

1002641 [2010] RRTA 570 (7 July 2010)

DECISION RECORD

RRT CASE NUMBER:	1002641
DIAC REFERENCE(S):	CLF2010/12555
COUNTRY OF REFERENCE:	Fiji
TRIBUNAL MEMBER:	Denis O'Brien
DATE:	7 July 2010
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Fiji, arrived in Australia [in] November 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] March 2010 and notified the applicant of the decision and her review rights by letter of the same date.
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 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).
4. The applicant applied to the Tribunal [in] April 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 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. Secondly, 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, if the 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 unable to be controlled 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 (see *Chan per McHugh J* at 430; *Applicant A per Brennan CJ* at 233, *McHugh J* at 258).
14. Persecution also 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. Thirdly, the persecution which the applicant fears must be for one or more of the reasons specified 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. Fourthly, 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 he or she has genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded when 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.
20. The applicant appeared before the Tribunal [in] June 2010 to give evidence and present arguments. The Tribunal also received oral evidence from [Ms A], a friend of the applicant. The Tribunal hearing was conducted with the assistance of an interpreter in the Fijian and English languages.

Protection visa application

21. The applicant is [age deleted: s.431(2)]. She was born in [location deleted: s.431(2)], Fiji, and attended primary school in Lautoka and high school in Nausori. From April 2002 she was a finance officer with [Company A] until the closure of the company in April 2009. Before coming to Australia, she lived in [town deleted: s.431(2)]. She was married in 1997 and her husband and son (born in [month and year deleted: s.431(2)]) remain in Fiji.
22. She said in her protection visa application that:
 - She left Fiji because of the closure of the company for which she worked and because she was a supporter of the Qarase Government ousted by Commodore Bainimarama;
 - She fears being victimized by the military government and she fears poverty because she could not find employment;
 - If she returns to Fiji, she will be ill treated by the military government for having revealed in another country the true nature of that government;
 - The present government cannot control the rise in criminal activity, the devaluation of the Fiji dollar and the economic decline.

Interview with delegate

23. The CD of the applicant's interview with the delegate was slightly corrupted in that, towards the end of the interview, the CD contained material from an interview involving another applicant. However, the recording seems to be substantially complete and in the interview the applicant said that:
 - The company for which she worked before its closure was [Company A];
 - She is concerned she will not be able to get another job because retirement at age 55 has been introduced in Fiji;

- She is a true supporter of the former Qarase Government and fears returning to Fiji because she will be victimized by the military government. She also fears poverty;
- She is a member of the Soqosoqo Duavata ni Lewenivanua (SDL) party of former Prime Minister Qarase. She belongs to the [location deleted: s.431(2)] branch of the party. Her party membership card is still in Fiji. She has not been involved in campaigning but is involved with catering and the provision of other assistance at party gatherings;
- When an email blog site from Fijians overseas was circulated in the office at [Company A], members of the military came to the office and took three staff away to the military barracks where they were forced to march, do “duck walks” and run. They were locked up for half a day.

Tribunal hearing

Written submission and supporting documents

24. Prior to the Tribunal hearing the applicant submitted a written submission in English in support of her claims. The submission was accompanied by:
- A copy of the Peoples Charter promulgated by the Bainimarama Government;
 - Information about decrees promulgated by the Bainimarama Government and extracts from the Crimes Decree 2009;
 - Various email news items about the Bainimarama Government.
25. Under the heading *The applicant’s fears of persecution due to race and political affiliation*, the submission stated:

The true face of all political conflicts in Fiji is race... All three of the military coups are clashes between the two major races. There are unconfirmed reports that the latest military coup was an under cover operation by Mahendra Pal Chaudhary and Attorney general Ayaz Khyum (sic). However there are also reliable reports that they have been holding secret meetings in various venues at various times. They are his closest advisors. The relationship between the indigenous Fijians and indo Fijians is like a marriage of convenience. It lasts only for the duration of its convenience....the greatest threat facing the country now is a very real chances of a racial conflict which can be expressed not any more in another coup but in bloodshed...In the circumstances, the applicant is not willing to take risks and her greatest desire is to keep away from harm at any cost.

Evidence of applicant

26. In the Tribunal hearing the applicant outlined the work experience she had had since leaving school. That experience included working in [various employment details deleted: s.431(2)] in Suva before joining [Company A] in 2002 as an accounts officer.
27. The applicant said that, when [Company A] was taken over, the employees were first told that their jobs were safe. However, the company was subsequently wound up and no redundancy or other moneys were paid to them.

28. The Tribunal asked the applicant whether she had any help in completing her protection visa application. She said that she had completed it herself. The Tribunal asked why she did not make her refugee claims immediately upon her arrival in Australia. She said that she made enquiries of the Department of Immigration and was told that she would need to make any protection visa application before her visitor visa expired. The Tribunal put to her that the delay may be an indication that her protection visa claims were not genuine. She said that she went to the Department to lodge a protection visa application but was told she could not lodge until the day before her visitor visa expired.
29. The Tribunal asked the applicant who had prepared her recent submission to the Tribunal. The applicant replied that [Ms A] had helped her. The applicant explained that she had orally outlined her claims in Fijian to [Ms A], who wrote them out for her in English and orally interpreted them back to her in Fijian. The Tribunal asked the applicant what the relationship was between her and [Ms A]. The applicant said that [Ms A] was a friend she had met in [suburb deleted: s.431(2)] after her arrival in Australia.
30. The Tribunal asked why the claims the applicant was now making were different from those in her protection visa application. She said that, on the day she made her application, it was not clear to her what was required. She said that it would have been better if she had had an interpreter.
31. The Tribunal asked the applicant what she meant in the passage from her submission which is quoted above. She said that the previous coups in Fiji were race related and that the 2006 coup was more for the purpose of upholding the interests of indo-Fijians than for upholding the interests of indigenous Fijians. She feared that, with the interests of indigenous Fijians having been relegated to the interests of indo-Fijians, there would be an escalation of violence and bloodshed in the future between the races. The Tribunal put to her that, given that these claims were not part of her original claims, they again raised a question about the genuineness of her refugee claim. She said that in her original claims as written she had expressed fear about the escalation in criminal activity. She now included in that her fear of racial violence.
32. The Tribunal pointed out to the applicant that she had said in her protection visa application that she was a supporter of the SDL but had told the delegate that she was a member of the party. The Tribunal asked whether she was a supporter of the SDL. She said that she was. The Tribunal asked if she was a member of the party. She said that she had been. The Tribunal asked whether she had a membership card. She said that she did not have one. She said that membership was manifested by what she did for the party.
33. The Tribunal asked her what activities she had engaged in for the SDL. She said that, during the visits of candidates to the community, she would assist with catering and other tasks and would assist near the polling places on election day. However, since the coup, activities had been restricted and she had kept away from the SDL office.
34. The Tribunal asked the applicant if she had ever been harmed by the military. She said that in her interview with the delegate she had mentioned that three of her work colleagues had been taken by the military to the military camp following circulation of an email. One of them was her cousin. She said that the email, which had been generated from outside Fiji, had been critical of Bainimarama. It had been sent to her computer immediately after the coup, probably in early 2007. She had read it but had not forwarded it. Someone must have informed the military about the email. The military contacted the [Company A] office at

[location deleted: s.431(2)] and informed the office that they wanted to come to the office to talk with the three individuals. Hearing of this, the three individuals left, with the result that when two truckloads of soldiers arrived at the office the soldiers were unable to talk with them. The soldiers left a message that the three should attend at the military camp at Nabua. The applicant was the team leader of one of the men so she rang all of them and pleaded with them to go to the camp as the military had asked. The applicant found out later from one of them that they had attended the camp where part of the treatment meted out to them was forcing them to run, to crouch and do a “duck walk” and to march.

35. The Tribunal asked the applicant if anything happened to her arising from this incident. She said that nothing had happened to her but she feared that something similar might. The Tribunal asked why, given that she had not circulated the email. She said that her name was one of the addressees of the email. The Tribunal pointed out that it seemed unlikely that anything would now happen to her given that this incident had occurred in January 2007. She agreed that nothing had happened to her as yet.
36. The Tribunal pointed out to the applicant that one of the fears mentioned in her protection visa claim was a fear of poverty if she had to return to Fiji. The Tribunal asked if this was still part of her claim. She said that it was not and that her real claims were as set out in her later submission to the Tribunal. The Tribunal pointed out to her that the trouble with this was that her expressed fears about racial violence were based on speculation concerning events that might or might not happen. The Tribunal asked the applicant if she wished to comment about this. She said that, unlike the abrogated Fiji Constitution, the Peoples Charter contained no guarantee of racial equality.
37. The Tribunal also put to the applicant that, with Commodore Bainimarama ruling the country with the support of the military and with elections due to be held in 2014, the likelihood of racial violence and bloodshed seemed remote. She responded that the Great Council of Chiefs had traditionally protected the interests of indigenous Fijians but that it had been removed by Bainimarama and, without the protection of constitutional guarantees, she now had no guarantee of her rights as an indigenous Fijian. The Tribunal said that in Fiji there might now be no constitutional guarantees but that this was a different matter from the question the Tribunal must consider as to whether the applicant had a well-founded fear of persecution on a Convention ground if she were to return to Fiji. The applicant said that she had grave fear because there was no freedom of expression in Fiji and the very fact that it would be known that she had applied for refugee status in Australia would cause her to be victimized.
38. The Tribunal put to the applicant that country of origin information suggested that high profile SDL figures who spoke out against the regime while overseas may face persecution on return to Fiji but not ordinary Fijians. The applicant reiterated that she was afraid that she would be taken to the military camp and physically abused by the military.

Evidence of [Ms A]

39. In her evidence [Ms A] said that, like the applicant, she was a visitor to Australia. She confirmed that the applicant was a friend she had met in Australia but that she also knew the applicant when both of them were in Fiji.
40. [Ms A] confirmed that she prepared on the applicant’s behalf the applicant’s written submission to the Tribunal.

41. The Tribunal asked [Ms A] whether she had any knowledge of the applicant having been harmed in Fiji. She said that she did not but she was aware that the applicant's workmates had been harmed by the military and she was aware of others having been similarly harmed. The Tribunal asked [Ms A] what her understanding was of the reason why these people had been harmed. She replied that it was because they were opposed to the military. She said that race underpinned the problems in Fiji. She further said that it was likely that racial confrontation would take place if the present situation in Fiji persisted and that, as with the 1987 and 2000 coups, the race issue was at the heart of the problem.

Country of origin information

Demographics

42. The two main population groups in Fiji are indigenous Fijians and indo-Fijians. Indigenous Fijians make up a small overall majority.¹ The military is overwhelmingly dominated by indigenous Fijians.²

Current government and state of emergency

43. On 9 April 2009, Fiji's Court of Appeal ruled that Commodore Frank Bainimarama's actions of declaring a state of emergency and removing Qarase and his ministers from office were unlawful under the Constitution. The Court of Appeal ordered President Iloilo to dissolve Parliament and appoint an independent interim Prime Minister. The Court of Appeal refused to grant a stay pending an appeal to the Supreme Court. On 10 April 2009, President Iloilo sacked the judiciary and suspended the Constitution. On 11 April 2009, the President re-appointed Commodore Bainimarama as Prime Minister until 2014.³
44. On 10 April 2009, *The Public Emergency Regulations 2009* were decreed in Fiji. Human Rights Watch (HRW) provides the following information:

...The Public Emergency Regulations 2009...purports to empower security forces to prohibit processions and meetings, to use such force as considered necessary, including use of arms, to enter and remain in any building where there is reason to believe three or more people are meeting, and to regulate the use of any public place of three or more persons. It further provides for the detention of suspects for up to seven days without charge. Regulation 3(3) provides:

[n]o police officer nor any member of the Armed Forces nor any person acting in aid of such police officer or member using such force shall be liable in criminal or civil proceedings for having by the use of such force caused harm or death to any person.

¹ BBC country profile-Fiji, http://news.bbc.co.uk/2/hi/asia_pacific/country_profiles/1300477.stm .

² Badri-Maharaj, S. 2000, 'Ethnic Armies - Race and Security Forces in Fiji, Guyana and Trinidad, *Bharat Rakshak Monitor*, Volume 3, Number 2, September-October <http://www.bharat-rakshak.com/MONITOR/ISSUE3-2/sanjay.html> - Accessed 16 May 2003.

³ 'Fiji coup ruled to be unlawful' 2009, *Television New Zealand*, source: *ONE News & Reuters*, 9 April <http://tvnz.co.nz/world-news/fiji-coup-ruled-unlawful-2633758> – Accessed 18 June 2009 ; Reporters Without Borders 2009, 'Prior censorship and expulsion of foreign journalists deal "mortal blow" to press freedom', 14 April <http://www.rsf.org/Prior-censorship-and-expulsion-of.html> – Accessed 18 June 2009; and McLean, Tamara 2009, 'Fiji: Bloggers continue tirade against Bainimarama', *New Zealand Herald*, source: *Australian Associated Press*, 17 April http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10567134 – Accessed 18 June 2009

The wide-ranging powers and immunity provided in these regulations contribute to impunity for members of the security forces. In addition, the regulations violate the rights of liberty and freedom from arbitrary detention, free speech, and freedom of peaceful assembly. The arbitrary enforcement of restrictions on gatherings and meetings, provided for in the regulations compromises the work of nongovernmental organizations, religious groups, and other civil society organizations.⁴

Criticism of the regime in Fiji

45. The ill-treatment and harm by Fiji's military government of perceived government critics has continued in the first months of 2010.⁵ In February 2010, Amnesty International estimated that over a thousand people had been subject to forms of ill-treatment/harassment, arbitrary arrest or detention on false charges, for being critical of the government since the abrogation of the Constitution and introduction of the Public Emergency Regulations in April 2009. In January 2010, Fiji's land force commander, Colonel Pita Driti, warned government critics "to keep low and try to cooperate with us...otherwise they will be in for something really hard in terms of how we will treat them this year."⁶ And in one recent example documented by Amnesty International, prominent human rights lawyer Ms Imrana Jalal was charged and her passport confiscated in order to punish her "for her strong public stance against human rights violations perpetrated by the military since its overthrow of the Laisenia Qarase-led government in December 2006".⁷
46. A September 2009 Amnesty International report titled *Fiji: Paradise Lost: A Tale of Ongoing Human Rights Violations: April-July 2009* provides the following information on the treatment of government critics:

Government intimidation of its critics is rife. From 10 April until 20 May 2009, the police, military and other government officials arrested approximately 40 people, including journalists, some of whom were then detained, under the PER's broad powers of detention on suspicion of threatening peace and stability in the country. The vast majority of those arrested and detained were questioned without being given the right to see a lawyer, before and during questioning by the police. Although all of them have been released, these short term arrests and surveillance of activists have contributed to the climate of fear in Fiji.

..The ongoing harassment and arbitrary detention of journalists, lawyers, clergy and government critics by the authorities under the guise of the PER is a tactic used to

⁴ Human Rights Watch 2009, 'Human Rights Watch Letter to President Ratu Josefa Iliolo', 5 May <http://www.hrw.org/en/news/2009/05/05/human-rights-watch-letter-president-ratu-josefa-iloilo> – Accessed 18 June 2009

⁵ Amnesty International 2010, 'Fiji Government misrepresents human rights record to UN', 10 February, PRE01/042/2010 <http://www.amnesty.org/en/for-media/press-releases/fiji-government-misrepresents-human-rights-record-un-20100210-0> - Accessed 2 March 2010 . For other recent reports on the treatment of government critics see the Fijian human rights NGO Citizens' Constitutional Forum submission to the United Nations 2010 Periodic Review: Citizens' Constitutional Forum 2009, *Citizens' Constitutional Forum Submission for UPR on Fiji*, 22 February, p. 2 http://www.ccf.org.fj/about_us/annual_report/UPR.pdf - Accessed 2 March 2010 ; Amnesty International 2010, 'Fiji: Downward spiral continues for human rights persecution of prominent human rights lawyer', 19 January, ASA 18/001/2010 <http://www.amnesty.org/en/library/asset/ASA18/001/2010/en/8fb0dcc2-801c-49d3-855f-f37e8da4f007/asa180012010en.html> - Accessed 2 March 2010.

⁶ Human Rights Watch 2010, 'UN Rights Council: Demand End to Fiji Abuses', UNHCR website, 9 February <http://www.unhcr.org/refworld/country,,,FJI,,4b7a562ac,0.html> - Accessed 1 March 2010.

⁷ Amnesty International 2010, 'Fiji: Downward spiral continues for human rights following persecution of prominent human rights lawyer', 19 January, ASA 18/001/2010 <http://www.amnesty.org/en/library/asset/ASA18/001/2010/en/8fb0dcc2-801c-49d3-855f-f37e8da4f007/asa180012010en.html> - Accessed 2 March 2010.

suppress freedom of expression, including any form of dissent. Amnesty International is concerned that the PER appears to permit arbitrary detention and is being used for that purpose.⁸

Treatment of SDL members

47. SDL Party members and supporters who criticise the current regime may be targeted. On 27 February 2010, an SDL meeting of members and supporters at the party's headquarters in Suva was raided by soldiers and police. The group, which included two former MPs, was detained at a military camp and released during the night. The raid was believed to be prompted by a 600 000 signature petition calling for the restoration of democracy, delivered to Bainimarama in February 2010.⁹ In a separate incident, the military declared an earlier gathering in January 2010 at the SDL headquarters illegal. A permit requirement is now strictly enforced for political gatherings, and those without such a permit are likely to be seen as suspect by the government. *BBC Monitoring* reported on 20 January 2010 that: "The military has today stated that it will not tolerate any secret political meetings due to the Public Emergency Regulation (PER). RFMF's [Republic of Fiji Military Forces] Land Force commander Colonel Pita Driti said any gatherings in relation to political activities need a permit."¹⁰
48. Other actions taken by the current regime to limit the influence of the SDL are:
- As a result of a February 2010 decree giving the Prime Minister the power to stop government pensions and benefits to those perceived to criticise/undermine the regime or incite hatred, more than forty SDL members were expected to lose their pensions.¹¹
 - In early November 2009, the national director of the SDL, Peceli Kinivuwai, a regular critic of the military-led government, was detained and harassed at an army camp in Suva for commenting to overseas media about the expulsion of diplomats. He was held overnight and released on 5 November.¹²

Detention after dissemination of political material by email

49. The regime monitors and intercepts email correspondence, and it has detained and questioned senior community figures on the content of emails. In addition, blogsites critical of the government have been blocked and blogsite users reportedly targeted by the military. Human Rights Watch reported on the questioning in August 2009 of retired military officer Colonel Sakiusa Raiwoce about an email he received. He was later detained for two days:

⁸ Amnesty International 2009, *Fiji: Paradise Lost: A Tale of Ongoing Human Rights Violations: April-July 2009*, September, ASA 18/002/2009, pp.22-24

⁹ Lealea, S., 2010, 'Fiji Regime Hits Out at SDL Supporters', Solivakasama website, 28 February <http://solivakasama.net/2010/02/28/fiji-regime-hits-out-at-sdl-supporters/> - Accessed 2 March 2010; 'Fiji campaigner claims democracy demand has impact' 2010, Radio New Zealand News International, 2 March.

¹⁰ 'Fiji ousted premier's party reported holding "secret meeting"' 2010, *BBC Monitoring Asia Pacific*, source: Fiji Village website, 20 January.

¹¹ 'Fiji's regime stops pensions to 20 former government ministers' 2010, Radio New Zealand International website, 7 February <http://www.rnzi.com/pages/news.php?op=read&id=51782> - Accessed 2 March 2010.

¹² Amnesty International 2009, 'Harassment of Government Critics Continues in Fiji', 10 November <http://www.amnesty.org.au/news/comments/22068/> - Accessed 2 March 2010 .

The Fiji government is habitually violating rights to freedom of expression, association, and assembly by arresting and detaining people under the Public Emergency Regulations.

On August 4, 2009, police questioned Colonel Sakiusa Raivoce, a retired military officer, about an email apparently sent to him. He was released without charge. Police arrested him again later that day and over the following two days security forces kept him in military and police detention and questioned him, amongst other things, about his involvement with the pro-democracy movement. He was released on August 6, without charge.¹³

50. The emails of Methodists Church leaders have also been intercepted as part of the regime's strategy targeting the Church and limiting its ability to criticise the government.¹⁴
51. Alongside surveillance of private email correspondence, the interim government has also sought to limit the emergence of blogsites used to generate criticism against it. In August 2009, DFAT commented that blogging and blogsites remained one of the few avenues available to express dissent in the aftermath of the 2006 coup, but that those involved in anti-blog sites are reportedly targeted:

One of the few avenues available for publishing dissent is blogging, and several popular blogsites have emerged since the coup in December 2006...

The interim government has publicly condemned the blogs as being meant to "stir" people and "depress" them, and it has advised people not to read them. There have also been reports of military reprisals for those suspected of involvement in the anti-regimes blogsites.¹⁵

52. In February 2010, Human Rights Watch reported that access to blogs critical of the military government had been blocked in recent months.¹⁶

Ethnic Fijians being targeted by soldiers

53. While human rights related information on Fiji does not indicate that the indigenous Fijian ethnic group is systematically targeted by the military on account of its ethnicity, it is the segment of the population most opposed to the regime, and the current government's ill-treatment of critics may be seen to fall most on the ethnic Fijian population.¹⁷ Both the SDL Party and the Methodist Church, which have predominantly ethnic Fijian affiliation, are prominent organisations that have publicly spoken against the Bainimarama government.

¹³ Human Rights Watch 2009, UPR Submission to the United Nations 2010 Periodic Review, August, p.3 http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/FJ/HRW%20UPR_FJI_S07_2010_HumanRightsWat ch.pdf - Accessed 11 March 2010.

¹⁴ McGeough, P. 2009, 'An unholy alliance of church and state', *The Sydney Morning Herald*, 29 November <http://www.smh.com.au/world/an-unholy-alliance-of-church-and-state-20091128-jxwu.html> - Accessed 30 November 2009

¹⁵ DIAC Country Information Service 2009, *Country Information Report No. 09/61- Fiji: Imputed Political Opinion*, (sourced from DFAT advice of 18 August 2009), 18 August .

¹⁶ Human Rights Watch 2010, 'UN Rights Council: Demand End to Fiji Abuses', UNHCR website, 9 February <http://www.unhcr.org/refworld/country,,,FJI,,4b7a562ac,0.html> - Accessed 1 March 2010.

¹⁷ For example, see Amnesty International 2009, *Fiji: Paradise Lost: A Tale of Ongoing Human Rights Violations: April-July 2009*, September, ASA 18/002/2009; Immigration and Refugee Board of Canada 2008, *FJI 102703.E - Fiji: Treatment of members and supporters of the Soqosoqo Duavata ni Lewenivanua (SDL) [United Fiji Party], in particular treatment of non-elite indigenous Fijians*, 6 February http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451695 - Accessed 13 November 2008.

Around eighty per cent of indigenous Fijians support the SDL; and the Methodist Church is supported by the majority of the country's chiefs and remains influential within the ethnic Fijian community.¹⁸

FINDINGS AND REASONS

54. The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out: *MIEA v Guo & Anor* (1997) 191 CLR 559 at 596. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making (*Yao-Jing v MIMA* (1997) 74 FCR 275 at 288), the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the decision-maker to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her: *Prasad v MIEA* (1985) 6 FCR 155 at 169-70; *Luu & Anor v Renevier* (1989) 91 ALR 39 at 45. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant: *Randhawa v MIEA* (1994) 52 FCR 437 at 451.
55. In the present case, the Tribunal accepts, on the basis of the applicant's passport which she produced at the hearing, that the applicant is a citizen of Fiji. The Tribunal has assessed her claims against that country as her country of nationality.
56. The applicant claims appeared originally to be framed on the basis that she feared harm on the ground of her political opinion as a supporter of the SDL Government of former Prime Minister Qarase and as a supporter of the SDL party more generally. She also claimed to fear economic hardship. At the hearing before the Tribunal she disavowed any claim based on economic hardship. For her to have done so was appropriate because a fear of economic hardship does not come within the Convention grounds for protection unless the hardship is feared by reason of the applicant's race, religion, nationality, membership of a particular social group or political opinion and, even in these circumstances, the hardship has to be so significant as to threaten the person's capacity to subsist (s.91R(2)(d) of the Act). In the present case the applicant's fear of economic hardship is not a fear that arises for reasons of any of those five grounds. It is a fear that arises because of general economic conditions in Fiji.
57. The applicant also indicated in the hearing that the written submission she had made to the Tribunal should be taken as representing the complete statement of her claims. As indicated above, that submission contains a section purporting to set out the nature of the applicant's fears of persecution based on race (albeit that the heading to the particular section also refers

¹⁸ Immigration and Refugee Board of Canada 2008, *FJI 102703.E – Fiji: Treatment of members and supporters of the Soqosoqo Duavata ni Lewenivanua (SLD) [United Fiji Party], in particular treatment of non-elite indigenous Fijians*, 6 February http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451695 – Accessed 13 November 2008; US State Department 2009, *International Religious Freedom Report – Fiji*, 'Religious Demography', 26 October.

to “political affiliation”). The remainder of the submission deals generally with human rights issues in Fiji but does not disclose a Convention nexus for the applicant’s fears.

58. On the basis of the separate evidence given to the Tribunal by the applicant and [Ms A] as to how the submission was prepared, it seems to the Tribunal that [Ms A] may have had some considerable influence in its preparation. In order to ensure that the applicant has not, through the preparation of this document, inadvertently lost the opportunity to put her case in as complete a fashion as possible, the Tribunal’s assessment proceeds on the basis that the applicant continues to put her case on the grounds that her fear of persecution is due both to her political opinion as a supporter of the SDL party and to her race.
59. The Tribunal accepts that the applicant is a supporter of the SDL party. However, the Tribunal does not accept that she has a well-founded fear of persecution for reasons of her political opinion. On the basis of country information, the Tribunal accepts that high profile leaders of the SDL and persons associated with the former Qarase Government may be targeted by the authorities, as may members of the party if they gather in party meetings, but there is no evidence before the Tribunal to suggest that persons, such as the applicant, who are merely supporters of the SDL face a real chance of persecution. The Tribunal accepts that the infliction of harm can constitute persecution when an applicant must act discreetly to avoid the harm (*Appellant S395/2002 v MIMA* (2003) 216 CLR 473 at 487). However, the activities of the present applicant in the past in Fiji have not extended to the public expression of opinions in opposition to the Bainimarama regime and the Tribunal does not consider that she would engage in the public expression of such opinions on her return.
60. The Tribunal accepts the evidence given by the applicant that her workplace was visited by the military following circulation of an email critical of the Bainimarama regime. The Tribunal also accepts that three of the applicant’s workmates were detained and ill-treated by the military as a result. However, the Tribunal is not satisfied that there is a real chance of the applicant suffering persecution as a result of this incident. The incident occurred around January 2007 and the particular workplace no longer exists as a result of the winding up of [Company A]. No harm was caused to the applicant at the time and, given the passage of time, the Tribunal is satisfied that there is not a real chance of the military causing harm to her in the future arising out of the incident.
61. The applicant’s claim that she faces a real chance of persecution because of her race is a claim that the Tribunal cannot accept. Country of origin information indicates that indigenous Fijians make up over 50% of the population and the military is overwhelmingly dominated by indigenous Fijians. There is no evidence to suggest that any harm that the authorities in Fiji are causing to indigenous Fijians is being caused because of their race. As the Tribunal indicated to the applicant at the hearing, her argument that the current position in Fiji will lead to racial violence and that as an indigenous Fijian she faces a risk of serious harm because of her ethnicity is entirely speculative. The Tribunal does not accept that she faces a real chance of persecution on the grounds of her race.
62. The applicant also said to the Tribunal that the fact of her having applied for refugee status in Australia meant that she would face a real chance of being persecuted on her return to Fiji. The Tribunal does not accept this. As information about the identity of protection visa claimants is protected, the Tribunal does not accept that the authorities in Fiji would have any knowledge of the applicant’s claim.

CONCLUSIONS

63. 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

64. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.
- 65.