

**1004365 [2010] RRTA 740 (2 September 2010)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1004365

**DIAC REFERENCE(S):** CLF2010/12025

**COUNTRY OF REFERENCE:** Albania

**TRIBUNAL MEMBER:** Karen Synon

**DATE:** 2 September 2010

**PLACE OF DECISION:** Melbourne

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

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of both Albania and Italy and formerly resident in Italy, arrived in Australia [in] October 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] January 2010. The delegate decided to refuse to grant the visa [in] May 2010 and notified the applicant of the decision and her review rights by letter dated [on the same day].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] June 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### RELEVANT LAW

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

### Definition of 'refugee'

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

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the

protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

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

if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department’s file relating to the applicant. The Tribunal has also had regard to the material referred to in the delegate's decision and other material available to it from a range of sources.
20. The applicant is a [age deleted: s.431(2)] married woman who describes her ethnicity as Albanian and her religion as Roman Catholic. She speaks, reads and writes Albanian and Italian. The applicant lists the details of 12 years of schooling and her previous occupation as ‘Hospitality’ and claims to have employed in Italy since 2000 as a chef. The applicant married a second time, in June 2003, to an Italian citizen. The applicant lists as family, a husband in Italy, a brother in Australia, who is an Australian citizen, and a mother who lives in Italy as a permanent resident.

### **Protection Visa Application**

21. At question 40 the applicant claims to be seeking protection so that she does not have to go back to Albania.
22. In answer to question 41 asking the applicant why she left that country (that is Albania) it was claimed:

First marriage was age [deleted] years old and contracted by her parents. The police in Albania are always on the husband’s side. Her husband sexually abused her the whole time. Currently looking for her and the main reason why she left Italy. First husband is from the Albanian underground movement.
23. In answer to question 42 asking the applicant what she fears will happen to her if she returns, it was claimed:

He has a contract on my head.

24. In answer to question 43 asking the applicant who she thinks may harm or mistreat her if she goes back she wrote:

My ex-husband and Albanian underground movement. Albanian culture supports husbands to kill wife that has disgrace them, by deserting them.

25. In answer to question 44 asking the applicant what she thinks will happen to her if she goes back it was claimed:

Albanian culture promotes this behaviour in males at very small age.

26. Other documents on the Department file are:

- A recording of an interview conducted with the applicant [in] March 2010 which the Tribunal has listened to. In summary, the applicant provided the following relevant information to the delegate in support of her claims:
  - She has a resident's permit to live in Italy and that she has a legal right to return to Italy;
  - She cannot return to Italy because she is always in fear;
  - Her husband is in Australia with her;
  - She has an arranged marriage at age [deleted];
  - Her son was born in [date];
  - Throughout the marriage her husband physically and sexually abused her;
  - She told her father she was being abused but he said it was her fault;
  - One night she went to the police who found her a safe home. They said she could press charges but she did not want to put her father's son in jail. Her son stayed with his father;
  - She had no relationship with her father until 2-3 months before his death. She was estranged from her family and did not attend her brother's wedding;
  - She left Albania for Italy in 1991 and only resumed contact with her son after she moved to Italy;
  - She met her husband 3 or 4 years later and after she remarried her ex-husband started harassing them;
  - Her ex-husband travels a lot for business and can go anywhere: America, Canada, Germany, Greece, Turkey or Italy. After she remarried he started harassing her and she has changed homes 3 times because of this. He would come to her house and threaten her;
  - Her ex-husband beat her husband at his work and injured his cheek. Her husband reported it to the police and pressed charges and there was a court case but her ex-husband asked her son to take the blame;
  - By the time they got to the police station her son had presented himself to the police and said he did it, thereby protecting her ex-husband;
  - She thinks the Italian police force is useless because many times she had been to them and they don't even take notes;

- There has been no outcome of the case because the culprits are in Albania;
  - Her husband said she had to cut all ties with her son and she now has no contact with her son or ex-husband;
  - Last year her ex-husband came to her door and said “I will do the same thing to you as I did to your husband” She did not report this incident to the police because in the past she has called them and they would just say “where is he, we are not chasing him?”;
  - Her ex-husband visits Italy often for business;
  - She has had enough of running from him and, while her nephews have said they will go after him, she does not want a blood feud;
  - She has seen her ex-husband “a thousand times” since 1995/1996;
  - She is seeking protection from Italy and Albania;
  - She does not think the Italian authorities will protect her because they have done nothing to protect her so far, they are not interested in foreigners and the court case will take years to finish;
  - The last time she saw her ex-husband he said “I am getting old now but when I go, I will take you with me...I have nothing to lose now”.
  - She visited her family in Albania about once every two years since living in Italy and has not had any problems with leaving or re-entering Italy or entering Albania.
- The following identify documents are also on the Department file:
    - A copy of the applicant’s Italian/European driver’s licence;
    - A copy of the applicant’s Albanian passport valid until [a date in] 2016;
    - A copy of a card titled ‘Tessera Sanitaria’ (untranslated);
    - A copy of the applicant’s Italian identity papers ‘Carta D’Identita’; and
    - A copy of the applicant’s ‘Permesso Di Soggiorno Per Stranieri’ translated as a ‘Foreigners Permit of Stay’ valid until [a date in] 2016.

### **Application for Review**

27. [In] June 2010 an application for review of the primary decision was received.
28. No additional claims or submissions were made prior to the hearing.

### **The Hearing**

29. The applicant appeared before the Tribunal [in] July 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of a female interpreter in the Albanian and English languages as requested by the applicant. The applicant was not represented in relation to the review.

30. At the commencement of the hearing the applicant said she was not feeling well and would like the hearing rescheduled. In support of this request the applicant gave the Tribunal a copy of a letter from [Dr A] dated [in] July 2010. This letter reads

I have seen [the applicant] regularly since she became a patient of the practice in March 2010. She suffers from severe depression and anxiety requiring regular review and medication. The depression could certainly be a result of the traumas she describes as experiencing growing up in Albanian and Italy. I believe her symptoms of depression and anxiety would certainly worsen if she was required to return to Italy.

31. The Tribunal notes that [Dr A] is a general practitioner and not a mental health specialist and that she made no reference in her letter to the applicant's ability to participate in the hearing due to her diagnosed depression and anxiety. The applicant said she was feeling unwell as she had last week changed her medications and her new tablets were having an adverse affect on her. The Tribunal agreed to adjourn the hearing and resume it in 8 days time. The applicant said she was available on [a further date in] July for a resumed hearing and undertook to see her doctor again this week.

### **The Resumed Hearing**

32. The hearing resumed on [a further date in] July 2010. The hearing was conducted with the assistance of a (different) female interpreter in the Albanian and English languages as requested by the applicant.
33. At the commencement of the hearing the Tribunal enquired as to the applicant's health and ability to participate in the hearing. The applicant said she was feeling better. The Tribunal told the applicant that she could request a break whenever she felt she needed one.
34. During the preamble to the hearing, when explaining the definition of refugee as defined in the United Nations Convention concerning the status of refugees and explaining the specified grounds within which the Tribunal must make its decision, the applicant said "I don't think I have any of these 5 reasons in here because I am trying to escape from my ex-husband; it is not that I have been persecuted by the county where I live". The applicant continued "I am [age] years old and even though you don't know me I didn't come here to lie; I will tell you the truth. I want to stay here in Australia and that is the reason I received the visa and I came here and I intended to stay here in Australia but I don't want to lie to you".
35. The Tribunal commenced its questions by summarising that the claim before it today, as it understood it from the documentation the applicant had provided to the Department and listening to the recording of her Department interview, was that she, and her current husband because of her, have been persecuted, harmed and threatened by her former husband and that she believes they can not get effective protection from the authorities in Italy from this harm. The applicant responded yes, that's correct.

36. The Tribunal explained to the applicant that persecution that is aimed at a person for personal reasons rather than for a Convention reason will not, of itself, bring a person within the Convention definition of a refugee as explained in the hearing introduction and that Australia will not be required under the Convention to provide protection if it finds that the authorities of Italy have taken reasonable measures to protect the lives and safety of its citizens and residents, including an appropriate criminal law, and the provision of a reasonably effective and impartial police force and system of justice and that this justice is not selectively withheld from any person or group of people for a Convention reason. In this respect the Tribunal told the applicant that, in particular, it wanted to discuss her claim that the Italian police “are not interested in foreigners”.
37. The Tribunal asked the applicant to explain her family situation in Albania, Italy and Australia. The applicant responded that her younger brother lives in Australia and that he came on a refugee visa while Albania was under the communists in the 1990s. The applicant has four other siblings living in Italy, 3 brothers and one sister, and one sister who is a citizen of the USA who went there with her husband. The applicant said her mother lives in Italy. The applicant said she went to Italy in 1991 and was the first member of her family to move there. She said her mother moved to Italy 4 or 5 years ago. The applicant said all her family in Italy live in [Town 1] and all have permanent residency in Italy. The Tribunal asked the applicant if she has permanent residency in Italy to which she responded yes and that she could go everywhere in Europe. The applicant said she could have taken an Italian passport and citizenship a long time ago but that she wasn’t really interested at that time but had decided to apply for an Italian passport two years ago because then it would be easier for her to go a long way away from her ex-husband. The applicant said she received her Italian citizenship and passport [in] July this year but she does not have it yet as she has to be in Italy to receive it. The Tribunal confirmed its understanding that the applicant has current permanent residency in Italy and applied for and has been granted Italian citizenship but that it cannot be officially given to her until she returns to Italy. The applicant said this was correct but that she will still need to apply for visas to travel to Canada, the USA and Australia. The applicant said she can currently travel and stay anywhere in Europe.
38. The Tribunal asked the applicant what year she permanently departed Albania and how many times she had travelled back there since her departure. She responded that she arrived permanently in [Town 1], Italy in 1991 and that she had travelled many times back to Albania to see her mother who was ill but that she always went secretly just to see her mother.
39. The applicant said she remarried 8 years ago but had lived with her now husband as a de-facto couple for 8 years before that. She said her husband is still in Australia on an extended visitor’s visa and that the Australian government was happy to extend it as he is an Italian citizen.



40. The Tribunal asked the applicant who had suggested she apply for protection in Australia and she responded that she had not been advised but had just talked to her brother who suggested she apply for this. The Tribunal asked if she was previously aware of the five Convention reasons for harm that it had outlined earlier in the hearing and she responded that she did not know but that at the interview with the Department she heard about these. The applicant said she thought she might be part of a particular social group because people came from countries like South Africa and became refugees even though their countries were not at war.
41. The Tribunal asked why she believes she might have to go back to Albania and she said she does not need to go back to Albania. The Tribunal pointed out that in answer to question 40 of her protection visa application she claimed to be seeking protection so that she does not have to go back to Albania. The applicant responded that she fears harm in both countries because of her ex-husband but that she does not need to go back to Albania.
42. The Tribunal then advised the applicant that it would be assessing her claims to be a refugee against Italy as her place of habitual residency as she has lived there since 1991, had permanent residency and because, by her own evidence today, she has applied for, and been granted, Italian citizenship although she does not have the formal documents and travelled to Australia on an Albanian passport. The Tribunal explained that this means it will be assessing her claims against Italy rather than against Albania. The applicant said she understood this.
43. The Tribunal told the applicant that it accepted her account of her life in Albania as she told the delegate, including her marriage at a young age, the abuse she suffered from her husband, her estrangement from her family and that she had to leave her former husband and son in order to be safe from the spousal violence. The Tribunal told the applicant that because it accepted this account, it would only be asking questions about, and focusing on, her claims in relation to her time in Italy.
44. The Tribunal asked the applicant when her ex-husband first made contact again with her Italy. The applicant responded it was about 10 years ago and at that time he was following her although not as much as later because then he was married to someone else and had a son with her. The Tribunal asked how her ex-husband knew where she lived in Italy to which she responded that it is very easy and not difficult to find someone in Italy and that in the camp (where the Albanians lived before being settled in different towns in Italy) they all exchanged their addresses and that her ex-husband was working as a merchant and she thinks that someone told him where she was living. The Tribunal asked if she had moved at all since first exchanging addresses at the camp. The applicant said that because of her ex-husband she had changed addresses 3 times in the last 5 years but they had always stayed in the same area and that [Town 1] is a very small city and all the Albanians there know each other.

45. The Tribunal asked the applicant to tell it about her claim that her ex-husband assaulted her husband and when this happened. The applicant said it happened about six years ago and the circumstances were that her husband was working [details deleted] and her ex went up to him and said “buon giorno, are you [the applicant]’s husband?” and, when her husband said yes, her ex hit him with an iron bar and her husband sustained an injury to his cheek and had to have an operation and stitches and he still has a mark there. The Tribunal asked the applicant if they reported this to the police and she responded that the hospital notified the police and the police went to the hospital and her husband reported the name of her ex-husband. The applicant said that because her ex-husband was scared he had persuaded their son to take the blame. The Tribunal expressed some disbelief that the police would accept that her son had committed the crime when her husband had himself told the police that her ex-husband had perpetrated it. The applicant responded that as her son and ex-husband were both there when the assault took place her ex-husband said it was her son. The applicant said that the police don’t care less unless they find someone and they are not interested in finding who did something and that her son went to the police and said he was the person who hit her husband. The applicant said that after six months they received a summons to go to the court and it was from the police letter that they saw the proceeding was in her son’s name. Asked what happened as result of this court case the applicant said that because they did not appear the case is still open. The Tribunal asked if her son had been convicted in his absence and she said no, that is not what happens to Albanians in Italy.
46. The Tribunal asked the applicant if her son had returned to Italy since that incident six years and she said she didn’t know and that she has not seen him and although she sometimes speaks to him on the phone they have never spoken about these things.
47. The Tribunal asked the applicant to explain all of the incidents that had happened in the six years since this assault on her husband and she responded that in the last 6 years, at least once or twice a year her ex has approached her and has either threatened her or hurt her. The applicant said the first time she was beaten up he cut her with his ring and that she went to the hospital but did not go to the police because he had threatened to kill her if she went to the police.
48. The Tribunal asked the applicant why she and her husband did not move to another part of Italy to which she responded that her husband would not move and that it is very hard to move in Italy from one city to another and find another job. The applicant said her husband just kept saying “go to the police, go to the police” and after she did go to the police her ex-husband just disappeared. The applicant said that she went to the police four or five times. The applicant explained that in 2005 when she was hit with a ring in her face while she was walking down the street she rang the police and the police came to the street where the attack occurred and told her that after she went to the hospital and got cleaned up she should go to

the police station but she did not go because “I knew they would do nothing to him at the time so it wasn’t worth going”.

49. Asked to explain the next claimed threat or assault the applicant said that five or six months later he came suddenly to her in the street when she was holding her bicycle and that he caught her hand and the bicycle and said “did you go to the police” and she told him “if you touch me today I will go to the police”. The applicant said she did not go the police on that occasion. The applicant said that she has been four or five times to the police and asked the police to keep him away from her but that she never wanted him to go to jail because she was scared of him.
50. The Tribunal asked the applicant to tell it about the various times she went to the police and she responded that she cannot remember the dates. The Tribunal said it did not need the precise dates but rather for her to explain the circumstances of her reports and what the police said and did. The applicant said that she went to police after her leg was broken. Asked to explain the applicant said that when she was coming home from the pharmacy last year she was holding some bread and was nearly at her house when her ex-husband came with a motor bike and hit her as much as he could on her leg. The applicant said that she nearly fainted and then phoned her brother who took her to the hospital. She said that as soon as she got the plaster on she went to the police with her brother and denounced her ex-husband and that the police asked her if she had any witnesses and she said no, there were no witness and the police said they would take everything into consideration and let her know.
51. The interpreter then requested an adjournment which was granted.
52. Upon resumption the Tribunal asked the applicant if she was feeling well enough to continue. The applicant responded “you can write whatever you want but I am not capable of staying too long”. Asked what she meant the applicant said that she couldn’t stand having this kind of conversation for a long time but said she was ok to continue but first she wanted to clarify something. The applicant said that no one made her leave Italy except him; her ex and that deep down in her heart she knows her life is in danger. She said that maybe nothing will happen to her but she knows; she feels it and that the only person who can help her is the Tribunal member. The applicant said that she has not lied although she may be a bit confused.
53. The Tribunal asked the applicant again why she and her husband had not relocated to a different part of Italy saying that surely moving within a country where she has first residency and now citizenship and speaks the language would be easier than moving to a whole new and unfamiliar country with a new language. The applicant responded that she does not think it would be hard to stay here because [name and welfare organisation deleted: s.431(2)] had told her about school here and she is not stupid and can learn the language and find a job and she would go to one of these schools and the community would help her to find

a job. The Tribunal explained that if it found she faced a real risk of serious harm, amounting to persecution, for a Convention reason, it had to consider if she had a right to relocate anywhere else that would be safe and that she herself had said that she can live anywhere in Europe. The applicant said that Australia is a country that is far away from Italy and that in Europe her ex can go any place and that there are lots of Albanians in every country in Europe.

54. The Tribunal asked the applicant to tell it about the other times she had been to the police and why she believes the Italian police won't protect her. The applicant said that this is how it works if you read the statistics you will see that every 48 hours an Italian woman dies in Italy and they are killed by their ex-husbands and ex-fiancées. The applicant said that the women are being killed by the men.
55. The Tribunal again asked the applicant why she believes the Italian police won't protect her in particular. The applicant responded because I am a woman and I have to have a witness to the harassment and to him hitting me. The Tribunal asked if she believes it is because she is a woman or because she is from Albania. The applicant said it is because she is woman and a foreigner. The Tribunal commented that the evidence she had given today did not seem to support this claim as, by her own evidence, when she called the police they had come and then told her to report to the police station after she had gone to hospital but that she had chosen not to pursue this with a formal report. The applicant responded that when her husband was attacked he reported it and it went to court but that nothing happened. The Tribunal pointed out that that experience also does not seem to support her claim as her husband is both a male and an Italian citizen. The Tribunal asked the applicant if she was saying that the Italian police don't protect women and women who are foreigners or, that they don't protect anyone, including male Italian citizens. The applicant responded "the police couldn't protect me or my husband because when you send the summons you need the address to send the summons to and he has left; he goes somewhere else; they can't get him". The Tribunal asked the applicant if she was saying that the police had tried to help but that they are not able to because her ex-husband goes back to Albania and she responded "I don't know about other cases, I know the case about my husband and I know the case about me and when I went there they asked if they had any witnesses and asked where is he and they said if he is not here we can't do anything about it and go home" The Tribunal said that the applicant had said this happened following the incident she had encountered earlier about her broken leg but that she had earlier claimed that she had reported incidences to the police four or five times. The Tribunal asked what happened on these occasions to which the applicant responded "the same thing" The Tribunal pointed out that she had said earlier that when she called the police after her ex-husband cut her with his ring the police had attended the scene and told her to report to the police station after she had been to the hospital but that she had decided not to report the matter formally. The applicant said she made four reports to the police after that and nothing happened.

56. The Tribunal asked the applicant what she believes is the reason that the Italian police do not want to help her. She responded it that it is little bit of both; they can't locate her ex-husband and they are not interested in finding him for her. The Tribunal asked the applicant about the claim she made to the delegate that not only do the police not want to help her but that the cases take so long to come to court to which the applicant responded, yes that's very true.
57. The Tribunal asked the applicant why she believes she is a refugee. The applicant responded that because she is in deep, dire straights and that if she goes far away he won't find her and so she thought she might be part of the special group but that after the Tribunal explained it she thinks she does not get any of these five reasons.
58. The Tribunal asked the applicant to explain her claim that her ex-husband is a member of the Albanian underground movement and she responded that they say "a gangster in their language" and she does not know how to explain it but all his life he has been a gangster and all his life he fights people a lot and has been in trouble. The applicant said he had never been in jail. Asked if he is actually a member of a group the applicant responded that she does not really know but she thinks he is with one of these certain groups of bad people but that she does not really know because she has not been back to Albania for twenty years.
59. The Tribunal asked the applicant why she believes her ex-husband is threatening and assaulting her to which she responded "he wants to take revenge of me, I was a child when I left him and maybe he wants to take revenge, maybe because I left him, maybe because he is crazy, maybe because he was very much in love with me and I don't really know how to explain that but he has said to me many times that if I am going to die, I will die by [his] hand" The Tribunal asked the applicant if she thinks her ex-husband's targeting of her is purely personal and due to their relationship and because she left him to which she responded "of course it's personal, what else have I done to him?".
60. The Tribunal asked the applicant about her claim that her ex-husband has a "contract on my head" to which she responded "I have never said a contract on my head; I never said this". The Tribunal showed the applicant the statement made in her protection visa application in answer to question 42 and she said "no, I never said such a thing". The applicant said that someone had filled out the form for her.
61. The Tribunal then outlined country information (detailed below) from the United States Department of State concerning Italy and advised that while it did record some societal discrimination against foreigners, specifically Roma people, there was no independent information to support a view that state protection is withheld or applied discriminatory to either women or foreign women in their jurisdiction or that she would be restricted in anyway from moving around or relocating anywhere within Italy.

62. The Tribunal invited the applicant's comment on this information and she said that of course she can move around and that she is not a prisoner but that only 50% of that is true and that 50% is a big lie because there are lots of lies and lots of corruption and that the refugee people have been left to die in the streets. The Tribunal asked if she had any comments about her own situation in relation to the country information and she said that she does not know or care about the police force but that she does not have any witnesses and that she did not want to leave Italy for as long as she was alive but for these problems because she has a house and everything and her whole life in Italy. In relation to the information and statistics about violence against women the applicant said "that's true"
63. The Tribunal asked the applicant if there was anything she wanted to add or if anything else had happened to her that she wanted to discuss. The applicant asked how long she would have to leave the country if the Tribunal did not find in her favour because she did not want to break the law. The Tribunal advised the applicant about the process of its written decision and that following this the Department would be in touch with her. The Tribunal told the applicant that it did accept she had been threatened and assaulted by her ex-husband to which the applicant said that so many things had happened to her that she will take them to the grave because she is too ashamed to talk about them. The applicant said that wherever she went in Italy her ex-husband would find her and that even in the south of Italy she would not be safe. The applicant said she does not have the strength to fight anymore. The Tribunal asked the applicant if she wanted to talk about anything to which she responded no.

## **COUNTRY INFORMATION**

64. The United States 2009 Country Report on Human Rights Practices in Italy (released 11 March 2010) provides the following information regarding the police force and the position of women in Italy:

Italy is a multiparty parliamentary democracy with a population of approximately 59.1 million....The government generally respected the human rights of its citizens, although there were problems with lengthy pretrial detention; excessively long court proceedings; violence against women; trafficking in persons; and abuse of homosexuals, Roma, and other minorities.

### **RESPECT FOR HUMAN RIGHTS**

#### **Role of the Police and Security Apparatus**

Civilian authorities maintained effective control over the Carabinieri, the national police, the financial police, and municipal police forces. The government has effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the security forces during the year; however, long delays by prosecutors and authorities in completing investigations of some cases of alleged abuse undercut the effectiveness of mechanisms to investigate and punish police abuses.

On July 14, a court sentenced two of eight Carabinieri arrested in Milan in 2006 for graft and evidence tampering to 30 to 66 months' imprisonment; it acquitted one of them. The eight reportedly used false evidence to extort money from a number of previous offenders. During the year Romani NGOs complained that many Roma lived in constant fear of systematic and invasive searches of their living areas, accompanied by threats of deportation. In 2008 the ECHR issued judgments that found two violations by the country of the right to liberty and security as provided by the European Convention on Human Rights.

#### Arrest Procedures and Treatment While in Detention

To detain an individual, police require a warrant issued by a public prosecutor unless a criminal act is in progress or there is a specific and immediate danger to which they must respond. When authorities detain a person without a warrant, an examining magistrate must decide within 24 hours of the detention whether there is enough evidence to proceed with an arrest. The investigating judge then has 48 hours to confirm the arrest and recommend whether to prosecute. In terrorism cases authorities may hold suspects 48 hours before bringing the case before a magistrate.

Authorities generally respected the right to a prompt judicial determination. The law entitles detainees to prompt and regular access to lawyers of their choosing and to family members. The state provides a lawyer to indigent persons. In exceptional circumstances, usually in cases of organized crime figures, in which there is danger that attorneys may attempt to tamper with evidence, the investigating judge may take up to five days to interrogate the accused before access to an attorney is permitted. Some human rights organizations asserted that the terrorism law is deficient in due process and in some cases resulted in the deportation or return of alien suspects to countries where they had reason to fear persecution. The law allows for increased surveillance and enhanced police powers to gather evidence in terrorism cases, for example, DNA for purposes of identification (see section 2.d.).

Lengthy pretrial detention was a serious problem. During the first half of the year, 47 percent of all prisoners were either in pretrial detention or awaiting a final sentence. The maximum term of pretrial detention is from two to six years depending on the severity of the crime. There is no provision for bail; however, judges may grant provisional liberty to suspects awaiting trial. As a safeguard against unjustified detention, detainees may request that a panel of judges (liberty tribunal) review their cases on a regular basis and determine whether continued detention is warranted.

#### Trial Procedures

The constitution provides for the right to a fair trial, and an independent judiciary generally enforced this right. Trials are public. Defendants have access to an attorney in a timely manner. Defendants may confront and question witnesses against them and may present witnesses and evidence on their own behalf. Prosecutors must make evidence available to defendants and their attorneys upon request. Defendants have a presumption of innocence and the right to appeal verdicts.

Domestic and European institutions continued to criticize the slow pace of justice and cited 51 especially egregious cases in 2008. At the end of 2008, 4,200 petitions seeking compensation from the government for excessively long proceedings were pending in the ECHR. In addition, according to the Court of Cassation, about 30,000 new cases were initiated at the national level in 2008. Also in 2008, the Court of Cassation rendered 3,612.

#### d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The constitution provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. The government cooperated with the UNHCR and other humanitarian organizations to protect and assist refugees, asylum seekers, stateless persons, and other persons of concern. The law prohibits forced exile, and the government did not employ it.

#### Protection of Refugees

The country is a party to the 1951 Convention relating to the Status of Refugees and its 1967 protocol. The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. The country is a party to the EU's Dublin II Instruction, whose partners generally transfer asylum applications to the first member country in which the applicant arrived. In practice the government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened.

The government also provided temporary protection to individuals who may not qualify as refugees under the 1951 convention and the 1967 protocol. In 2008, 4,431 persons received such protection. Between January and August, 1,246 immigrants were granted asylum status, and 1,387 obtained humanitarian protection. According to the UNHCR, the top three countries of origin of persons granted temporary protection were Eritrea, Nigeria, and Somalia. The government provided temporary protection to refugees fleeing hostilities or natural disasters. The government granted such refugees temporary residence permits which had to be renewed periodically and did not ensure future permanent residence....

#### Section 6 Discrimination, Societal Abuse, and Trafficking in Persons

The law prohibits discrimination based on race, gender, ethnic background, and political opinion. It provides some protection against discrimination based on disability, language, or social status. The government generally enforced these prohibitions; however, some societal discrimination continued against women, persons with disabilities, immigrants, and Roma.'

#### Women

Rape, including spousal rape, is illegal, and the government enforced the law effectively. In 2008, according to the Ministry of Interior, 4,637 cases of rape were reported, and police identified 8,845 assailants.



Violence against women, including spousal abuse, remained a problem. In 2007 the Italian National Institute of Statistics (ISTAT) reported that 6.7 million women aged 16 to 70, or 32 percent of all women, had been victims of violence at least once in their lives. Five million women were victims of sexual violence, one million of them of rape or attempted rape. ISTAT estimated that in 2006 there were 74,000 cases of rape or attempted rape, of which 4,500 were reported to the police. Partners reportedly committed approximately 23 percent of sexual abuses. According to the Ministry of Interior, from June 2008 through July 2009, 5,556 cases of sexual abuses were reported to police.

The law criminalizes the physical abuse of women, including by family members; allows for the prosecution of perpetrators of violence against women; and helps abused women avoid publicity. ISTAT reported 113 killings of women by their current or ex-partners in 2008. Law enforcement and judicial authorities prosecuted perpetrators of violence against women, but victims frequently declined to press charges due to fear, shame, or ignorance of the law.

On July 17, the Ministry of Equal Opportunity established a hotline for victims of stalking, in addition to the hotline for victims of violence seeking immediate assistance and temporary shelter. From February 23 through October, 3,247 cases of stalking were reported to the Ministry of Equal Opportunity hotline. Police received 4,124 stalking complaints and made 723 arrests. From March 2006 through 2007, 16,700 women reported episodes of violence to this hotline, and half of them requested assistance. The NGO Telefono Rosa assisted 1,744 victims of violence, 287 of whom were foreigners. The NGO ACMID-Donna established a toll-free number for abused Muslim women and received 5,500 calls from November 2008 through August 2009. Approximately 82 percent of those cases involved violence or other mistreatment by husbands or relatives, including unwillingly being in a polygamous marriage, a situation affecting an estimated 14,000 women.

#### National/Racial/Ethnic Minorities

There continued to be reports that authorities mistreated Roma. The NGOs International and National Union of Roma and Sinti in Italy (UNIRSI) and Opera Nomadi reported cases of discrimination, particularly in housing and evictions, deportations, and government efforts to remove Romani children from their parents for their protection. Government officials at the national and local levels, including those from the Interior Ministry and the Ministry of Equal Opportunity, met periodically with Roma and their representatives.

According to the European Fundamental Rights Agency, the majority of North African immigrants living in the country believed that they were discriminated against and mistreated by police because of their ethnicity.

The government's Office to Combat Racial and Ethnic Discrimination in the Ministry of Equal Opportunity assisted victims of discrimination. In 2007 the office received about 8,000 calls on its national hotline. The majority of complaints related to labor conditions, wages, and discrimination in the provision of public services. The office provided legal assistance and helped mediate disputes.

## FINDINGS AND REASONS

65. In order to be a refugee under the Convention, it is necessary for the applicant to be outside of her country of nationality or the country where she has usually lived and for her to hold a well-founded fear of persecution for at least one of the five grounds listed in the Convention. The applicant travelled to Australia on an Albanian passport however at the hearing claimed to have been granted Italian citizenship [in] July 2010. The applicant has lived in Italy since 1991 and she married an Italian citizen in 2002. The applicant also provided a copy of her Carta Di Soggiorno Per Stranieri (Foreigners' Permit of Stay) which grants her permanent residency in Italy. The Tribunal is therefore satisfied, on the basis of the documents provided and the applicant's own evidence at the hearing, that she is now a national of Italy and has assessed her claims against Italy as her country of nationality.
66. The Tribunal accepts the applicant's account of her life in Albania, including her marriage at a young age, the abuse she suffered from her husband, her estrangement from her family and that she had to leave her former husband and son in order to be safe from spousal violence. The Tribunal also accepts that after the applicant settled in Italy in 1991, her ex-husband subsequently discovered her whereabouts about 10 years ago and has since then, on numerous occasions, threatened, abused, assaulted and physically attacked her. The Tribunal considers the applicant to be witness of truth and the consistency and understated manner in which she recounted her experiences at the hands of her ex-husband has left the Tribunal in no doubt that she genuinely fears she will seriously harmed or even killed by her ex-husband should she return to Italy. The Tribunal also accepts the claims made by the applicant in relation to her ex-husband including that she and her husband have moved residences three times to evade his harassment and that her ex-husband attacked her husband resulting in her husband being admitted to hospital. The Tribunal does not however accept the claim made in the applicant's protection visa application that her ex-husband has a contract on her head as the applicant resiled from this claim at the hearing.
67. However the Tribunal does not accept that the harm the applicant has both experienced in the past and fears in the future has or will be perpetrated for a Convention reason. Persecution aimed at a person as an individual and not for a Convention reason will not, of itself, bring a person within the Convention definition of a refugee. The Court considered the issue of persecution in a purely private matter in *MMM v MIMA* (1998) 90 FCR,

Persecution for the purposes of the Convention connotes some official approbation of the feared conduct, or at least official failure or inability to do something about it, when the general standards of civilised countries would entitle the putative refugee to the protection of the State ... There is nothing in such general standards to suggest that adults not under a disability have such an entitlement when, for private reasons, their families reject them.

68. Further, there is no evidence before the Tribunal that the applicant's ex-husband's violence towards her has been motivated for anything other than private revenge. In making this

finding the Tribunal has considered the applicant's claim that her ex-husband is a member of the Albanian underground movement and/or a gangster however relies on the evidence of the applicant herself at the hearing that she thinks her ex-husband wants to take revenge on her because she left him or because he is crazy or because he loved her and she also gave evidence that his targeting of her is for purely personal reasons. The court considered similar matters in *Basa v MIMA* and found

The applicant did not face persecution because she was a Filipino woman, but because of the unfortunate circumstances of her relationship with [her former lover] and his apparent propensity for violence.

69. Given that the Tribunal has found that the violence perpetrated upon the applicant in the past and feared in the future was and is not perpetrated for a Convention reason, the Tribunal must now consider the applicant's claims that the Italian police and authorities will not protect her from this violence.
70. Failure of state protection can, in some circumstances, constitute persecution within the meaning of the Convention, where such failure is itself for a Convention reason. A majority of the High Court in *MIMA v Khawar* held that the Convention test may be satisfied by the selective and discriminatory withholding of [http://isysweb/isysweb/viewdoc.asp?searchid=284669&docnumber=7&sortfield=7&docurl=\NTSSYD\REFER\Research\Decision\postMLAA\Nonpub\09\0903110\\_LM\\_RRT.doc - hit8#hit8](http://isysweb/isysweb/viewdoc.asp?searchid=284669&docnumber=7&sortfield=7&docurl=\NTSSYD\REFER\Research\Decision\postMLAA\Nonpub\09\0903110_LM_RRT.doc - hit8#hit8) state protection for a Convention reason from serious harm that is not Convention related.
71. The applicant has claimed that she has reported her ex-husband to the Italian police on 4 or 5 occasions and that the police have done nothing. The applicant also claimed that the police require that she provide witness evidence in order to investigate and that they say they cannot pursue her ex-husband because they don't know where he is. The applicant also claims that the lengthy delay in court cases mean that protection is denied to her. Asked why she believes she is being denied protection the applicant claims that it is because she is a woman and a foreigner.
72. A particular social group is a collection of persons who share a certain characteristic or element which unites them and distinguishes them from society at large. Not only must such persons exhibit some common element but the element must unite them, making those who share it a cognisable group within their society. The group must be identifiable as a social unit. Moreover, the characteristic or element which unites the group cannot be a common fear of persecution: the group must not be defined by the persecution.
73. The Tribunal notes the following Australian case law on membership of a particular social group. In the case of *Applicant A v MIEA* (1997) 190 CLR 225, the High Court stated:

The adjoining of “social” to “group” suggests that the collection of persons must be of a social character, that is to say, the collection must be cognisable as a group in society such that its members share something which unites them and sets them apart from society at large. The word “particular” in the definition merely indicates that there must be an identifiable social group such that a group can be pointed to as a particular social group. A particular social group, therefore, is a collection of persons who share a certain characteristic or element which unites them and enables them to be set apart from society at large. That is to say, not only must such persons exhibit some common element; the element must unite them, making those who share it a cognisable group within their society. (per Dawson J at 241)

The use of [the term "membership"] in conjunction with "particular social group" connotes persons who are defined as a distinct social group by reason of some characteristic, attribute, activity, belief, interest or goal that unites them. If the group is perceived by people in the relevant country as a particular social group, it will usually but not always be the case that they are members of such a group. Without some form of internal linking or unity of characteristics, attributes, activities, beliefs, interests or goals, however, it is unlikely that a collection of individuals will or can be perceived as being a particular social group. Those indiscriminately killed or robbed by guerillas, for example, are not a particular social group. (per McHugh J at 264-265)

The concept of persecution can have no place in defining the term “a particular social group”. ... Allowing persecutory conduct of itself to define a particular social group would, in substance, permit the “particular social group” ground to take on the character of a safety-net. It would impermissibly weaken, if it did not destroy, the cumulative requirements of “fear of persecution”, “for reasons of” and “membership of a particular social group” in the definition of “refugee” (per McHugh J at 263)

74. The Full Federal Court in reviewing *Applicant A's* case, in *MIMA v Zamora* (1998) 51 ALD 1 at 6-7, held that:

To determine that a particular social group exists, the putative group must be shown to have the following features. First, there must be some characteristic other than persecution or the fear of persecution that unites the collection of individuals; persecution or fear of it cannot be a defining feature of the group. Second, that characteristic must set the group apart, as a social group, from the rest of the community. Third, there must be recognition within the society that the collection of individuals is a group that is set apart from the rest of the community.

75. In *Morato v MILGEA* (1992) 39 FCR 401, Black CJ stated (at 405):

.. it is necessary to examine the characteristics of the supposed group to see whether, on any sensible view of the expression, those who are said to constitute it can be said to be members of a particular social group - a group that has to be sufficiently cognisable as to have something that may sensibly be identified as membership.

At the very least, a particular social group connotes a cognisable group in a society, and cognisable to the extent that there may be a well-founded fear of persecution by reason of membership of such a group.

76. The Tribunal does accept that ‘women foreigners in Italy’ may constitute a particular social group that is cognizable within Italian society and which shares some interest or experience in common, in this case, the fact that they are immigrants to Italy and that such women are easily identifiable by way of their language and accent.
77. Given this finding the Tribunal must now consider if the persecution feared, that is a lack of state protection, is for reasons of the applicant’s membership of the particular social group

‘women foreigners in Italy’ In this regard the Tribunal has noted the comments of Lindgren J, with Mathews J agreeing, concerning the actions of the State in cases of domestic violence in *MIMA vKhawar & Ors* (2000) 101 FCR 501 at [160]:

... the fact that the police have failed to protect a woman from her husband’s violence will not necessarily provide the bridge between the state and privately motivated harassment. Firstly, the failure may be atypical. Secondly, it may be due to the attitude or ineptitude of a particular police officer. Thirdly, it may be due to systemic inefficiency. Fourthly, the police may be reluctant, for good or bad reason, to become involved in a particular domestic dispute. Unfortunate as the woman’s position would be, these various explanations (and perhaps others) would serve to displace any suggestion that she was a refugee as defined. Something more is required. In my view, that “something more” would be satisfied at least by a sustained or systemic absence of state protection for members of a particular social group attributable to a perception of them by the state as not deserving equal protection under the law with other members of the society, whatever the origin or explanation of that discriminatory perception might be.

78. On the evidence before it, the Tribunal is satisfied that the protection provided by the State in this case is not inadequate or ineffective in the Convention sense. The information before the Tribunal supports a view that the Italian authorities do not promote, condone or permit crimes perpetrated by or to Albanian or former Albanian citizens. The applicant’s own evidence in this regard did not support her claims. The applicant said that after the incident where her ex-husband cut her with a ring that the police did attend the scene of the crime and asked her to attend at the police station after she had been to the hospital but that she had chosen not to go because her ex-husband had threatened her. The applicant also gave evidence at the hearing that she just wanted the police to keep her ex-husband away from her but she did not want him to go to jail because she was afraid of him. In relation to the incident where her ex-husband attacked her husband, charges were laid and a court case held. The Tribunal does not accept that it is a discriminate application of state protection that resulted in her son being wrongly charged since he appears to have confessed to the crime. It makes this finding despite the fact that the applicant said that the police don’t care about getting the right person; they just want to charge someone. Nor does the Tribunal accept that it is a discriminate application of state protection that results in the police being unable to apprehend her ex-husband if he cannot be located by the Italian authorities because he escapes back over the Albanian border. In relation to the “4 or 5 times” the applicant claimed to have sought police protection, she could provide no actual details of these reports despite the Tribunal asking her several times. In relation to the applicant claiming that the police would not investigate her report that her ex-husband had hit her with his motor cycle because she did not have any witlessness and that they told her to go home, the Tribunal does not consider that this did not mean they would not investigate the alleged crime. The enquiry as to witnesses to crimes is a common police procedure and, while the lack of a witness may slow down an investigation, the Tribunal notes that the police did not tell her that they would not investigate the matter.
79. The country information cited above does support a view that violence against women, including spousal abuse, is a problem in Italy and quotes a 2007 Italian National Institute of Statistics report that 32 percent of all women had been victims of violence at least once in

their lives however the country information also states that the Italian law criminalizes the physical abuse of women, including by family members and allows for the prosecution of perpetrators of violence against women and helps abused women avoid publicity. It also states that law enforcement and judicial authorities prosecuted perpetrators of violence against women while noting that victims frequently declined to press charges due to fear, shame, or ignorance of the law.

80. The country information also does not indicate that the Italian authorities and/or police withhold protection on the basis of foreign nationality or ethnicity and nor does it suggest that protection is denied to Albanians or persons fearing harm from Albanians. Consequently in relation to Italy, as the harm feared by the applicant is criminal conduct by private individuals which the state neither encourages nor is powerless to prevent, the Tribunal finds that it does not constitute persecution. Based on this independent country information and the applicant's own evidence, the Tribunal finds that the applicant does not have a well founded fear of serious harm amounting to persecution for a Convention reason if she returns to Italy in the reasonably foreseeable future.
81. The Tribunal has also considered the applicant's statement at the hearing that "if you read the statistics you will see that every 48 hours an Italian woman dies in Italy and they are killed by their ex-husbands and ex-fiancées". While the country information cited above does record that 113 women were killed by their current or ex-partners in 2008 this does not support the applicant's claim of one every 48 hours and, while it does support a view that the applicant is genuinely in fear for her life and safety, it does not raise an additional or particular claim that the Tribunal has not already considered.
82. Finally, there is evidence before the Tribunal in the country information cited above that there are lengthy delays in court processes and proceedings however on the evidence before it the Tribunal does not accept that these delays indiscriminately affect only 'women foreigners in Italy'.
83. On the evidence before it, the Tribunal does not accept that the Italian authorities do not provide effective protection or that they withhold or withdraw the protection of the law from or discriminately apply the law to 'women foreigners in Italy'. Accordingly, the applicant does not have a well founded fear of persecution within the meaning of the Convention.
84. Considering the applicant's claims, both individually and cumulatively, the Tribunal finds that she does not face a real chance of serious harm amounting to persecution on account of her ethnicity, nationality or membership of a particular social group of 'women foreigners in Italy' or any other particular social group or for any other Convention reason now or in the reasonably foreseeable future. She is not a refugee.

#### **Ministerial Intervention Pursuant to s.417 of the Act**

85. The applicant has been diagnosed as suffering from severe depression and anxiety as a result of non Convention violence perpetrated upon her by her ex-husband and, the Tribunal believes, she holds a genuine fear of returning to a country or region where he could again locate her.
86. The evidence before the Tribunal indicates that the applicant is well settled in Italy. She is employed, owns property with her husband and has extended family around her. By her own evidence she has recently been granted Italian citizenship and yet her pervasive and it appears justified fear of her ex-husband's violence has forced her to seek protection in a country as far away from Albania as she could find. The Tribunal found the applicant to be honest and authentic. Her account of her claims was consistent and not over exaggerated. Her bearing at the hearing was one of dignity and composure despite the painful and very sad experiences she had endured and the difficulty she had in recounting them for the Tribunal.
87. In the view of the Tribunal, these factors may constitute compassionate circumstances regarding the age and/or health and/or psychological state of the applicant such that a failure to recognise them would result in irreparable harm and continuing hardship to her.
88. It may therefore be appropriate for the Minister to consider intervening in this matter on public interest grounds pursuant to s.417 of the Act. That is, of course, a matter entirely at the Minister's discretion.

## **CONCLUSIONS**

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

## **DECISION**

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