

1002307 [2010] RRTA 532 (5 July 2010)

DECISION RECORD

RRT CASE NUMBER:	1002307
DIAC REFERENCE(S):	CLF2009/110152
COUNTRY OF REFERENCE:	Mongolia
TRIBUNAL MEMBER:	Giles Short
DATE:	5 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 a review of a decision made by a delegate of the Minister for Immigration and Citizenship [in] March 2010 refusing an application by the applicant for a Protection (Class XA) visa. The applicant was notified of the decision under cover of a letter dated [in] March 2010 and the application for review was lodged with the Tribunal [in] March 2010. I am satisfied that the Tribunal has jurisdiction to review the decision.
2. The applicant is a citizen of Mongolia. He claims that he arrived in Australia in November 2002 using a false passport in another name. He applied for a Protection (Class XA) visa [in] August 2009.

RELEVANT LAW

3. In accordance with section 65 of the *Migration Act 1958* (the Act), the Minister may only grant a visa if the Minister is satisfied that the criteria prescribed for that visa by the Act and the Migration Regulations 1994 (the Regulations) have been satisfied. The criteria for the grant of a Protection (Class XA) visa are set out in section 36 of the Act and Part 866 of Schedule 2 to the Regulations. Subsection 36(2) of the Act provides that:

‘(2) A criterion for a protection visa is that the applicant for the visa is:

 - (a) a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa.’
4. Subsection 5(1) of the Act defines the ‘Refugees Convention’ for the purposes of the Act as ‘the Convention relating to the Status of Refugees done at Geneva on 28 July 1951’ and the ‘Refugees Protocol’ as ‘the Protocol relating to the Status of Refugees done at New York on 31 January 1967’. Australia is a party to the Convention and the Protocol and therefore generally speaking has protection obligations to persons defined as refugees for the purposes of those international instruments.
5. Article 1A(2) of the Convention as amended by the Protocol relevantly defines a ‘refugee’ as a 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.’
6. The time at which this definition must be satisfied is the date of the decision on the application: *Minister for Immigration and Ethnic Affairs v Singh* (1997) 72 FCR 288.

7. The definition contains four key elements. First, the applicant must be outside his or her country of nationality. Secondly, the applicant must fear ‘persecution’. Subsection 91R(1) of the Act states that, in order to come within the definition in Article 1A(2), the persecution which a person fears must involve ‘serious harm’ to the person and ‘systematic and discriminatory conduct’. Subsection 91R(2) states that ‘serious harm’ includes a reference to any of the following:
- (a) a threat to the person’s life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person’s capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person’s capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person’s capacity to subsist.
8. In requiring that ‘persecution’ must involve ‘systematic and discriminatory conduct’ subsection 91R(1) reflects observations made by the Australian courts to the effect that the notion of persecution involves selective harassment of a person as an individual or as a member of a group subjected to such harassment (*Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at 388, McHugh J at 429). Justice McHugh went on to observe in *Chan*, at 430, that it was not a necessary element of the concept of ‘persecution’ that an individual be the victim of a series of acts:
- ‘A single act of oppression may suffice. As long as the person is threatened with harm and that harm can be seen as part of a course of systematic conduct directed for a Convention reason against that person as an individual or as a member of a class, he or she is “being persecuted” for the purposes of the Convention.’
9. ‘Systematic conduct’ is used in this context not in the sense of methodical or organised conduct but rather in the sense of conduct that is not random but deliberate, premeditated or intentional, such that it can be described as selective harassment which discriminates against the person concerned for a Convention reason: see *Minister for Immigration and Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1 at [89] - [100] per McHugh J (dissenting on other grounds). The Australian courts have also observed that, in order to constitute ‘persecution’ for the purposes of the Convention, the threat of harm to a person:
- ‘need not be the product of any policy of the government of the person’s country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution’ (per McHugh J in *Chan* at 430; see also *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 per Brennan CJ at 233, McHugh J at 258)
10. Thirdly, the applicant must fear persecution ‘for reasons of race, religion, nationality, membership of a particular social group or political opinion’ Subsection 91R(1) of the Act provides that Article 1A(2) does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless ‘that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution’ It should be remembered, however, that, as the Australian courts have observed, persons may be persecuted for attributes they are perceived to have or opinions or beliefs they are perceived to hold, irrespective of whether they actually possess those attributes or hold those opinions

or beliefs: see *Chan* per Mason CJ at 390, Gaudron J at 416, McHugh J at 433; *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 570-571 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ.

11. Fourthly, the applicant must have a 'well-founded' fear of persecution for one of the Convention reasons. Dawson J said in *Chan* at 396 that this element contains both a subjective and an objective requirement:

'There must be a state of mind - fear of being persecuted - and a basis - well-founded - for that fear. Whilst there must be fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear.'
12. A fear will be 'well-founded' if there is a 'real chance' that the person will be persecuted for one of the Convention reasons if he or she returns to his or her country of nationality: *Chan* per Mason CJ at 389, Dawson J at 398, Toohey J at 407, McHugh J at 429. A fear will be 'well-founded' in this sense even though the possibility of the persecution occurring is well below 50 per cent but:

'no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.' (see *Guo*, referred to above, at 572 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)

CLAIMS AND EVIDENCE

13. The Tribunal has before it the Department's file CLF2009/110152 relating to the applicant. The applicant appeared before the Tribunal [in] June 2010 to give evidence and present arguments. The Tribunal also received oral evidence from [Ms A], the applicant's partner. The Tribunal was assisted by an interpreter in the Mongolian and English languages. [Name deleted: s.431(2)], a volunteer with [organisation deleted: s.431(2)], attended the hearing as a support person.

The applicant's original application

14. The applicant is [age deleted: s.431(2)]. In his original application he said that he had completed 10 years of schooling in Ulaanbaatar in [year deleted: s.431(2)] and that he had then worked as [occupation deleted: s.431(2)] until he came to Australia in 2002 (apart from a period when he undertook military service [dates deleted: s.431(2)]). He said that he had lived at the same address in Ulaanbaatar from birth until 1999 and at another address in the same city from 1999 until 2002.
15. The applicant said that in [year deleted: s.431(2)] he had married his first wife. He said that they had had two daughters but she had left him for another man in [year deleted: s.431(2)]. He said that he had begun a de facto relationship with his second partner, [Ms B], in 1999 and that they had lived together for three years. He said that they had had two sons. He said that her parents and her brothers and sisters had been against their relationship and as a result he had been threatened and verbally and physically abused. He said that his second partner had begun to take her family's side and his life had become unbearable so he had decided to leave Mongolia. In a statement accompanying his original application the applicant said that in October 2002 a friend had asked him if he was interested in buying a passport with an Australian visa in it. He said that his photograph had been substituted for that of the holder of the passport and he had used this passport to travel to Australia.

16. In his original application the applicant said that [in] August 2000 two of his second partner's brothers, [Mr C and Mr D], had beaten him up. He said that this had happened again in [late] 2001. He said that he was afraid that if he returned to Mongolia his second partner's two brothers and a third brother called [Mr E] would harm him. He said that [Mr E] had already been here in Australia when he himself had arrived but had later been removed from Australia. He said that [Mr E] had telephoned him from Mongolia and had accused him of telling the Department of Immigration that he was here illegally, resulting in his removal from Australia. He said that [Mr E] had threatened to kill him if he returned to Mongolia.
17. The applicant also referred in the statement accompanying his original application to the fact that he had suffered [a serious] [Injury 1] [circumstances deleted: s.431(2)] in Australia [in] January 2009. He said that he had been discharged from hospital in March 2009 but he had still not fully recovered. He said that if he went back to Mongolia in this condition his life would be at stake. He said that he would face the same abuse as he had faced before and in his current condition he would not be able to cope. He also said in his original application that the Mongolian Government would not help him with his disabilities and that he would not survive.
18. The applicant said that he did not think that the authorities in Mongolia would protect him and that his life was not guaranteed. He referred in this context to the prevalence of corruption in Mongolia. He said that this was why his life would not be guaranteed. He said that it meant that no one would protect him. He said that he was a disabled person now. Besides various medical reports he also attached a copy of a page from the US State Department's *Country Reports on Human Rights Practices for 2006* in relation to Mongolia highlighting a passage which said that the law in Mongolia prohibited discrimination in employment and education against persons with disabilities and that the law also required the government to provide benefits according to the nature and severity of the disability, which it did. It said that in practice most persons with disabilities could not find jobs and that they demonstrated for higher government subsidies. The applicant asked the primary decision-maker to make a decision on his application without interviewing him because he was unwell.

The applicant's evidence given to the Tribunal

19. In a letter dated [in] March 2010 submitted to the Tribunal the applicant's general practitioner said that he was [details of condition deleted: s.431(2)] as a result of the [incident deleted: s.431(2)], that he also suffered [details of additional medical conditions deleted: s.431(2)]. In a further letter dated [in] May 2010 the applicant's general practitioner referred to the fact that the applicant also suffered [Condition A]. She said that the applicant feared being sent back to Mongolia where he would not be able to afford treatment for either his [Injury 1] or his [Condition A]. She said that she did not believe that the applicant could access the necessary treatment in Mongolia.
20. At the hearing before me the applicant said that he had not had the assistance of an interpreter when he had prepared his original application to the Department of Immigration for a protection visa. He said that his de facto partner had helped him to prepare the application. He said that the answers in his application were correct but that he had been at the hospital when he had prepared the application so his mind had been going in and out and some answers were incomplete. He said that he had written the statement accompanying his application in Mongolian and he and his de facto partner had translated it.

21. The applicant said that the reasons he did not want to go back to Mongolia were incomplete. He said for about three years from 1999 he had lived with a lady called [Ms B] and her family had pressured him or attacked him while he had been living with her. He said that in November 2000 [Ms B]'s sister, [Ms F], had come to [Australian City 1] and because she had not known anyone in [Australian City 1] he had sent her to stay with his uncle who had been living in [Australian City 1]. He said that his uncle had raped [Ms F] in [late] 2001 while she had been living with him. He said that because her visa had expired she had not reported this to the police.
22. The applicant said that [Ms F] had informed her relatives in Mongolia about the rape and that [Ms B]'s family had attacked him in [late] 2001. He said that he had [injuries deleted: s.431(2)] and one of his [bones] had been broken. He said that he had lost consciousness and his younger brother had found him in the street. He said that he had wanted to report what had happened to the police but [Ms B]'s family had said that if he reported what had happened to the police they would kill him.
23. The applicant said that one of [Ms F]'s cousins called [Mr E] had come to Australia in August 2001 but he had been deported in 2003. He said that [Mr E] had threatened him, saying that if the applicant returned to Mongolia he would kill him. He said that because [Ms F] had been raped all the family had started to hate him and he had had no choice but to leave Mongolia. The applicant confirmed that he claimed that, as he had said in his original application, [Mr E] had also blamed him for the fact that he had been deported. He said that [Mr E] had been calling him all the time, day and night, so he had had to change his telephone number and his email address.
24. I noted that in the statement accompanying his original application the applicant had said that [Ms B]'s two brothers had beaten him up the first time [in] August 2000. The applicant confirmed that this was correct and that the next assault had been in [late] 2001. He said that at that time he had been divorced from his wife and he had been living with his two daughters. He said that because he had had two daughters [Ms B]'s family had not liked him. He confirmed that he had started living with [Ms B] in 1999. He said that the reason for the first assault had been that [Ms B]'s family had not liked him. He said that [Mr C and Mr D] who had been responsible for this assault were [Ms F]'s cousins, not her brothers.
25. I asked the applicant if there were other problems he thought he would have if he returned to Mongolia apart from the problems he had mentioned with [Ms B]'s family and with [Mr E]. The applicant said that there were not.
26. I noted that as I had mentioned at the beginning of the hearing, in order to meet the definition of a refugee in the Refugees Convention he had to fear being persecuted for one or more of the five Convention reasons. I put to him that it did not appear that one or more of those five reasons was the reason for the persecution he feared from either [Ms B]'s family or [Mr E]. He had said that the reason [Mr E] had threatened to kill him was that [Mr E] blamed him for his having been caught by Immigration and removed from Australia. The applicant said that this was correct. He said that [Ms F] had been deported in 2002 and her family had accused his uncle of having informed Immigration about her.
27. I noted that, so far as the persecution the applicant feared from [Ms B]'s family was concerned, he had said that they had never liked him and this had become even worse after his uncle had raped [Ms F]. I asked the applicant if he understood that the reasons for the

persecution he feared did not appear to bring him within the definition of a refugee. The applicant said that he did.

28. I noted that in his original application the applicant had also said that the Mongolian Government would not help him with his disabilities. The applicant said that he had been told that there was no possibility of help. I noted that the Tribunal had also been given a letter from his general practitioner stating that she did not believe that he would be able to access the necessary treatment in Mongolia. I put to the applicant that once again it was difficult to fit these sorts of problems within the definition of a refugee. I put to him that in order for his situation to come within the definition of a refugee I would have to find, for example, that he would be denied treatment or discriminated against in relation to treatment for one or more of the five Convention reasons. I put to him that the evidence available to me indicated that people with disabilities formed a particular social group for the purposes of the Refugees Convention in Mongolia but there was nothing in the evidence available to me to suggest that he would be denied access to treatment or discriminated against in relation to treatment for reasons of his membership of that particular social group.
29. The applicant produced two letters in Mongolian together with translations. The first, from [Medical Organisation 1], headed '[title]' and dated [in] May 2010, refers to the applicant's [Injury 1] as a result of [circumstances deleted: s.431(2)] and concludes:

'And we could not make confirmation for his further treatment and examinations related on an appropriate clinical conditions and inadequacy of advanced testing and treatment equipment of our hospital.'
30. The second, from a hospital in Ulaanbaatar, likewise dated [in] May 2010, says that there is no complete treatment for [Condition A] in Mongolia. I noted that the first letter appeared to suggest that the doctors could not form an opinion as to the applicant's treatment for his [Injury 1] without further examination.
31. The applicant said that his [Condition A] was serious and he was having one year of [treatment deleted: s.431(2)]. I explained to the applicant again that I had to look at how this fitted within the definition of a refugee in the Refugees Convention. I noted that there were a lot of countries in the world which were not able to provide the same sort of medical treatment as was available in a country like Australia. I put to him that, as I had said, this in itself would not bring him within the definition of a refugee: I would have to find that there was some discriminatory refusal or discrimination in relation to the provision of treatment to him for one of the five Convention reasons. It was not enough that the treatment was simply not available in Mongolia: there had to be a link to one of the five Convention reasons.
32. The applicant said that he understood. He said that if he went back to Mongolia he would be killed. [Information deleted: s.431(2)]. He said that if he were to be assaulted again he would not last long because he had suffered a very bad injury. He confirmed that the people who he feared would assault him or kill him were [Mr E] and [Mr C and Mr D]. I put to the applicant again that, as we had discussed, his fear of these people did not appear to bring him within the definition of a refugee because one or more of the five Convention reasons was not the reason why they wanted to harm him or kill him. The applicant said that he understood.
33. I noted that the applicant had included with his original application some information with regard to the treatment of people with disabilities in Mongolia from the US State Department's *Country Reports on Human Rights Practices for 2006* in relation to Mongolia. I put to the applicant that in its most recent report the US State Department had said much the

same as it had said in 2006. It had said that the law in Mongolia prohibited discrimination in employment and education against people with disabilities although in practice people with disabilities faced significant barriers to employment, education and participation in public life. It had also said that the law required the government to provide benefits to people with disabilities according to the nature and severity of the disability although the level of financial assistance was low (US State Department, *Country Reports on Human Rights Practices for 2009* in relation to Mongolia, Section 6, Discrimination, Societal Abuses, and Trafficking in Persons - Persons with Disabilities).

34. The applicant said that he had read in the newspaper that the level of financial assistance was between ten dollars and thirty dollars a month. I put to the applicant that it was a little difficult to accept that 'people with disabilities' as a particular social group for the purposes of the Convention faced a real chance of being persecuted for reasons of their membership of that group in Mongolia. The applicant said that he understood. He said that in Mongolia social security and medical assistance was very poor. I indicated to the applicant that, as with medical treatment, it was not enough that Mongolia was a poor country and that it provided a poor level of support for everyone.
35. The applicant asked that I take evidence from his de facto partner. She said that the applicant did not look disabled - he looked normal - and she was worried that if he returned to Mongolia he might get killed because he was now very sensitive and if someone hit him it was going to destroy him. She said that he could not run, he could not move quickly and Mongolia was a dangerous country. She said that anyone could hurt the applicant easily [details deleted: s.431(2)] because he had a very serious [Injury 1]. She said that in Mongolia robbery was common and the applicant could not protect himself.
36. The applicant's de facto partner said that the Mongolian authorities did not give correct information about the country to the United States: they gave false information. I indicated to her that the reports of the US State Department were put together from its own resources: the US State Department did not rely on what it was told by the Mongolian government. The applicant's de facto partner said that she had read a report about the Mongolian government having two faces. She said that this had been a report on human rights. I noted that one of the things on which the US State Department reported was the extent to which governments cooperated with domestic and international human rights monitoring organisations.
37. The applicant's de facto partner said that the applicant's physical condition was not very good at the moment: he was in pain and he had had surgery. The applicant himself said that he had pain in his stomach, [symptoms deleted: s.431(2)] and he could not sleep at night. He said that his [Injury 1] pain was not getting better. [Details deleted: s431(2)]. I noted that I had evidence from the applicant's general practitioner and that I was aware of the seriousness of his medical problems. I indicated again to him that the issue I had to consider was whether he came within the definition of a refugee. I referred to the fact that if the Tribunal did not make a decision in his favour the Minister for Immigration had a discretion to substitute a more favourable decision. I indicated that I did not want to hold out any hope as to how the Minister might exercise his discretion but he needed to be aware that the decision of the Tribunal was not necessarily the end of the process.
38. The applicant's volunteer support person said that the applicant was incredibly vulnerable, not just because of the people who had vendettas against him. She said that he was more vulnerable than he would have been before he had sustained the injury. She said that she read the letter from the [Medical Organisation 1] not as stating that they could not assist him

without further examination but rather that from what they understood of his condition they did not feel that they could adequately treat him. She said that they were waiting on a number of letters confirming this from other medical specialists in Mongolia. She said that one of the key documents they were awaiting was a document in relation to the drugs to treat the applicant's condition. She said that there was information that because of corruption many of the drugs in Mongolia were fake. She said that even with the level of care the applicant was receiving here they were not able to manage his pain to a reasonable level.

39. The applicant's volunteer support person referred to the fact that Article 6 of the International Covenant on Civil and Political Rights said that every human being had the inherent right to life, that this right shall be protected by law and that no one shall be arbitrarily deprived of his life. She said that she understood the information to which I had referred from the US State Department but she said that because of corruption the application of the law was not as it was meant to be. She referred to the fact that the Minister's guidelines in relation to the exercise of his discretion mentioned 'compassionate circumstances regarding the age and/or health and/or psychological state of the person such that a failure to recognise them would result in irreparable harm and continuing hardship to the person' She said that although the applicant's situation was not strictly Convention-related they would be grateful for a recommendation to the Minister.
40. I noted that the Tribunal did not recommend: it referred matters for the Minister's consideration in accordance with the Minister's guidelines. I noted that the matters to which she had referred in relation to the shortcomings of the medical system in Mongolia fell within the sorts of matters which the Minister could consider. I indicated to the applicant's volunteer support person that I thought I had enough evidence to make a decision but that the sort of material to which she had referred would be relevant to the Minister's exercise of his discretion and that I understood that she would have the opportunity to place this material before the Minister. I asked the applicant if there was anything further he wished to add. The applicant said that he would rather die here than go back to Mongolia and get killed. I emphasised again to the applicant that the decision of the Tribunal was not the end of the process.

FINDINGS AND REASONS

41. As I put to the applicant in the course of the hearing before me, it does not appear to me that the persecution he fears from his former partner [Ms B]'s family or from [Mr E] brings him within the definition of a refugee in the Refugees Convention. This is because one or more of the five Convention reasons is not the essential and significant reason for the persecution which he fears as required by paragraph 91R(1)(a) of the Act.
42. The applicant has said that he was assaulted by [Ms B]'s cousins, [Mr C and Mr D, in] August 2000 because [Ms B]'s family did not like him and that members of [Ms B]'s family attacked him again in [late] 2001 because they blamed him for the fact that his uncle had raped [Ms B]'s sister, [Ms F], in [Australian City 1] in [late] 2001 The applicant has likewise said that [Ms B]'s cousin, [Mr E], has threatened to kill him if he returns to Mongolia because [Mr E] blames the applicant for his having been removed from Australia.
43. I find on the evidence before me that the members of [Ms B]'s family and [Mr E] do not wish to harm the applicant for reasons of race, religion, nationality, membership of a particular social group or political opinion. I find, therefore, that one or more of the five Convention

reasons is not the essential and significant reason for the persecution which the applicant fears from [Ms B]’s family or [Mr E] as required by paragraph 91R(1)(a) of the Act.

44. As I indicated to the applicant in the course of the hearing before me, I accept that ‘people with disabilities’ constitute a ‘particular social group’ in Mongolia for the purposes of the Refugees Convention. In *Applicant S v Minister for Immigration and Multicultural Affairs* (2004) 217 CLR 387 at [36], Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of a particular social group:

‘First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group".’

45. Whether a supposed group is a ‘particular social group’ in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. I consider that the material in the US State Department *Country Reports on Human Rights Practices for 2009* in relation to Mongolia referred to above indicates that ‘people with disabilities’ are treated as a group in Mongolia in a way which distinguishes them from society at large. However as I indicated to the applicant I do not accept on the basis of that material that there is a real chance that he will be persecuted for reasons of his membership of that particular social group if he returns to Mongolia now or in the reasonably foreseeable future.
46. As I put to the applicant, the US State Department said that the law in Mongolia prohibited discrimination in employment and education against people with disabilities although in practice people with disabilities faced significant barriers to employment, education and participation in public life. It said that the law required the government to provide benefits to people with disabilities according to the nature and severity of the disability although the level of financial assistance was low (US State Department, *Country Reports on Human Rights Practices for 2009* in relation to Mongolia, Section 6, Discrimination, Societal Abuses, and Trafficking in Persons - Persons with Disabilities). The applicant said that he had read in the newspaper that the level of financial assistance was between ten dollars and thirty dollars a month.
47. The applicant’s partner suggested that the US State Department report did not give an accurate picture of the situation in Mongolia but as I put to her I consider it a reliable and independent source. I accept that people with disabilities face significant barriers to employment, education and participation in public life in Mongolia. However I find that the law prohibits discrimination in education and employment and that the government provides benefits to people with disabilities although the level of financial assistance is low. I do not accept on the evidence before me that the problems which people with disabilities face in Mongolia for reasons of their membership of that particular social group are so serious or so significant as to amount to persecution involving serious harm as required by paragraph 91R(1)(b) of the Act. I do not accept on the evidence before me that there is a real chance that the applicant will be persecuted for reasons of his membership of the particular social group of ‘people with disabilities’ in Mongolia if he returns to that country now or in the reasonably foreseeable future.

48. The applicant referred in the course of the hearing before me to the difficulties he would face in accessing adequate medical care in Mongolia and he produced letters indicating that the care he is receiving here would not be available in Mongolia. As I explained to the applicant, this in itself is not sufficient to bring him within the terms of the definition of a refugee: there are many countries in the world where medical services of the sort which are available in Australia are simply not available. I would have to be satisfied that the requisite connection with one or more of the five Convention reasons existed: that is, that the applicant would be denied treatment for one or more of the five Convention reasons or that he would be discriminated against in relation to treatment for one or more of those five reasons. As I put to the applicant, there is nothing in the evidence before me to suggest that he would be denied access to treatment, or discriminated against in relation to treatment, for one or more of the five Convention reasons.
49. I am unable to be satisfied on the evidence before me that the applicant has a well-founded fear of being persecuted for a Convention reason if he returns to Mongolia now or in the reasonably foreseeable future. It follows that I am not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore the applicant does not satisfy the criterion set out in paragraph 36(2)(a) of the Migration Act for the grant of a protection visa.
50. As I referred to in the course of the hearing before me, the Minister has a discretion under section 417 of the Act to substitute for a decision of the Tribunal a more favourable decision if the Minister thinks it is in the public interest to do so. The Minister has issued guidelines in relation to the circumstances in which he may consider exercising this power (*PAM3: Act - Ministerial powers - Minister's guidelines on ministerial powers (s345, s351, s391, s417, s454 and s501J)*). The Minister has said that he will generally only consider the exercise of his power in cases which exhibit one or more unique or exceptional circumstances and that factors relevant to this assessment include 'compassionate circumstances regarding the age and/or health and/or psychological state of the person such that a failure to recognise them would result in irreparable harm and continuing hardship to the person' I accept on the evidence before me that the applicant has serious medical problems for which he would be unable to access adequate medical care in Mongolia. I have therefore asked that this case should be brought to the Minister's attention.

DECISION

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