

**0900871 [2009] RRTA 606 (30 June 2009)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	0900871
<b>COUNTRY OF REFERENCE:</b>	Samoa
<b>TRIBUNAL MEMBER:</b>	Robert Wilson
<b>DATE:</b>	30 June 2009
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	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 Samoa, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations for the grant of a Protection visa.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

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

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

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

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

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

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources, including its file 0900871.
20. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from a witness. The Tribunal hearings were conducted with the assistance of an interpreter in the Samoan and English languages.

#### ***Application for a Protection visa***

21. The applicant is a single Catholic man born in Samoa. The applicant speaks, reads, and writes Samoan, and he has received ten years of education. He was a Church Administrator at a Catholic Church before travelling to Australia.
22. The applicant's responses to the following questions from the Part 'C' application form, are as follows:

Q41. Why did you leave that country?

I had fear of persecution as I was a member of Catholic Church and I am a refugee for being persecuted owing to my portfolio I hold as Catholic Church Administrator.

I took a chance of escaping by making an electronic visa when Pope Paul visited Australia.

Australia has persecution obligation in relation to the applicants like me in accordance with Article 1(2) Convention as amended by the Protocol.

I was always in fear and there were many attempts and threats with dire consequences owing to my allegiance to my Catholic Church Administration.

I narrowly escaped a bullet – shot on [date] at the time when I was confused where to seek protection.

I was quite happy in Samoa prior to [month, year] when I happily organised church activities for Catholics.

In [date] when I had organised a Mass for the Church and made a speech on acceleration of Catholic activities and my statement in the speech to help "Catholics only" angered the Methodist Church and I was pinpointed as the target and this became a starting point in my status in Samoa and should I go back there has been substantial animosity and my other members have advised me to be secured in Australia, as I am disadvantaged owing to denial of fundamental rights of movement of freedom.

Although this is a single act of oppression as my threat and bullet escape is enough threat for the purpose of Convention, there were many other events but I took care and remained among the crowd and now my return to Samoa would mean death.

Q43. Who do you think may harm/mistreat you if you go back?

If I return to my country then there is sure chance of the Methodist Church gangs to look down upon Catholics and at one point I had a narrow escape of a gun-shot. I went to report to the police but the police belongs to Methodist group who counter attacked me.

I had sent a letter to the Community but had no response.

Q44. Why do you think this will happen to you if you go back?

Even if I go back in any part of Samoa I am in great danger as I would be inviting “death”.

It is very difficult to use conventional methods in a country which accepts “bribes” and in this situation the underground operations cannot be controlled as the politicians are loyal to the church they belong to.

If it was easy for me to go back, there was no reason for me to flee Samoa and leave my poor old parents behind.

Q45. Do you think the authorities of that country can and will protect you if you go back? If not, why not?

Basically the politicians are backing only their party-men and because of my statement made in my speech of promotion and “help to Catholics” has created animosity amongst other church members.

The other reason I fear is one of the Catholic Church members was killed but the cause of killing was not known to anybody.

The politicians and the police do not reveal any secrets or any underground operations.

As indicated earlier there is no reason to flee my country and come to Australia and leave behind my friends and parents with whom I am emotionally attached.

Obviously I fall within the definition of the Refugee Act and have a well founded fear of persecution and my return would mean an open invitation to “death”.

***Letter (undated)***

23. The letter is as follows:

To whom it may concern,

This is to certify that [applicant] was the Church Administrator and we confirm that the Methodist activist attacked him and had fear of persecution and his returning to Samoa would mean danger to his life.

The Activities of Methodist Church have been make enquiries with us regarding his whereabouts, We stronglive feel he needs protection Australia Government this fact is true and correct as this message come from Church of Samoa.

I believe that he is in your good hand and look after him, and may God Bless you for your decision and especial for [applicant] while his away

YOUR SINCERELY

(Signed) [signature of person]

***Interview with the applicant and the Minister's delegate***

24. The following is a summary, and it is not a transcript.

25. The applicant's nationality is Samoan and he is of the Catholic faith.
26. He has travelled to American Samoa.
27. He has family in Australia.
28. He feels he is a persecuted refugee from Samoa because he was a volunteer in the Catholic Church. From time to time, there were youth gatherings between the Catholic and Methodist youth. They developed a rivalry, and the other group thought they were favouring their own. That is, they thought they (the Catholics) were biased. There were four Catholics and four Methodists on a group or committee. But the Methodists felt that there was bias.
29. The delegate asked for the applicant's personal experiences. When the program was completed, he heard feedback that they thought he had swayed a decision. Because he was the leader of his four member group, he heard stories that they would persecute him, physically punish him. There were threats of personal harm. On his way to church, the members of the Methodist youth would try to physically harm him. Some of them threatened him, and some hit and punched him.
30. The delegate stated this seemed like a private, criminal matter. He had not reported it to the police. He said he did not want to take the matter further, due to humility and forgiveness. He did not know whether the Police would have acted or not. The Police are so far away it would have taken a long time to get there, and it might have settled by them.
31. The delegate suggested the Catholics could stop having the youth camps, or he could move to another part of Samoa. The applicant stated that they no longer hold any programs. Further, he could not move away from his parents. The delegate suggested they all move away. He stated it is difficult for his parents to move. The other people believe he is the cause.
32. The delegate stated that he seemed to have options, and she explained what the visa meant. She read the UN Definition of a refugee. She stated that the fear is against the government or agents of the government. It appeared to be a private criminal matter, personal threats; and he had options to spare himself private personal harm.
33. The applicant did not have any difficulty leaving Samoa.
34. The delegate asked what would happen if he were to return to Samoa. He would like to leave things a bit longer, say two or three months, before he returns.
35. A document was handed to the delegate, and she said she would make a photocopy.
36. There was a pause in the interview, allowing the applicant to discuss matters with his support person.
37. The applicant was asked if he had anything else to say. He emphasised that he was in deep fear that his life would be threatened, if he were to go back to Samoa. Then the delegate asked, 'But you don't want to see the Police?' He stated no.

***Letter from the applicant (undated)***

38. The letter has been reproduced below.

To whom it may concern,

I wrote this letter from the bottom of my heart to apologies about the day that I had my interview cos I wasn't concerntrate while I had my interview, on the [date] cos I was nervous and scare that there will he anything will happened to me when I come to the immigration, like to lock me up cos I'm not a citizen in Australia and the other hand this is the first time to face with an officer from the immigration, just an memory.

But any way the reason why we didn't ring the police cos my Country is not the same as Australia. New Zealand, and other big country my country is an a small country, only in the city where the police station is not every where like here every suburb where the police station is. In here you don't have to walk anywhere to look for a telephone to use, but my country its hardly find a phone anywhere to use, no puplic phone either and if we ring them they just come about next two days, cos there is no police car to use like here if we ring them they will come in straight away

Anyway my leader still went to the city to report the matter to the police station cos it was getting worse, they use weapons that was a same time I flew to Australia. I feel guilty and scared about all this matter cos they where looking for me. My leader explain the police can't do anything much, they just came and settle things down.

On the [date] I rang my leader to say hellow and thanks about the letter that he to support my case, and he said they keep coming and check when do I have to come back. I am scare cos they try to find where I am living in Australia.

I am baking you Australia for the chance for me. My life is in danger, whenever time I go back I will be a deadmeat.

...

### ***Application for Review***

39. No new claims were provided.

### ***Letter from the applicant***

...

Thank you for your letter dated the [date] and for granting me an extension till the [date].

I have now received the relevant letter from [name of theological college] Theological College from Rev. [name of reverend who will hereafter be referred to as Rev. X] which indicates the horrible moments I had in West Samoa.

I am scared and I have a well founded fear of persecution. I therefore request you to consider my application for a Protection Visa in view of the circumstances explained in the letter under reference.

...

### ***Letter dated [date] from Rev.X***

...

To whom it may concern

Dear Madam/Sir,

With great honour and respect, I write this letter to explain and clarify, as a witness, to the fragile situation in our village, which is of huge concern for the safety of the young man [applicant].

An interdenominational dispute in Samoan villages is always a concern, when it gets to the hands of the young people. The incident in our village, [name of village], is one among many unreported (in the media) cases in Samoa. The dispute in the village, between the Roman Catholic young men and the Methodist youths originated from a dispute in a sports competition, but resulted in an unfortunate brawl that injured some of the young men. [Applicant] was involved because he was the head of the committee that organised the competition, and was wrongly accused of being unfair in making decisions that resulted in the loss of the Methodist youth sports team.

The truth of what happened during that day, although important, cannot prevent the ongoing differences in the village between youth groups. [Applicant] was so fortunate to have the chance to escape the wrath of his accusers when he came to Australia. The police and village elders have been working hard to settle the matter, but deep within the circles of young people, [applicant] has to pay for his actions if he comes back to the village. It is not safe for him to return to the village at the moment. It is not safe for him to return to Samoa as well. Samoa is a small place, and there is nowhere to hide if he comes back. The only alternative is to let him stay in Australia for a few more years. Our concern is the life of [applicant], a useful and talented young man with a bright future. Things here in Samoa could change, and maybe safe for him in the future to return. But for now, it is our concern to protect him from getting involved in violent and criminal activities.

We hope that our concern would also be considered by your honours as vital to our calling, to protect our young people from criminal and violent activities.

Yours truly,

Rev. [name of reverend]

For your information: I teach in a school that is located in the same village where [applicant] comes from. I do support his pledge for more time in Australia, so he would be safe from the violence.

### ***Hearing held before the Tribunal***

40. The following is a summary, and it is not a transcript.
41. The applicant gave the following evidence.
42. The applicant stated that a relative completed his application for a Protection visa, Parts 'B' and 'C'. She asked him questions and he responded to her. She translated the responses into English and wrote them on the forms. The information on the forms 'B' and 'C' were read back to the applicant in his own language so he could understand what had been written. The information on forms 'B' and 'C' is correct. The information on forms 'B' and 'C' still constitute the applicant's claims. There is nothing that has been left out of the applicant's claims that he would now like to add.



43. The applicant provided his Samoan passport. He has not travelled to any countries other than Australia, and American Samoa. The applicant arrived in Australia on [date] He has not returned to Samoa.
44. The applicant lodged an application for a Protection visa. It took him a long time to lodge the application because he did not have enough money.
45. The applicant has always been a Catholic. He was baptized as a child. He came to Australia on a Visitor visa.
46. The Tribunal asked what had happened to the applicant in Samoa, including the bullet fired at him.
47. The applicant said what happened to him in Samoa was between two youth groups. They were religious youth groups who lived in his village. The conflict was between the Catholics and the Methodists. It was over a football match. When the Methodists lost the game they blamed it on the referee, and said that he was biased. That is what started the fight on the football field. Everyone jumped in including the spectators; religion against religion. When the fight broke out the applicant was in the Catholic youth group, and when they saw what was happening they left. Now what is happening is when the Methodists see any Catholics they hunt them out, and vice versa. With that happening, even though the fight has finished, the feud is still going on between the youth. That is when the Methodist boys caught up with the applicant and beat him up. He did not have to go to the doctor as a result.
48. The applicant holds a position in the Catholic church in Samoa. He helped to organise the games. The Tribunal asked whether he was also a Catholic church administrator. He agreed that he was. He has always been involved with the church.
49. After he was beaten, he stayed at home until his wounds were healed and that was when he thought about coming to Australia, so he could escape the problem and escape the people who were angry, and still after him. The football match was a couple of years ago, but he cannot remember the month.
50. The applicant lives in a village in Samoa There are four religions in the village. They are the Mormons, the Methodists, the Congregationalists and Catholics. He cannot avoid the Methodists. There are more Methodists in his village than any other religion. There are a number of chiefs, or Mattais, who rule the village. They are all of different religion. There is always some tension between the religions.
51. The Tribunal asked whether anything else that was bad, had happened to the applicant. He stated that is the main problem, the Methodist boys beat up Catholic boys and it is still happening nowadays.
52. The Tribunal asked whether there was anything else in his story he had not told the Tribunal. He said no.
53. The Tribunal asked the applicant whether there were any other reasons the Methodists picked on him. He stated that the reason he stood out is that he organised all these matches. As a result, he was picked on more than the other Catholic boys. He said they think that the Catholics are biased in setting the matches. The Tribunal asked who appointed the referees.

He stated that they are youth from other village churches. The referee in the match in question was not Christian.

54. The Tribunal asked the applicant whether he reported the problems that he encountered to anyone in authority. He said he did not report it to the Police but the high chiefs were there at the match and they saw everything that happened. The Police are made up of different religious groups.
55. The Tribunal asked whether anyone was injured as a result of the problems due to the football match. He said up until now there has been a lot of tension between the Catholics and Methodists, and the boys are beaten up.
56. The Tribunal showed the applicant the document at page 43 of the Department of Immigration file and asked him whose signature was on the document. He stated that it is the signature of an acolyte from his church. The interpreter volunteered that that meant in Samoan culture that he is second in charge under the priest. The applicant agreed with that.
57. The Tribunal referred to the letter by the applicant at page 44 of the Department file. The Tribunal asked in relation to paragraph 3 of the document who the 'leader' was that the applicant referred to. He said it was the acolyte. The Tribunal asked whether the leader went to the city to report the matter to the Police. The applicant said that is why in due course if he goes back to Samoa he hopes the problem is solved.
58. The Tribunal referred to the Refugee Review Tribunal file, page 33, where there is a letter from the Reverend X. The Tribunal asked what the letter was about. The Tribunal read from the letter the following :

[Applicant] was so fortunate to have the chance to escape the wrath of his accusers when he came to Australia. The Police and village elders have been working hard to settle the matter, but deep within the circles of young people, [applicant] had to pay for his actions if he comes back to the village.
59. The Tribunal asked what it meant when the writer says that the applicant had to pay for his actions before he came back to the village. The applicant did not know what 'pay' means. The Tribunal indicated that maybe it meant that he had done something wrong. The Tribunal asked whether that was correct or not. He said he did not know.
60. The Tribunal read out the following from the letter at Folio 33:

But for now, it is our concern to protect him from getting involved in violent and criminal activities.
61. The Tribunal asked whether this sentence meant anything to the applicant. He said he just hoped and prayed the problem will be solved, and it will not be tit for tat.
62. The Tribunal referred to question 42 of the applicant's application for a Protection visa and asked him how he had been denied fundamental rights of movement or freedom. He stated he cannot move around the island as he may get beaten up. He said people may think he will want to do something bad, so they might murder or kill him.
63. The applicant attends church every Sunday, he goes to Mass. In Australia he goes to his relative's church. His relative is the Pastor at a Christian Church. He goes every week. He

is presently staying with his relative's family. He is the piano player at the church. He is also in the 'Youth'. He is also in the band.

64. The Tribunal asked the applicant if he were to return to Samoa what would he do regarding the practice of his religion. He said he would not. The Tribunal asked would he practise any religion. He said he would probably go back to Congregationalist.
65. The applicant knew the four gospels were Matthew, Mark, Luke and John. The message of the Gospel is that Jesus died for us. The applicant used to pray the Rosary in Samoa but not here. The meaning of the Rosary is the Holy Mother of Mary. There is a litany when you do your prayers. The applicant recited the Lord's Prayer.
66. The witness, a relative of the applicant who lives in Australia, gave the following evidence.
67. She has been here many years, and is a permanent resident. Her brother is a Pastor.
68. The witness knew the applicant from Samoa, before he came to Australia. She knew that the applicant was always involved with the church. When he was young, he always went to church. Even when he came to Australia, she believed it would be good for him, and that is why she brought him out.
69. She stated that even though they were all Christians, there was always tension between the religions and it is very competitive in Samoa.
70. The Tribunal asked whether she had heard anything about what had happened to the applicant in Samoa from other people. She stated that the only person who explained it to her was his mother. The Tribunal asked what she had said to the witness. The witness said that whatever the applicant had explained before is true. But they think he is biased and sets the matches which is not true. That is all she had to say.
71. The Tribunal said words to the following effect to the applicant.

Remember at the beginning of the hearing I told you I may put to you any information that I may consider would be the reasons for affirming the decision of the Department of Immigration. If I do that I must also explain the consequences and relevance of the information and I will invite you to comment on or respond to the information. You may respond to that information orally or in writing or you can come back to the Tribunal and explain it in front of the Tribunal, using an interpreter. You may also seek additional time to comment on or respond to the information.

1. The first information is that there are a number of claims in the Application and other documents, but they were not referred to at the hearing. The relevance of this is that the Tribunal may think that those claims did not happen, and the applicant has made up the story. Further, on other occasions, the applicant has said one thing and there is something else which is different in the documents. This may lead the Tribunal not to believe the applicant. The Tribunal referred to the following.
  - (a) The applicant did not refer to a gunshot at the hearing, whereas he referred to it in answer to question 43 in his Application for a Protection visa. In his answer he said he had a narrow escape from a gunshot.

- (b) The applicant did not refer, at the hearing, to a claimed speech where he referred to helping Catholics only. This is in response to question 41 on the application for a Protection visa. The exact words were “in [month and year] when I had organised a Mass for the church and made a speech on acceleration of Catholic activities and my statement in the speech to help ‘Catholics only’ angered the Methodist Church and I was pinpointed as the target and this became a starting point of my status in Samoa...” The Tribunal indicated that the applicant had not mentioned that point today in the hearing, but it was the main point in his Application. It appeared to be more important than the football match.
- (c) In either the statement, or document on the file, the applicant had said that all the Police in Samoa are Methodists, but at the hearing the applicant said the Police were made up of different religions.
- (d) In the documentation the applicant had said the Police counter-attacked him. However, nothing was said about that at the hearing.
- (e) There was no reference to the applicant sending a letter to the community which he refers to in answer to question 43 of his Application for a Protection visa. There was no reference to that at the hearing.
- (f) The applicant said in answer to this question, that another reason he fears is that a Catholic church member was killed but the cause of the killing was not known to anyone. The Tribunal indicated that it had asked the applicant at the hearing if anyone had been injured and he did not raise this issue with the Tribunal.
- (g) In answer to question 43 of his Application the applicant had said that at one point he had a narrow escape of a gunshot and went to report it to the Police. However at the hearing, the applicant did not say anything about reporting the gunshot or any other matter to the Police.

The Tribunal said regarding (a)-(g), these all come under the heading, as examples of differences in evidence between what had been put in the Application and other documents and what was said at the hearing, and it may lead the Tribunal to believe that the applicant’s credibility is in issue. This may ultimately lead to the applicant not being granted a Protection visa.

2. The Tribunal indicated that it had read some reports about Samoa. The Tribunal indicated that there were different reports, but if the applicant wanted to consult a reference it is the United States Department of State Report 2008, the International Religious Freedom Report for 2008 – Samoa. The Tribunal stated that there are no references in it to tensions between Methodists and Catholics. The reports said that there have been ‘no reports of societal abuses or discrimination based on religious affiliation, belief or practice’. However, there were reports in other documents, particularly the New Zealand Herald dated 23 November 2002, which reported that there was tension between religions but it was mainly to do with traditional religions, for example Methodist, Catholics, and Anglicans; and the new religions like the Assemblies of God. The New Zealand Herald report does say that there is tension, and refers to ‘buildings burned down, beatings, threats of violence and even murder; holy men trussed up and left lying on the street; roads blocked; villagers forced to leave their towns, grandmothers and babies loaded forcefully onto buses and driven away from their homes; and property stolen’. It further goes on to say ‘the conflict has arisen largely because of the emergence of a Samoan branch of the Assembly of God’ Further, ‘that kind of church has been in an ongoing conflict with the larger and longer established churches in Samoa – the Methodist church, Catholic church and the Congregational Christian church of Samoa’.

So, the relevance of this information is that the Tribunal has not been able to find a report regarding tension between Catholics and Methodists. However, you may be successful in finding something about this. If you wish, you can bring that information in to the Tribunal.

You have provided a couple of letters from the Pastors or Priests in Samoa, but they are not clear on what might have happened. That is, it is not clear what might have happened because of the different claims that have been made by you, for example, the football match. If you are going to bring more evidence, then you may bring it from other people who may have seen things happening in Samoa. Ultimately, if the Tribunal goes with the information in front of it, it may mean that you may not get a Protection visa.

3. The last point the Tribunal wanted to raise with the applicant is there are reports that when there are conflicts between the groups, the same report in the New Zealand Herald had stated:

‘...After destruction of property, violence and banishment, several members of the “new” church (that is the Assemblies of God) took their grievances to a higher authority – in Apia.’

And they took the case to the Supreme Court. So the relevance of this is that you may be able to take your matter to the Supreme Court. That would indicate the country is interested in protecting its citizens. If that is the case, Australia does not have to intervene, if Samoa is going to hear the dispute in a Court, and make a decision.

The Tribunal stated that they are the three main points the Tribunal wanted to make.

72. The applicant elected to return in two weeks time to respond orally with the use of an interpreter. He also took away a copy of the CD of the hearing so he could listen again to what took place.

#### ***Letter from the applicant***

73. The applicant stated that he was doing his level best to get more clarification as to the statement made by Rev. X. No further explanation has been received.

#### ***Second Hearing held before the Tribunal***

74. The following is a summary, and it is not a transcript.
75. The applicant was advised that if there was any problem in him understanding what the Tribunal was saying, to let the Tribunal know.
76. The Tribunal indicated that the last time the applicant was before the Tribunal, the Tribunal had given him some information, and he was to respond by coming to the hearing.
77. The Tribunal noted that the applicant had brought two documents with him to the hearing. One was a Statutory Declaration, and the other was referred to as ‘Refugee Claims – [applicant]’. The Tribunal indicated that it had looked at those documents.
78. The Tribunal then asked the applicant if there was anything he wanted to say. He said no.

79. The applicant was advised that the Tribunal had two or three questions arising from the documents. The first question related to the Statutory Declaration where the applicant states that he escaped a bullet shot. The Tribunal asked why the applicant did not refer to that at the last hearing. He said he was not set at that time. He said he was not in the right frame of mind on that day. He was not set, he was very scared.
80. The second point that the Tribunal referred to was that in his document entitled "Refugee Claims", he stated "In fact there is a ban or restriction that the Methodists are imposing on us to stop preaching and they consider the Methodist Church as the dominant and prominent church." The Tribunal indicated that it had not heard those claims before. It had not heard that there was a ban on preaching. The applicant said that the Methodists have a majority in his village and there are not many of his faith in the village. So the Methodists wanted their church to dominate the village. So they put a ban on anyone preaching in the village.
81. The Tribunal asked when the ban was placed. The applicant said it was around the time they had the big fight, but there had always been an unspoken word, as the Methodists were the dominant religion. The Methodists wanted their church to be the domineering church and they no longer want to participate in games, or masses with other churches.
82. Regarding the third question, the Tribunal asked the interpreter to read the following in the Samoan language from the applicant's document marked "Refugee Claims".
- "The restriction constitutes restriction and a meaningful fetter on me from practising the religion and as a [position held by applicant at church] assisting the pastors and the governess of the Church; wanted to kill me as I was strong opponent and gave speeches without fear on behalf of the church."
83. The applicant confirmed the position he held at the church. He assisted the pastors. The Tribunal asked who the governess of the church was. He said that he also assisted the governess, and they are like teachers in the church. The Tribunal asked who wanted to kill the applicant as referred to in the passage. The applicant replied that they were the people from the Methodist church who wanted to kill him.
84. In conclusion the applicant stated that he does not want to return to Samoa. He is not sure whether there is protection for him there.
85. The Tribunal indicated that it had referred previously to applying to the courts in this regard. Also, the applicant could go to the Police and he had not sought protection from the Police to date. In this regard, without having sought protection it is difficult for the applicant to claim that there is no protection. The Tribunal asked what the applicant had to say about that. The applicant said that the majority of the Police are Methodists and they take their view, over the Catholics. He is not so sure if they would protect him.

***Documents provided by the applicant at the hearing***

86. The applicant's Statutory Declaration.

I, [applicant] of [address] do hereby state that the material I provided initially to the Department of Immigration and Citizenship in the Form 866 is correct and the facts stated have been declared in a statutory form.

I, [applicant] do hereby state that I narrowly escaped a bullet shot on [date], and this is the point of time I took my decision to travel to Australia under the Advise of Elders and Rev. [name of reverend (Rev X)]

I, [applicant] do hereby state that I was well placed in Samoa and this incident created a great turmoil and this would be a history under the UN Convention a first of its kind.

I, [applicant] have correctly stated in the Page No.8 of the Form 866C wherein it is mentioned therein that many other events took place and the supporting letter to this cause by [Rev. X] who is the authority of the Church and a peace maker would never make a comment until he is fully satisfied that there is a Danger for me to go back to Samoa and personally I am happy to go to Samoa as my ties and bondages and cultural bindings inherit from there.

Therefore, the incident stated in Form 866 was the major and main incident whereas [Rev. X]'s decision is an addition one.

87. The applicant's document 'Refugee Claims – [applicant]'

I, [APPLICANT] IS GRATEFUL TO YOU FOR DEFERRING THE HEARING DATE TO [DATE].

I CLAIM THAT RELIGION HAS LONG BEEN A MAJOR REASON FOR MY PERSECUTION AND THAT THERE WAS NO PHYSICAL INJURY ON MY BODY AND FOR THE REASON THAT I NARROWLY ESCAPED THE SCENARIO.

IN THE LAST HEARING THERE MAY BE SOME TROUBLE WITH THE INTERPRETATION OF THE STATEMENT MADE BY ME BUT I WISH TO STATE THAT THE POLICE NEVER TOOK UP THE CASE FOR THERE WAS NO MALICIOUS BODILY INJURY AND THE CHURCH ADMINSTRATORS KNEW OF THESE INCIDENTS.

I COULD NOT IDENTIFY THEM AS THE MISCREANTS VIZ METHODISTS' WERE DRESSED UP IN SUCH A MANNER AND IN THAT SPUR OF THE MOMENT IT WAS PRACTICALLY DIFFICULT TO ENVISAGE OR IDENTIFY THEM AS I WAS SIMPLY FEARING FOR MY SAFETY AND ESCAPE. THE LAST HEARING I UNDERSTAND AFTER GOING THROUGH THE CD THAT I NEVER MEANT BEATING UP ME BUT AN ATTACK WITH STICKS THAT I ESCAPED SO PLEASE MODIFY THIS VERSION OF STATEMENT.

I CLARIFY THAT I WAS NOT HOLDING ANY PORTFOLIO AS THE TERM USED IN MY APPLICATION IS INAPPROPRIATE AS THE UNDERSTANDING OF THE WRITER IN ENGLISH AND MY PLACEMENT IN SAMOAN MAY HAVE NOT INTERACTED IN ITS CORRECT PERSPECTIVE OF LANGUAGE.

IT IS JUST A MANIFESTATION OR A PRACTICE OF THE FAITH IN CATHOLIC CHURCH VERSUS THE METHODISTS CHURCH AND THIS CONVENTION SHOULD BE SEEN IN TWO DIMENSIONS. FIRSTLY, YOUR TRIBUNAL SHOULD SEE PROTECTION OF PERSONS WHO ARE AT RISK OF BEING PERSECUTED BECAUSE THEY ARE IDENTIFIED AS ADHERENTS OF A PARTICULAR RELIGION; THE SECOND ASPECT THE TRIBUNAL SHOULD SEE IS THE PROTECTION OF THOSE WHO ARE AT RISK BECAUSE I AM ENGAGED IN RELIGIOUS ACTIVITIES CONSISTENTLY WITH THEIR RELIGIOUS CONVICTIONS.

IN FACT IT IS A BAN OR RESTRICTION THAT THE METHODISTS ARE IMPOSING ON US TO STOP PREACHING AND THEY CONSIDER THE METHODIST CHURCH AS THE DOMINANT AND PROMINENT CHURCH.

Please refer to the federal Court case of Lama v MIMA.

THE APPLICANT WAS A BUDDHIST AND A NATIONAL OF NEPAL WHO CLAIMED TO FACE PERSECUTION IN THE FORM OF THE ENFORCEMENT OF NEPALESE CRIMINAL LAW AGAINST HIM AND IN THE FORM OF COMMUNITY VIOLENCE BECAUSE HE HAD KILLED A COW. THE FULL COURT AGREED THAT A LAW MOTIVATED BY A DESIRE TO PRESERVE OR PROMOTE HINDU RELIGIOUS VALUES WAS NOT, BY ITSELF, SUFFICIENT TO ESTABLISH THAT THE APPLICANT HAD A WELL FOUNDED FEAR OF BEING PERSECUTED FOR RELIGIOUS REASONS; AND THAT IT WAS WELL OPEN ON THE EVIDENCE BEFORE THE TRIBUNAL TO FIND THAT THE LAW AGAINST BOVICIDE IN NEPAL WAS NOT ENFORCED IN A DISCRIMINATORY OR SELECTIVE MANNER.

THE RESTRICTION CONSTITUTES RESTRICTION AND A MEANINGFUL FETTER ON ME FROM PRACTISING THE RELIGION AND AS A [POSITION HELD BY APPLICANT IN THE CHURCH] ASSISTING THE PASTORS AND THE GOVERNANCE OF THE CHURCH; WANTED TO KILL ME AS I WAS STRONG OPPONENT AND GAVE SPEECHES WITHOUT FEAR ON BEHALF OF THE CHURCH. MY CHURCH ADMINISTRATORS FEEL STRONGLY THAT MY RETURN WOULD BE A GREAT DANGER TO MY LIFE AS I AM THE MAIN PERSONS WHOSE RIGHT TO PROSELYTISE AMOUNTS TO PERSECUTION WHERE THIS IS ONE OF THE PRACTICES EXPECTED OR CONDONED BY THE RELIGION.

ON THE OTHER HAND I HAD BEEN AN ACTIVE SPORTS PERSON ORGANISING GAMES AND MY VITAL FIGURE AS A GREAT SPORTSMAN AND HAVING THE LEADERSHIP QUALITY; THE METHODIST WANTED TO TARGET ME BEING THE PILLAR OF THE CATHOLIC CHURCH'S ORGANISER.

...

## **INDEPENDENT COUNTRY INFORMATION**

**What tensions exist in Samoa between Catholics and Methodists, and have there been any negative incidents as a result?**

No information was found in the sources consulted regarding any tension or negative incidents between Catholics and Methodists in Samoa. Reports indicate that the Samoan constitution and law protects the right to freedom of religion. According to the US Department of State (USDOS) *International Religious Freedom Report for 2008 – Samoa* there have been “no reports of societal abuses or discrimination based on religious affiliation, belief, or practice”. However, reports were located in the sources consulted which suggest animosity towards new religious groups from village leaders and traditional Churches in Samoa (including the Catholic and Methodist Church) (US Department of State 2008, *International Religious Freedom Report for 2008 – Samoa*, 19 September, Sections 1-3 –; Freedom House 2008, *Freedom in the World 2008 – Samoa*, 2 July; US Department of State 2009, *Country Reports on Human Rights Practices 2008 – Samoa*, 25 February, Section 2.c –; ‘Samoa Council of Churches calls for review of constitution on freedom of religion’ 2008, *Radio New Zealand International*, 5 December, <http://www.rnzi.com/pages/news.php?op=read&id=43518> – Accessed 5 May 2009 –;



‘Samoa’s minister of justice sets up new law reform commission’ 2003, *Asia Pulse*, 29 January; ‘Guarding the flocks’ 2002, *New Zealand Herald*, 23 November).

The USDOS *International Religious Freedom Report for 2008 – Samoa* states that according to the 2006 census 19.4% of the Samoan population are Catholic and 14.3% are Methodist. The report does not describe any tension between Methodists and Catholics in Samoa or report any negative incidents between the groups. The USDOS report states that Samoan law protects the right to freedom of religion against abuse from government or private actors. The report contains the following information on religious demography and freedom of religion in Samoa:

The 2006 census revealed the following distribution of major religious groups: Congregational Christian, 33.6 percent; Roman Catholic, 19.4 percent; Methodist 14.3 percent; the Church of Jesus Christ Latter-day Saints (Mormons), 13.2 percent; Assemblies of God, 6.9 percent; and Seventh-day Adventist, 3.5 percent. Groups that together constitute less than 5 percent of the population include Jehovah’s Witnesses, Congregational Church of Jesus, Nazarene, nondenominational Protestant, Baptist, Worship Centre, Peace Chapel, Samoa Evangelism, Elim Church, and Anglican. A comparison of the 2001 and 2006 censuses shows a slight decline in the membership of most major denominations and an increase in participation in nontraditional and evangelical groups.

...All religious groups are multiethnic; none is exclusively comprised of foreign nationals or native-born (Western) Samoans. There are no sizable foreign national or immigrant groups, with the exception of U.S. nationals from American Samoa.

...The Constitution provides for freedom of religion, and other laws and policies contributed to the generally free practice of religion. The law at all levels protects this right in full against abuse, either by governmental or private actors.

The Constitution provides for the right to choose, practice, and change the religion of one’s choice, and the Government observes and enforces these provisions. Legal protections cover discrimination or persecution by private as well as government actors.

... There were no reports of societal abuses or discrimination based on religious affiliation, belief, or practice (US Department of State 2008, *International Religious Freedom Report for 2008 – Samoa*, 19 September, Sections 1-3).

A July 2008 report by Freedom House on Samoa states that “relations among religious groups are generally amicable”. The report provides the following relevant information:

The government respects freedom of religion in practice, and relations among religious groups are generally amicable. In 2000, the Supreme Court ruled that the 1990 Village Fono Act, which gives legal recognition to village fono decisions, could not be used to infringe on villagers’ freedom of religion, speech, assembly, and association. Similar Supreme Court rulings followed in 2003 and 2004 (Freedom House 2008, *Freedom in the World 2008 – Samoa*, 2 July).

The most recent report by the US Department of State on human rights in Samoa states that “the law grants each person the right to change religion or belief and to worship or teach religion alone or with others, but in practice the matai [the heads of extended families] often choose the religious denomination of their extended family”. The report provides the following brief information on freedom of religion in Samoa:

The constitution provides for freedom of religion, and the government generally respected this right in practice. The constitution acknowledges an “independent state based on Christian principles and Samoan custom and traditions”; however, there is no official or state denomination. The law grants each person the right to change religion or belief and to worship or teach religion alone or with others, but in practice the matai often choose the religious denomination of their extended family (US Department of State 2009, *Country Reports on Human Rights Practices 2008 – Samoa*, 25 February, Section 2.c).

Information from the World Council of Churches website, dated January 2006 indicates that the “Methodist Church of Samoa” and the “Roman Catholic Church in Samoa” are members of the Samoan Council of Churches (‘Samoa Council of Churches’ 2006, World Council of Churches website, 1 January <http://www.oikoumene.org/en/member-churches/regions/pacific/samoa/scc.html> – Accessed 5 May 2009).

A January 2003 report by *Asia Pulse* reports on the creation of a Law Reform Commission to “address the conflict between traditional customs and Christianity”. The report states that there have been “several instances where village chiefs or matais used traditional custom to exile people who professed belief in new denominations” The report contains the following information:

Samoa’s minister of Justice, Seumanu Aika Ah Wa, says the new Law Reform Commission will address the conflict between traditional customs and Christianity. The comments come after several instances where village chiefs or matais used traditional custom to exile people who professed belief in new denominations.

When the matter has come before the justice system, the court, in several cases ruled that freedom of religion was guaranteed by the constitution and matai had no right to use their traditional authority to tell villagers how they should worship.

The government has yet to announce an outright backing of the constitution when it comes to religious matters.

The Prime Minister, Tuilaepa Sailele, has said the issue will be left with cabinet, which will consider it and report back to the house (‘Samoa’s minister of justice sets up new law reform commission’ 2003, *Asia Pulse*, 29 January).

On 23 November 2002, *The New Zealand Herald* reported on the mistreatment of practitioners who belong to new religious denominations in Samoa. The article reports on “ongoing conflict” in Samoa between traditional churches such as the Catholic and Methodist church and newer evangelistic denominations such as the Assembly of God Church. The report states the new churches have successfully taken cases of mistreatment to the Samoan Supreme Court. The article reports that while the traditional churches and village chiefs have largely respected these Supreme court decisions, the National Council of Churches has asked the government to change the constitution to allow the Prime Minister to “vet” any new religious groups in Samoa. The following is an extract from the report:

There are dozens of cases: buildings burned down, beatings, threats of violence and even murder; holy men trussed up and left lying on the street; roads blocked; villagers forced to leave their towns, grandmothers and babies loaded forcefully on to buses and driven away from their homes; and property stolen.

Surely all this isn't happening in relatively peaceful Samoa, a land many New Zealanders envisage only as an idyllic, friendly holiday resort?

It is, and Samoans will tell you it's been happening for a while. Unseen by tourists and casual visitors, a religious conflict lurks beneath the warm blue sky, the coconut palms and apparently laid-back island lifestyle. It is threatening the fabric of life as Samoans know it – and has implications for democracy as it is understood in this part of the South Pacific.

The conflict has arisen largely because of the emergence of a Samoan branch of the Assembly of God, a relatively evangelistic or charismatic form of Christian church, also popular in New Zealand.

This kind of church has been in an ongoing conflict with the larger and longer established churches in Samoa – the Methodist Church, Catholic Church and the Congregational Christian Church of Samoa (or CCCS).

...The problem is that the more evangelical churches such as Assembly of God work very differently to the big three established churches. They're loud, they're proud and they like to "witness" – part of their mission is to draw others to their church. Often the worshippers they're poaching are the younger members of the village, drawn to the more liberal, more exciting style of service. Guitars, singing, clapping and rousing "hallelujahs" are all part of what Samoans call "the new church".

...Ministers of the established churches like Fau'olo say this noisy, new form of Christianity is actually causing "disharmony" in the villages.

...In an attempt to stop the kind of disruption that so annoys Fau'olo, the matais began outlawing practitioners of the new religion. Often they would ask members of the new churches to desist – or face punishment. This has included everything from threats of murder to actual violence and beatings to banishment (a common form of punishment in Samoa whereby the offender is exiled from their home town) to a general village boycott of the supposed reprobate's business, such as a bus service.

...After destruction of property, violence and banishment, several members of the "new" church took their grievances to a higher authority – in Apia. The only place decisions made under the Village Fono Act can be appealed is in the Lands and Titles Court or the Supreme Court.

Two years ago, in July of 2000, the Samoan Supreme Court ruled on the first of these cases, concerning the banishment of 32 people from Saipipi for conducting Bible classes on communal land.

After several rounds of litigation the "new" church won. This was due to the Supreme Court's finding that the Constitution of Samoa allows for religious freedom. The case set a clear precedent and every similar case that's made it as far as litigation since then, has found in favour of the "new" church.

And although they're reluctant, the established churches and the village chiefs have, on the whole, agreed to abide by these decisions.

...Despite this, the established churches have not yet buried the proverbial hatchet. The National Council of Churches has approached the national Government about changing that part of the Samoan constitution that guarantees Samoan citizens

religious freedom. They want the Prime Minister to personally vet any “new” religions that come along.

Liberal Samoans like Toleafoa, with an eye on international opinion, believe this will not happen. “It’s unthinkable and outrageous,” he says. “But it does give you some idea of how powerful the churches are. However I don’t think the international community will put up with that kind of nonsense. The law says no one can interfere with people’s right to worship and it’s as simple as that” (‘Guarding the flocks’ 2002, *New Zealand Herald*, 23 November –).

The USDOS *International Religious Freedom Report for 2007 – Samoa* stated there were few reports of societal abuses or discrimination based on religious belief or practice.

It referred to The Seventh-day Adventist case in Safa'atoa Lefaga as an example of the limited tension between Fa'a Samoa (Samoan Way) and individual religious rights. Most religions, and especially Christianity, have embraced and incorporated Fa'a Samoa protocols and customs. (US Department of State 2007, *International Religious Freedom Report for 2007 – Samoa*, 19 September, Sections 1-3)

## **FINDINGS AND REASONS**

88. Having regard to the applicant’s passport, the Tribunal finds that the applicant is a national of Samoa. The Tribunal has assessed his claims accordingly.
89. The applicant’s claims have changed, but may be summarized as follows.
90. The applicant is a single Catholic man who lived in a village in Samoa. There are a number of chiefs who rule the village. They are all of different religion. There is always some tension between the religions. The Methodists constitute the majority in the village, and there are few Catholics.
91. The applicant was a Church Administrator at his village Catholic Church, and involved in organising sport in the Catholic Church in Samoa. He held a position in the village church and he helped the clergy. He organised church activities for Catholics. The applicant made speeches fearlessly on behalf of the church. In [month, year] he organised a Mass for the Church and made a speech on the acceleration of Catholic activities. He made a statement in his speech to help ‘Catholics only’ which angered members of the Methodist Church. He became a target. He is disadvantaged owing to denial of fundamental rights of freedom of movement, as he cannot move around the island, as he may get beaten up, or killed.
92. The applicant narrowly escaped a bullet, shot the month following his speech. He went to report this to the Police, but the Police belong to the Methodist group. He sent a letter to the Community but he had no response. One of the Catholic Church members was killed, but the cause of the killing was not known. This worried him.
93. The Methodist activists thought the applicant had swayed a decision in a football match against the Methodists, and favoured the Catholics, which had led to a brawl. The High Chiefs were at the game. The applicant was involved because he was involved in organisation of the competition. The Methodists think that the Catholics are biased in setting the matches. The Methodist youths threatened, and attacked He did not want to take the

personal matter further, and he did not know whether the Police would have acted or not. There are not many telephones, and the Police might take two days to arrive. However, his leader, an acolyte at his church, did go to the city to report the matter to the Police. However, the Police cannot do much, 'they just came and settle things down.' The majority of the Police are Methodists and they take their view, over the Catholics. The applicant is not so sure if they would protect him.

94. Around the time of the brawl, in the village the Methodists imposed a ban on the Catholics, to stop preaching. The Methodists consider the Methodist Church as the dominant and prominent religion. This constitutes restriction and a meaningful fetter on the applicant from practising his religion, and as an assistant to the pastors and the governess of the Church. Further, the applicant is restricted in proselytising, which includes fearless speeches on behalf of the church.
95. Some months after he had been in Australia the applicant rang his leader who stated that they kept coming to check when the applicant was to come back. The feud still exists between the Catholic and Methodist youth, and the Methodist boys still beat up Catholic boys. The people from the Methodist church wanted to kill the applicant. To return to Samoa would mean death.
96. Firstly, the Tribunal will turn to the claims that it does accept. The Tribunal does accept that the applicant is of the Catholic faith, and he lived in a village in Samoa. The Tribunal accepts that there was a dispute arising from a sports event which resulted in a brawl, and the applicant was involved because he was involved in the organisation of the competition, and he was wrongly accused of being unfair in making decisions that resulted in the loss of the Methodist youth sports team. The Tribunal also accepts that the applicant has been attending Church in Australia.
97. It is reasonable that an applicant whose claims are plausible and credible should, unless there are good reasons not to do so, be given the benefit of the doubt (UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, Re-edited, Geneva, January 1992, paras. 196-197 and 203-204). However, it is appropriate that the Tribunal assess the specific claims advanced in support of an applicant's case, bearing in mind that:

A decision-maker does not have to have rebutting evidence available before he or she can lawfully hold that a particular factual assertion by an applicant is not made out.

*(Selvadurai v The Minister for Immigration and Ethnic Affairs and Refugee Review Tribunal, Heerey, J, (1994) 34 ALD 347 at 348).* While the Tribunal accepts that, as observed by Gummow and Hayne JJ in *Abebe v The Commonwealth* (1999) 197 CLR 510, it is hardly surprising that applicants for refugee status may yield to the temptation to embroider their accounts (at paragraph 190), however, for the reasons that follow, the Tribunal does not accept any of the applicant's major claims.

98. The applicant did not refer to a gunshot at the hearing, even though the Tribunal asked him to tell it about what had happened to him in Samoa, including a direct reference to the bullet being fired at him. He did not do so. As a result, the Tribunal asked on another occasion whether anything else of a bad nature had happened to him. He responded that the main problem was the Methodist boys beating up the Catholic boys. The Tribunal asked once more, whether there was anything else in his story that he had not told the Tribunal. He said no. He did not refer to the alleged bullet firing incident. In his written response to the

information provided at the first hearing, the applicant stated that the material in his Application for a Protection visa was correct, and that he narrowly escaped a bullet shot (Q.41) The applicant further referred to the statement of Rev. X. There is no reference in that letter to a bullet being fired at the applicant. At the second hearing the applicant was asked why he did not refer to the bullet being fired at him at the first hearing. The applicant responded that at that hearing, he was not set, he was not in the right frame of mind, he was very scared. The Tribunal does not accept the applicant's reasons for not referring to a bullet being fired at him. The Tribunal was aware that there was the potential that the applicant might have been nervous at the hearing, and tried to put him at ease. Further, he had his relative sitting with him during the hearing and holds a reasonably responsible and elevated position in Samoa. As a result, the Tribunal finds that the applicant's evidence is unreliable on this point and does not accept the claim, and it finds that the applicant's credibility is in issue.

99. Having regard to the applicant's statement in his Statutory Declaration, that the material he provided to the Department of Immigration and Citizenship in the Form 866 (i.e. Parts 'B' and 'C') is correct, and his similar statement to the Tribunal, under oath at the first hearing, then prima facie, any evidence of the applicant which is contrary to the evidence in Form 866 is inconsistent evidence.
100. So, further, in relation to the gunshot claim, at the first hearing, the applicant did not say anything about reporting the gunshot to the police. However, in answer to Q. 43 the applicant referred to the gunshot, and he 'went to report to the Police, but the Police belongs to the Methodist group who counter attacked me.' Now, this may mean that he set off to report the incident to the Police, but changed his mind because they are Methodists. It may also mean that the applicant went and reported the matter to the Police. The Tribunal put the general nature of whether the applicant reported the gunshot to the applicant in the information at the first hearing. In his written response 'Refugee Claims...' the applicant stated that 'the Police never took up the case for there was no malicious bodily injury'. In these circumstances, the Tribunal finds that the applicant provided inconsistent evidence as to whether he attended the Police after the alleged gun shot, and finds that the applicant's credibility is in issue. The Tribunal finds, in all the circumstances, that the applicant did not report the gunshot, as there was no gunshot.
101. The applicant has referred to the case of *Lama v MIMA*, but the Tribunal finds that the matter is of little assistance in progressing this case.
102. The applicant did not refer, at the hearing, to a claimed speech where he referred to helping Catholics only. This was initially raised by the applicant in response to Question 41 on the Application for a Protection visa form. The exact words were 'in [month and year] when I had organised a Mass for the church and made a speech on acceleration of Catholic activities and my statement in the speech to help "Catholics only" angered the Methodist Church and I was pinpointed as the target'. The Tribunal indicated at the hearing that the applicant had not mentioned that point at the hearing, and it was the main point in his Application. The applicant has not responded to this information other than to refer generally to proselytising, and a new claim, that the Methodists have restricted the right to preach, although this apparently arose at the time of the brawl. Because the applicant did not raise the issue of his speech turning him into a target for the Methodists, at the hearing, although it was his central claim in his application, the Tribunal rejects this claim. Because of this finding and the previous findings, the Tribunal finds that the applicant is not a credible witness.

103. In answer to Q.43 the applicant stated the Police in Samoa belong to the Methodist group, but at the hearing the applicant said the Police were made up of different religions (paragraph 54 above). The applicant did not respond to this information. In these circumstances, the Tribunal finds that the applicant provided inconsistent evidence as to whether the Police Force is made up of Methodists only, or of many different religions. The significance of this inconsistent information is that it does not advance the applicant's claims, and puts them in doubt. Because of the inconsistent evidence the Tribunal finds that this supports its finding that the applicant is not a credible witness. Because the applicant did not respond to the information, the Tribunal finds in the circumstances, that the Police consist of many different religions, and so this is not a reason for the applicant avoiding reporting to the Police.
104. The Tribunal finds that at the first hearing there was no reference to the applicant sending a letter to the community, which he referred to in answer to Q. 43 of his Application for a Protection visa. The applicant did not respond to this information. The Tribunal finds that the applicant's evidence is inconsistent in this regard. The Tribunal finds that this supports its finding that the applicant is not a credible witness. In this case, the Tribunal finds that he did not send a letter to the community
105. The applicant said in answer to Q. 45 that he was also fearful because another Catholic church member was killed, but the cause of the killing was not known to anyone. The Tribunal asked the applicant at the hearing if anyone had been injured, and the applicant did not raise this issue with the Tribunal. The Tribunal finds that the applicant's evidence is inconsistent in this regard. The Tribunal finds this supports its finding that the applicant is not a credible witness. In this case, as a result, the Tribunal finds that the death of another Catholic was not pursued further by the applicant. That is, it was dropped by the applicant. The Tribunal finds that there was not a related case of a Catholic death to support the applicant's claims.
106. The Tribunal was unable to locate any independent references to tensions between Methodists and Catholics in Samoa. The Tribunal is nevertheless aware that Rev. X stated that there are many unreported interdenominational disputes (in the media). This is supported by a dated report in the New Zealand Herald which referred to interdenominational disputes in Samoa that were largely restricted to the emergence of the Samoan Branch of the Assembly of God church, and the reaction with the larger and longer established churches in Samoa Methodist, Catholic, and Congregational.
107. Overall, the Tribunal prefers and accepts the Independent Country Information that states that there were no reports of societal abuses or discrimination based on religious affiliation, belief, or practice during 2008 (US Department of State 2008, *International Religious Freedom Report for 2008 – Samoa*, released on 19 September 2008, Sections 1-3). The Tribunal also prefers and accepts the US Department of State 2007 *International Religious Freedom Report for 20078 – Samoa*, which states that there were few reports of societal abuses or discrimination based on religious belief or practice, and there were no specific references to Catholic-Methodist tensions. As a result, the Tribunal rejects the applicant's claims in this regard. The Tribunal also finds that this is a further indication that the applicant is not a credible witness.
108. Having regard to the Tribunal's findings, it can attach only little weight to the letter from the acolyte which refers to the applicant being attacked by Methodist activists. The Tribunal provided information at the hearing that the letter was not clear as to what might have

happened. In this regard, the applicant himself is now saying that he could not identify his 'attackers' as Methodists (see his 'Refugee Claims')

109. The Tribunal can only attach little weight to Rev. X's letter as the Tribunal provided information at the hearing that the letter was not clear as to what might have happened. At the hearing the Tribunal asked the applicant what Rev. X had meant in two references in his letter. The applicant stated in a letter that he was trying to get clarification as to what Rev. X had said, but the Tribunal has not received it.
110. The Tribunal can only attach little weight to the oral evidence of the witness who is a relative living in Australia, as the Tribunal finds that she confined her corroboration of the applicant's evidence to what he said at the first Tribunal hearing which related to the brawl at the football match and the subsequent tension between Methodist and Catholic youths, and restrictions on some of the applicant's religious activities. Further, she did not actually see the events recounted, but obtained a report from the applicant's mother. She confined her actual evidence to stating that they think the applicant is biased, and sets the matches, which she stated is not true. In other words, she only corroborated a limited amount of the applicant's claims. At the second hearing she was asked if she wanted to give any evidence, and she declined.
111. The Tribunal finds that the applicant is not a credible witness, and it does not accept any of his claims, other than those referred to previously.
112. Having regard to the claims that the Tribunal has accepted, the Tribunal finds that these do not give rise to a well-founded fear of persecution for a Convention reason. In this regard, there are no claims, or matters arising that relate to race, nationality, membership of a particular social group, or political opinion. The only possible claim relates to religion. However, the claims which the Tribunal has accepted relate to what could be considered private matters. Further, the Tribunal has accepted the country information that there have not been reports of tensions between Catholics and Methodists.
113. Further, the Tribunal also finds on the independent country information that the applicant can take his grievances to the Samoan Supreme Court (New Zealand Herald, 23 November 2002), and to the Police. The Tribunal finds that there is adequate State Protection.
114. As a result, the Tribunal is not satisfied the applicant faces a real chance of persecution should he return to Samoa, now or in the foreseeable future.
115. Therefore the Tribunal is not satisfied on the evidence before it that the applicant has a well-founded fear of persecution for any Convention related reason.

## **CONCLUSIONS**

116. 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**

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



I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: PMRT01