered a knife injury to his [body part] at that time. The Tribunal does not accept the first named applicant was assaulted at the end of 2012, or in March 2013. The Tribunal does not accept the applicants closed their [business] due to the first named applicant being assaulted or threatened or being required to pay protection money. The Tribunal does not accept the first named applicant and the second named applicant closed their business and stopped working for the reasons they have claimed. The Tribunal does not accept people came looking for the first named applicant at his home after he closed his business. The Tribunal does not accept the first and second named applicants were in hiding or in fear of harm at the time they left Malaysia. The Tribunal does not accept people continue to visit the first named applicants' home in Malaysia or his [sibling]'s home in Malaysia, looking for the first named applicant or threatening to harm him if he is found. Given the country information discussed above, and the Tribunal concerns in relation to the applicants' credibility, the Tribunal does not accept the applicants experienced discrimination in Malaysia.
54. On the evidence before it, the Tribunal does not accept there is a real chance the first named applicant, or the second named applicant, or their family in Malaysia, will be approached, harassed, threatened, or harmed, or suffer serious harm, or harm of any kind, from local mafia or Muslims if the first and second named applicants returned to Malaysia now or in the reasonably foreseeable future.

55. On the evidence before it, the Tribunal considers the chance of the first or second named applicant facing serious harm due to their Chinese ethnicity is remote. On the evidence before it the Tribunal is not satisfied there is a real chance either the first or the second named applicant will suffer serious harm because of their Chinese origin if returned to Malaysia now or in the reasonably foreseeable future.
56. On the evidence before it, the Tribunal does not accept there is a real chance the first named applicant, or the second named applicant, will be unable to run a business, as they have in the past, if the first and second named applicants returned to Malaysia now or in the reasonably foreseeable future.
57. On the evidence before it, the Tribunal is not satisfied there is a real chance either the first or second named applicants will be decimated against, or would be unable to access the services and protection of the police in Malaysia if required.
58. On the evidence before it, the Tribunal is not satisfied there is a real chance either the first or second named applicants will suffer serious harm, or harm of any kind, for any of the reasons they have claimed, or for any other reason, if returned to Malaysia now or in the reasonably foreseeable future.
59. Therefore the Tribunal does not accept there is a real chance the applicants will suffer persecution if returned to Malaysia now or in the reasonably foreseeable future.
60. The Tribunal finds that the applicants do not have a well-founded fear of persecution.
61. Having considered the claims individually and cumulatively, for the reasons given above, the Tribunal is not satisfied that the first or second named applicant is a person in respect of whom Australia has protection obligations under s.36(2)(a).

**Complementary protection criterion: s.36(2)(aa)**

62. As the Tribunal has found that the applicants does not meet the refugee criterion in s.36(2)(a) of the Act, the Tribunal has considered whether the first or second named applicant may nevertheless meet the criteria for the grant of a protection visa pursuant to the complementary protection criteria.
63. For the reasons given above, the Tribunal finds the applicants are not witnesses of truth, and it is not satisfied the applicants have told the Tribunal the truth in relation to critical aspects of their claims.
64. On the evidence before it, the Tribunal does not accept the first named applicant was required to pay protection money to the local mafia in order to continue his business, or that he was assaulted and beaten when he refused to pay an increased amount of protection money. The Tribunal does not accept the applicants tried to report the incident to the police, (as the Tribunal does not accept the incident occurred) or that the police refused the matter because the applicants were of Chinese ethnicity and complaining about Muslims. The Tribunal does not accept the first named applicant was attacked a second time, or that he suffered a knife injury to his [body part] at that time. The Tribunal does not accept the first named applicant was assaulted at the end of 2012, or in March 2013. The Tribunal does not accept the applicants closed their [business] due to the first named applicant being assaulted or threatened or being required to pay protection money. The Tribunal does not accept the first named applicant and the second named applicant closed their business and stopped working for the reasons they have claimed. The Tribunal does not accept people came looking for the first named applicant at his home after he closed his business. The Tribunal does not accept the first and second named applicants were in hiding or in fear of



harm at the time they left Malaysia. The Tribunal does not accept people continue to visit the first named applicant's home in Malaysia or his [sibling]'s home in Malaysia, looking for the first named applicant or threatening to harm him if he is found. Given the country information discussed above, and the Tribunal concerns in relation to the applicants' credibility, the Tribunal does not accept the applicants experienced discrimination in Malaysia.

65. On the evidence before it, the Tribunal does not accept there is a real risk the first named applicant, or the second named applicant, or their family in Malaysia, will be approached, harassed, threatened, or harmed, or suffer significant harm, or harm of any kind, from local mafia, if the first and second named applicants returned to Malaysia. For the reasons given above, the Tribunal does not accept there is a real risk the first or second named applicant will suffer significant harm due to their Chinese ethnicity if returned to Malaysia. The Tribunal does not accept there is a real risk they would be unable to run their own business, as they have in the past, or that they would be discriminated against, or would be unable to access the services and protection of the police in Malaysia if required.
66. On the evidence before it, the Tribunal is not satisfied there is a real risk either the first or second named applicant will suffer significant harm, or harm of any kind, for any of the reasons they have claimed, or for any other reason, if returned to Malaysia.
67. In relation to each applicant, the Tribunal is not satisfied there is a real risk the applicant will be arbitrarily deprived of their life; or the death penalty will be carried out on them; or that they will be subject to torture; or cruel or inhuman treatment or punishment; or subject to degrading treatment or punishment, if returned to Malaysia.
68. On the evidence before it, the Tribunal is not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of the first or second named applicant being removed from Australia to a receiving country, there is a real risk either applicant will suffer significant harm.
69. Having considered the claims individually and cumulatively, for the reasons given above, the Tribunal is not satisfied the first named applicant or the second named applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

## **CONCLUSION**

70. For the reasons given above the Tribunal is not satisfied that any of the applicants is a person in respect of whom Australia has protection obligations. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) or (aa) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b) or (c). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

## **DECISION**

71. The Tribunal affirms the decision not to grant the applicants Protection visas.

Chris Thwaites  
Member

3 June 2016