

1204665 [2012] RRTA 475 (26 June 2012)

DECISION RECORD

RRT CASE NUMBER: 1204665

DIAC REFERENCE(S): CLF2011/189881

COUNTRY OF REFERENCE: Bahrain

TRIBUNAL MEMBER: Shahyar Roushan

DATE: 26 June 2012

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the 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 Bahrain, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] November 2011.
3. The delegate refused to grant the visa [in] March 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. 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
7. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 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.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. 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.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

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.

Protection Visa Application

The Form

20. According to the information provided in the applicant's protection visa application, he was born in Manama, Bahrain in [year deleted: s.431(2)]. He has completed 9 years of education in Bahrain and lists his profession before coming to Australia as 'religious research' He was conducting research at [a] Religious School in Syria from 1998 to 2009. The applicant resided in Bahrain from birth until 1986 when he moved to Iran. In 1991 he travelled to Syria and resided in Damascus until 2010. He arrived in Australia [in] October 2010.

Written Statement

21. In a statement attached to his application for a protection visa, the applicant made the claims detailed below.

22. The applicant is from a religious Shi'a family. He completed his primary schooling at a Shi'a religious school, but after being discriminate against by his Sunni teacher in high school, he left Bahrain for the UAE in 1986 to join his [relative], [Mr A], 'a religious reference for the Shi'a in Dubai' and 'the president of [a Shi'a] Council'. With the help of his [relative], the applicant then travelled to Iran to complete his studies at a religious school in Qom. At that time diplomatic relations between Bahrain and Iran had been severed, making the applicant's situation 'very sensitive'.
23. The applicant stayed in Iran from the end of 1986 to the beginning of 1991, studying religion, researching literature, writing on religious issues and examining 'old books'.
24. In 1991, the applicant returned to Bahrain. During his stay he was called for interrogation by the security authorities on several occasions. During the course of these interrogations he was accused of supporting the 'Khomeini regime' and his passport was confiscated for three months. The applicant subsequently returned to Iran to complete his studies.
25. In early 1992, the applicant's passport expired and he had to return to Bahrain to renew the document. At that time Bahrain was experiencing a Shi'a uprising and the applicant was subjected to interrogation at the airport for two days. He was not allowed to leave the airport, where the authorities renewed his passport. He then returned to Iran via the UAE. When he found life in Iran 'getting difficult', he went to Syria where his [relative], [Mr A], was now residing.
26. In Syria, the applicant continued his studies under the instruction of Grand Ayatollah [name deleted: s.431(2)]. While residing in Syria, he travelled to other countries for purposes of research.
27. In 1998, the applicant's marriage to his wife, who was in the UAE, was arranged by his [relative]. The applicant's [relative] executed the marriage contract over the telephone. His wife subsequently travelled to Bahrain to meet his family. He was unable to go to Bahrain because he was 'not allowed' to do so. The applicant used to visit his wife in the UAE and sometimes she travelled to Syria or Iran to be with him. However, because of the religious articles he used to publish, the applicant was subjected to interrogation by the authorities for a few hours on every occasion he used to travel to the UAE. In 2009, he was denied entry to the UAE through Abu Dhabi airport. The applicant was unable to move his family to Syria and this caused him and his family much hardship.
28. In 2010, the applicant's wife secured a Student visa in order to travel to Australia to complete her [studies].
29. The current situation in Bahrain prompted the applicant to lodge an application for a protection visa as he fears being subjected to harm if he were to return to Bahrain due to his past profile.
30. In support of his application for a protection visa, the applicant submitted a document detailing his visits to Iraq, Lebanon and Iran on a number of occasions.

Departmental Interview

31. The applicant was interviewed by a delegate of the Minister [in] January 2012. The Tribunal has listened to the audio recording of the interview. The transcript of the interview is located on the Tribunal's file (folios 56-73).

The Delegate's Decision

32. The delegate refused to grant the applicant a protection visa on the basis that she was not satisfied that the applicant faces a real chance of persecution for a Convention reason in Bahrain. The delegate referred to country information relating to forcible exile as a punitive measure against suspected non-violent opposition activists or critics of government. While the delegate acknowledged that aspects of the applicant's claims 'echoes' the information before her, she noted that some specific forms of treatment cited in the formation before her had not applied to the applicant during his return trips to Bahrain in 1991 and 1992. The delegate further noted that there was no information to support the claims relating to the Bahraini government's general non-return instruction was applicable to all Bahrainis residing outside of Bahrain in 1998.
33. The delegate referred to the applicant's ability to renew his passport, obtain a 'smart card' travel to Bahrain in 2006/2007, 2009 and 2010 on a number of occasions and noted that the applicant had experienced no difficulties on those occasions. She further noted that as a holder of a Bahraini smart card the applicant had travelled between the Gulf Cooperation Countries (GCC) without difficulty. She concluded that the Bahraini authorities have no interest in the applicant. The delegate also placed weight on the applicant's delay in lodging his protection visa application in ultimately finding that the applicant's fear of persecution is not well-founded.

Application for Review

34. The applicant was represented in relation to the review.

The Hearing

35. The applicant appeared before the Tribunal [in] June 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
36. At the outset of the hearing, the applicant submitted a number of books and manuscripts which he claimed to have been authored by him. He also submitted a letter by [Organisation 3], stating that the applicant 'commonly known as [Alias 1] is from a well-known family in the Bahrain community, which has a history of struggling to defend the rights of oppressed citizens'. The letter further stated that the applicant has spent his life in exile, 'defending the issues of Bahrain through anonymous writings and publications on the subject'. It was stated that the applicant has been speaking on behalf of the movement and 'defending the Bahraini cause' on an ongoing basis at Islamic Shi'a gatherings and events.
37. The Tribunal explained to the applicant the complementary protection limb for the grant of a protection visa and that the Tribunal must also assess whether he would come within

Australia's complementary protection obligations under other treaties not to return people to their country of origin.

38. The applicant was asked about the preparation of his application for a protection visa. He stated that he was assisted by his representative in preparing his application for a protection visa and the accompanying statement. He confirmed the accuracy of the contents of both and stated that he did not wish to change any of the information contained therein.
39. The applicant stated he was born in [village deleted: s.431(2)], Bahrain in [year deleted: s.431(2)]. In 1982 or 1983 the family moved to [Town 1]. Towards the end of 1986 he departed Bahrain for the UAE. After a few weeks he secured a visa to Iran. He travelled to Iran in 1987. He resided in Qom for approximately 5 years. While residing in Iran, he returned to Bahrain on a number of occasions. He first returned to Bahrain in 1991, staying for a few months. During his stay, his passport was confiscated and he was questioned a number of times. The applicant had to return to Bahrain again in 1992 in order to renew his passport. On this occasion, he was not allowed to enter Bahrain and remained at the airport for 2-3 days. His passport was renewed at the airport. He was then deported to the UAE and after 10 days he returned to Iran. A few months later he moved to Syria, which remained his primary place of residence between 1992 and 2010. During this period he travelled to Iran, Iraq, Yemen, Egypt, India, UAE and Kuwait. The longest period of time he resided outside of Syria was for 9 months when he was working in Iraq.
40. He was asked about his family. He stated that his parents and all his [siblings] currently reside Bahrain. [Details in relation to the applicant's family deleted: s.431(2)]. His [relative] resided in the UAE and then Syria, before returning to Bahrain. He now plays an active role in Bahrain's opposition politics.
41. The applicant was asked about his education and work history. He stated that he was [at school] when he departed Bahrain for Qom. He studied in [Qom] and continued his research and studies in Syria, as well as other countries. He is known as a religious researcher and scholar. His specialty is in researching and finding old manuscripts by Bahraini, Shi'a scholars. He reviews, edits and republishes these manuscripts. [Details in relation to the applicant's work deleted: s.431(2)].
42. The applicant submitted a number published manuscripts in support of his claims. He noted that one of his books was a biography of [details deleted: s.431(2)].
43. The Tribunal noted that [Alias 1] appears as the author of the manuscripts. He stated that that is his 'scientific name'. In explaining why he had chosen [Alias 1] as his pen name, he stated that there are 2 prominent Shi'a families of scholars in Bahrain: [Family 2] and [Family 3]. The former follows [one] jurisprudential school while the latter follows [another] jurisprudential school of Shi'a Islam. In [year deleted: s.431(2)], high ranking clergy within [Family 3] had issued a *fatwa* against the ruling family, creating an ongoing conflict between [Family 3] and the ruling family. Therefore, many members of [Family 3] have refrained from using [Family 3] as a family name to avoid facing problems or being subjected to, discrimination and persecution. This is the reason why his name as it appears on his official documents is different to his pen name. He further explained that when he had encountered problems in 1991 and 1992 upon visiting Bahrain, the authorities had no knowledge of his membership of [Family 3].

44. The applicant stated that a number of his manuscripts have been translated into English in the last year or so and are in the process of being published in China. In relation to articles and other work, he stated that he used to contribute to a Bahraini internet forum. The forum was shut down following the events in 2011. He regularly publishes his scholarly work in magazines and journals in Iraq and Lebanon. In addition, he authors a daily email report [details deleted: s.431(2)]. He regularly delivers lectures across all Shi'a [centres], converting a range of topics including religion, jurisprudence, political events and breaches of human rights. He regularly sends or posts the text of his speeches to the subscribers of his email group.
45. The applicant was asked if he was involved in any other form of political activity in Bahrain. He stated that he was [closely involved with [Organisation 3]]. The objective of the organisation is to correct any misconceptions in the mind of the public about the situation in Bahrain and to inform the authorities in Australia about the recent developments in Bahrain. As a member of the organisation, while he has not participated in demonstrations, he has delivered lectures, assisted in mobilising members and lending support at demonstrations by preparing and delivering banners and flags.
46. The applicant was asked why he did not want to return to Bahrain. He stated that due to the publication of his recent works and spread of his lectures and speeches through the internet, it has become widely known that he is indeed [Alias 1]. Not only is he a member of [Family 3], but also a vocal opponent of the regime outside of Bahrain. If he were to return to Bahrain he would be subjected to imprisonment, sexual assault and mistreatment.
47. The Tribunal noted that many members of his family continue to remain active in the opposition, but he has not claimed that anything has happened to any of them. He stated that they all work in a political organisation which enjoys a degree of protection. They are involved in peaceful opposition activities and they do not directly speak against the ruler of Bahrain. However, his publications are replete with references to the 'crimes' committed by the ruler of Bahrain and he is known as a prominent member of his family. The authorities are now aware of this because of his public appearances in Australia. He stated that just because members of his family have not been arrested, it does not mean that nothing has happened to them. His [relative]'s house has been hit with tear gas almost on a daily basis. His father is regularly subjected to searches and questioning at checkpoints. He stated that while Wifaq is calling for reforms, [Organisation 3] is calling for regime change. He further stated that he had called for regime change even before the events in February 2011.
48. The applicant was asked, if he had been an outspoken critic of the regime before 2011, why he had been able to travel to Bahrain on a number of occasions in 2009 and 2010 without experiencing any consequences. He stated that at that they were unaware he is the same person 'as [Alias 1]'.
49. The applicant stated that his [youngest child] has been denied a travel document because they require the applicant's presence in order to issue the passport to his child.

Information from other Sources

Protest Activities

50. The country information before the Tribunal suggests that demonstrations and political rallies erupted throughout Bahrain on 14 February 2011. Bahraini authorities arrested 2,929 people

in connection with the protests.¹ While most have now been released, some protest leaders have been sentenced to heavy prison terms. The special military courts established after the protests ended their operation on 7 October 2011, after more than 250 persons were convicted through the courts.

51. The Human Rights Watch *World Report 2012* notes that twenty protest leaders were sentenced by the special military court to prison terms ranging from five years to life.² The charges against them ranged from calling for a change of government, leading illegal demonstrations, spreading false news, and harming the reputation of the country. An appeals court upheld their convictions and sentences on 28 September 2011.³
52. Protests have continued in Bahrain in recent months.⁴ Sources report that prominent human rights activists and demonstrators have been detained and ill-treated in recent protests. On 15 December 2011 police detained Zainab al-Khawaja, human rights activist and daughter of a prominent opposition leader, during a demonstration.⁵ According to *Al Jazeera*, along with Zainab Al-Khawaja's father, three other male relatives and her husband were imprisoned after the February 2011 uprising.⁶ Al-Khawaja and Al-Sayyid were reportedly released after five days in custody and are awaiting trial.⁷
53. On 25 January 2012 *Associated Press* reported the death in custody of a protester who had been detained during recent clashes. The Interior Ministry reportedly issued a statement noting that public prosecutors would investigate the death. According to *Associated Press*, the statement from the Interior Ministry said that the detainee had been accused of 'vandalism' during a protest.⁸
54. On 26 January 2012 Amnesty International criticised the Bahraini authorities for inappropriately using tear gas against protesters.⁹ The report noted that more than a dozen

¹ On the State of National Safety legislation see Chapter III: Section F: Bahrain Independent Commission of Inquiry 2011, *Report of the Bahrain Independent Commission of Inquiry*, 23 November, p.47
<http://files.bici.org.bh/BICIreportEN.pdf>

² Human Rights Watch 2012, *World Report: Bahrain*, 22 January, p.3-4
http://www.hrw.org/sites/default/files/related_material/bahrain_2012.pdf

³ Human Rights Watch 2012, *World Report: Bahrain*, 22 January, p.3-4
http://www.hrw.org/sites/default/files/related_material/bahrain_2012.pdf

⁴ Khalifa, Reem 2012, 'Bahrain protests turn violent after teen protester's funeral', *Huffington post*, source: *Associated Press*, 1 January http://www.huffingtonpost.com/2012/01/01/bahrain-protests-violent_n_1178414.html; '4 killed in protests in Bahrain, opposition groups says' 2012, *CNN*, 27 January http://articles.cnn.com/2012-01-27/middleeast/world_meast_bahrain-unrest_1_bahrain-center-bahraini-police-wefaq?_s=PM:MIDDLEEAST; 'Bahraini police fire tear gas in clash with protesters' 2011, *Arabian Business*, source: *Reuters*, 17 December <http://www.arabianbusiness.com/bahraini-police-fire-tear-gas-in-clash-with-protesters-435540.html>; 'Fired Bahrain Shiites want their jobs back' 2012, *Kuwait Times*, 22 December (CISNET Bahrain CX278984)

⁵ 'Bahraini police fire tear gas in clash with protesters' 2011, *Arabian Business*, source: *Reuters*, 17 December <http://www.arabianbusiness.com/bahraini-police-fire-tear-gas-in-clash-with-protesters-435540.html>

⁶ 'Bahraini blogger released on bail' 2011, *Al Jazeera*, 21 December
<http://www.aljazeera.com/news/middleeast/2011/12/2011122155515288556.html>

⁷ 'Bahraini blogger released on bail' 2011, *Al Jazeera*, 21 December
<http://www.aljazeera.com/news/middleeast/2011/12/2011122155515288556.html>; 'Bahrain blogger Zainab al-Khawaja freed on bail' 2011, *BBC News*, 21 December <http://www.bbc.co.uk/news/world-middle-east-16283557>.

⁸ 'Protester in Bahrain Dies After Arrest' 2012, *ABC News*, source: *Associated Press*, 25 January
<http://abcnews.go.com/International/wireStory/bahrain-police-fire-tear-gas-rally-capital-15438138>

⁹ Amnesty International 2012, *Bahrain's use of tear gas against protesters increasingly deadly*, 26 January
<http://www.amnesty.org/en/news/bahrain-s-use-tear-gas-against-protesters-increasingly-deadly-2012-01-26>

protesters had died since February 2011 as a result of tear gas, 'with a rise in such deaths in recent months'.¹⁰ Security forces reportedly threw tear gas canisters into people's homes, including the home of Bahraini lawyer Fatima Khudair, although the report does not indicate whether the victims of such attacks were known to the authorities.¹¹ On 27 January 2012 CNN reported that four people had been killed in anti-government protests.¹²

55. On 30 January 2012 Bahrain Youth Society for Human Rights (BYSHR) reported that more than 70 demonstrators had been arrested 'in recent weeks'.¹³ It is BYSHR's view that the arrests are part of a 'proactive security crackdown' in the lead up to the one year anniversary of the Bahraini uprising on 14 February 2012.¹⁴
56. In response to the 2011 protests the Bahraini authorities targeted doctors, teachers, students, leaders of recognised opposition groups, journalists, athletes and human rights defenders.¹⁵ Some reports suggest that Shi'as in general may have been targeted purely due to membership of their religious sect. Many of those arrested have been held incommunicado and there have been reports of torture and ill-treatment while in detention. Additionally, government agencies, other official bodies and private companies in which the state held a substantial interest dismissed more than 2,500 employees, reportedly for their suspected involvement in the protests. Sources report that some family members of detainees have been assaulted or threatened (see below).
57. The Human Rights Watch (HRW) *World Report 2012* states that, since mid-March 2011 security forces have arrested over 1,600 people who participated in, or were suspected of supporting, the anti-government demonstrations. According to HRW, authorities held most detainees in incommunicado detention for weeks, in some cases months.¹⁶
58. An October 2011 article from *AlJazeera* reported that 'teachers, professors, politicians, doctors, athletes, students and others have all appeared in Bahrain's military courts' The article notes that, in just two weeks, 208 people were sentenced or lost appeals, leading to a cumulative total of just less than 2,500 years in prison.¹⁷

Shi'as

59. Amnesty International (AI) has reported that the 'overwhelming majority' of hundreds of people arrested in March 2011 were Shi'a Muslims who were active during the protests.¹⁸ According to AI, as the military and security forces took control of the Pearl Roundabout, the

¹⁰ Amnesty International 2012, *ibid.*

¹¹ Amnesty International 2012, *ibid.*

¹² '4 killed in protests in Bahrain, opposition groups says' 2012, CNN, 27 January http://articles.cnn.com/2012-01-27/middleeast/world_meast_bahrain-unrest_1_bahrain-center-bahraini-police-wefaq?_s=PM:MIDDLEEAST

¹³ Bahrain Youth Society for Human Rights 2012, *Bahrain: a crackdown on demonstrators in the first anniversary of the Feb. 14 protests*, 30 January <http://byshr.org/?p=922>

¹⁴ Bahrain Youth Society for Human Rights 2012, *ibid.*

¹⁵ Matar Ibrahim Matar and Jawad Fairouz, who represented Al Wefaq, the largest opposition bloc in parliament before its members resigned in protest in February, were seized on 2 May 2011. Authorities released Matar and Fairouz in August but they still face charges related to their political activities. Human Rights Watch 2012, *World Report: Bahrain*, 22 January, p.2

http://www.hrw.org/sites/default/files/related_material/bahrain_2012.pdf

¹⁶ Human Rights Watch 2012, *ibid.*

¹⁷ 'Two weeks in Bahrain's military courts' 2011, *AlJazeera*, 19 October (CISNET Bahrain CX274733)

¹⁸ Amnesty International 2011, *Briefing paper – Bahrain: A human rights crisis*, 21 April, p4 <http://www.amnesty.org/en/library/asset/MDE11/019/2011/en/40555429-a803-42da-a68d-0f016b908580/mde110192011en.pdf>

Financial Harbour and the SMC ‘they launched a clearly planned and orchestrated crackdown on the Shi’a political and community leaders and activists who had been prominent in leading the protests and who had spoken out publicly criticizing members of the royal family and calling for a change of government...’ In addition, AI reported that military or police checkpoints had been set up at the entry and exit points of predominantly Shi’a villages and towns.¹⁹

60. Some reports suggest that Bahraini authorities have targeted Shi’as in general, not just those suspected of involvement in the protests. An article published by the *Institute for War and Peace Reporting (IWPR)* on 23 March 2011 reported that authorities were stopping people at checkpoints and asking them if they were Muslim or Rafithi – a derogatory term for Shi’a. According to the report, ‘people feel like they have to lie about their background and maybe even their name to be safe and to be allowed to pass’²⁰ Saudi soldiers reportedly ‘treated them like they were not human because they are Shi’a, and that they were cursed for being Shi’a while being beaten up’.²¹
61. A *Reuters* article published 9 May 2011 states that Bahrain ‘has pursued a punitive campaign that appears to target Shi’ites in general, not just the advocates of more political freedoms, a constitutional monarchy and an end to sectarian discrimination’²² Similarly, an *AlJazeera* report published 19 October 2011 states that while many of those imprisoned took part in massive pro-democracy protests earlier this year, ‘others, families say, were in the wrong place at the wrong time and were targeted by virtue of their religious sect’²³
62. While no recent information was located to indicate that the Shi’a population currently faces a general risk of harm because of imputed anti-government opinion, sources indicate that the protest movement continues to be dominated by Shi’as, and recent prominent arrests and trials all appear to have involved Shi’a defendants.
63. An April 2012 Amnesty International article argues that the Government response to the 2011 protests amounted to a collective punishment against the Shi’a community. The article states:

After the Bahraini government violently crushed the protests in mid-March 2011, the authorities engaged in systematic repression against all those who were active in the antigovernment protests, and orchestrated a collective punishment policy against the Shi’a community. At least 38 Shi’a prayer centres were demolished. The government argued that these centres were illegal makeshift buildings which did not comply with official planning criteria. On 22 April 2011, the Minister of Justice, Islamic Affairs and Endowments Shaikh Khalid bin Ali Al Khalifa said: “what have been demolished are, in fact, unlicensed buildings regardless of any doctrine.”

He added that the government was guaranteeing religious freedom and protecting houses of worship but would never tolerate any violations of building regulations. However, some of the demolished mosques had existed for many years. The timing of their destruction, and the fact that all mosques destroyed were used by the Shi’a

¹⁹ Amnesty International 2011, *ibid.*

²⁰ Al-Khawaja, Zainab 2011, ‘Protesters reject Sunni-Shi’a split claims’, *Institute for War and Peace Reporting (IWPR)*, 23 March (CISNET Bahrain CX265640)

²¹ Al-Khawaja, Zainab 2011, *ibid.*

²² Lyon, Alistair 2011, ‘Analysis: West turns blind eye to Bahrain crackdown’, *Reuters*, 9 May <http://www.reuters.com/article/2011/05/09/us-bahrain-repression-idUSTRE7481VM20110509>, (CISNET Bahrain CX265547)

²³ ‘Two weeks in Bahrain’s military courts’ 2011, *AlJazeera*, 19 October (CISNET Bahrain CX274733)

community, point out to the targeting of the Shi'a community. Bahraini media, including the national state-controlled television channel and pro-government newspapers orchestrated a campaign against the Shi'a community. Those who led and or were active in the protests were labelled as traitors working for Iran. The weekly television programme "Open Dialogue" broadcast "confessions" extracted from detainees under torture and other ill-treatment and threat. Protestors who appeared on television usually apologized and pledged not to protest or get involved in politics. State-controlled media and top government officials mobilized many in the Sunni community, who are loyal to the royal family and the government, against the Shi'a protesters. Some well-known pro government politicians and journalists spoke on Bahraini and other Arab television channels as if Shi'a Bahrainis were second class citizens. For example, one politician said on television: "we have paid for their education here and abroad and this is what we get from them". Bahraini society became further polarized along sectarian lines.²⁴

Targeting of family members

64. Some sources report that security forces have assaulted or threatened the family members of those they suspect of involvement in the protests. This has reportedly occurred both at the time of arrest and also during other encounters. According to AI, when people were arrested they were often taken at night, 'by groups of police and security forces who wore masks, failed to produce arrest warrants and sometimes assaulted those they wished to detain and members of their families'.²⁵
65. On 9 April 2011 *Reuters* reported that Bahraini authorities had arrested and beaten a prominent human rights activist and members of his family.²⁶
66. On 14 April 2011 the *British Broadcasting Corporation (BBC)* reported on a Shi'a funeral for 'one of the several detainees to die in police custody'. Accused of trying to run over a policeman during a protest, Ali Isa al-Sager reportedly handed himself over to police after his family said they were threatened.²⁷
67. On 22 June 2011 human rights activist and protest leader Dr Abdul Jalil Singace was sentenced to life imprisonment (25 years).²⁸ After his arrest, Abdul Jalil's 28-year-old son, Hussein, and his wife reportedly moved into the family home. According to *AlJazeera*, one week after his father's arrest, police again raided the house in the middle of the night and arrested Hussein. On 6 October 2011, the final day of military courts, Hussein was sentenced to seven years in prison.²⁹

²⁴ Amnesty International 2012, 'Flawed Reforms - Bahrain Fails to Achieve Justice for Protesters', April, pp. 49-50 <<http://www.amnesty.org/en/library/asset/MDE11/014/2012/en/a23b192e-c518-49e1-8a97-c11e4789f06f/mde110142012en.pdf>>.

²⁵ Amnesty International 2011, *ibid.*

²⁶ Richter, Frederik 2011, 'Bahrain human rights activist 'arrested, beaten up'', *Reuters*, 9 April <http://www.reuters.com/article/2011/04/09/us-bahrain-idUSTRE7382WW20110409>

²⁷ 'Bahrain's security clampdown divides kingdom' 2011, *British Broadcasting Corporation (BBC)*, 14 April (CISNET Bahrain CX263961)

²⁸ 'Two weeks in Bahrain's military courts' 2011, *AlJazeera*, 19 October (CISNET Bahrain CX274733)

²⁹ 'Two weeks in Bahrain's military courts' 2011, *ibid.*

68. According to news reports, some Bahrainis alleged that family members of expats who had been pictured at a pro-democracy protest in England had been harassed.³⁰

Protests Abroad

69. A number of Bahraini students studying abroad had their scholarships revoked for participating in anti-government protests. These scholarships have reportedly been reinstated. A news source reported that Bahrainis studying in the United Kingdom were required to sign loyalty pledges and vow that they would not compromise Bahrain's image by participating in protests abroad. They were also reportedly ordered to inform on fellow Bahrainis who were not 'fulfilling their loyalty' According to the article, some Bahrainis alleged that family members of expats who had been pictured at a pro-democracy protest in England had been harassed.³¹
70. On 1 July 2011 *MSNBC* reported that Bahrainis studying in the United Kingdom had been 'ordered to spy on their countrymen in the wake of the deadly crackdown on pro-democracy demonstrators'³² Documents containing 'loyalty pledges' were reportedly sent to Bahraini students who receive funding to study abroad. The students were required to vow that they would not compromise Bahrain's reputation 'through the use of social media, public demonstrations or any other manner'.³³ The document, a copy of which was reportedly obtained by *MSNBC*, also states that recipients had a duty to report other students who were not 'fulfilling their loyalty'.³⁴ Additionally, according to *MSNBC*, the Bahrainis alleged that the families of some expats who were pictured at a pro-democracy protest in England had been harassed³⁵
71. Article 134 of the Penal Code restricts freedom of expression abroad. The Article states:
- A punishment of imprisonment for a period of no less than 3 months and a fine of no less than BD100, or either penalty, shall be imposed upon any citizen who has attended abroad in whatever capacity and without authorisation from the Government, any conference, public meeting or seminar or has participated in any manner whatsoever in the deliberations thereof with the intent of discussing political, social or economic conditions in Bahrain or in any other state so as to weaken financial confidence in Bahrain or undermine its prestige or standing or to worsen political relations between Bahrain and these countries...³⁶
72. According to the BICI, the Government of Bahrain has proposed amendments to the Penal Code to enhance freedom of expression, including removing Article 134.³⁷

³⁰ Bruton, Brinley. F 2011, 'Bahrain to citizens living abroad: Spy on countrymen, no protests permitted', *MSNBC*, 1 July http://www.msnbc.msn.com/id/43590958/ns/world_news-mideast_n_africa/t/bahrain-citizens-living-abroad-spy-countrymen-no-protests-permitted/.

³¹ Human Rights Watch 2012, *ibid*, p.5

http://www.hrw.org/sites/default/files/related_material/bahrain_2012.pdf; and Bahrain Independent Commission of Inquiry 2011, *Report of the Bahrain Independent Commission of Inquiry*, 23 November, p.357 <http://files.bici.org.bh/BICIreportEN.pdf>

³² Bruton, Brinley. *ibid*.

³³ *Ibid*.

³⁴ *Ibid*.

³⁵ *Ibid*

³⁶ Bahrain Independent Commission of Inquiry 2011, *ibid*.

³⁷ Bahrain Independent Commission of Inquiry 2011, *ibid*.

FINDINGS AND REASONS

73. The applicant travelled to Australia on a valid passport issued by the Kingdom of Bahrain. Having sighted the applicant's passport at the hearing, the Tribunal accepts that he is a national of Bahrain.
74. The applicant's claims are based on the Convention grounds of political opinion, religion and membership of his family as a particular social group. The applicant claims that he belongs to a family of prominent Shi'a clergy, scholars and political activists in Bahrain. In line with his family's tradition, he pursued Shi'a scholarship from a young age, eventually focussing on the historical works of Bahraini Shi'a religious figures. He claims to have published [books] using a pen name. Some of his published works have been directly or indirectly critical of the ruling family. The applicant claims to have delivered lectures in Australia and to have been a [member] of [Organisation 3]. He has also distributed information in relation to Bahrain to an email list and contributed to Shi'a electronic fora. The applicant fears arrest, detention and ill-treatment if he were to return to Bahrain.
75. The Tribunal found the applicant's oral evidence at the hearing wholly consistent with his written claims and the independent evidence before the Tribunal. His account of his experiences was straightforward, unembellished and persuasive. The Tribunal found him to be a reliable, truthful and credible witness.
76. On the basis of the evidence before it, the Tribunal accepts that the applicant is from a prominent family of Shi'a clergy and scholars in Bahrain, who historically have been locked in tense relations with the ruling family³⁸ The Tribunal accepts that the applicant's [relative], [Mr A], is a high ranking Shi'a cleric and one of the spiritual leaders of [an opposition party]. The Tribunal accepts that the applicant is a prominent Shi's scholar and the author of numerous books and manuscripts under the pen name of [Alias 1]. The Tribunal accepts that his books have at times been critical of Bahrain's ruling family, [details deleted: s.431(2)].
77. The applicant's evidence in relation to the restrictions placed on him when visiting Bahrain in in the 1990s is consistent with the country information before the Tribunal. According to Mansoor Al-Jamri, the government of Bahrain banned the vast majority of those who studied in Qom from returning to Bahrain. Some of these students managed to return home in the early 1990s, but the majority had to wait until 2001 when political exiles were allowed to return³⁹ The Tribunal accepts that the applicant departed Bahrain for Qom in 1986 and that he was questioned and his passport confiscated when he visited Bahrain in 1991. The Tribunal accepts that the authorities refused to renew his passport during his 1991 visit, forcing him to return to Bahrain in 1992. The Tribunal accepts that the applicant was not allowed to enter Bahrain on that occasion and his passport was renewed at the airport. The Tribunal further accepts that the applicant was not allowed or at least he believed that he was not allowed to return to Bahrain on occasions in the 1990s. There is also evidence to support the applicant's contention that many Bahrainis who were perceived to be linked to

³⁸ Leading Alim laid to rest amid tension in Saudi-occupied Bahrain, IRIB World Service, 17 April 2011, <http://english.irib.ir/radioislam/news/islam-in-asia/item/77958-leading-alim-laid-to-rest-amid-tension-in-saudi-occupied-bahrain>

³⁹ Al-Jamri, M, Shi'a and the State in Bahrain: Integration and Tension, *Alternative Politics, Special Issue 1, 1-24, November 2010*. See also

the unrest in 1990s continued to experience difficulties when travelling to GCC as a result of being placed on ‘blacklists’ in the years following the unrest.⁴⁰

78. The Tribunal accepts that the applicant was able to travel to Bahrain from 2006 to 2010 on a number of occasions. This is not surprising for a number of reasons. Sources confirm that the ascension to power of the current monarch, King Hamad, in 1999 ushered in an era of hope and many radical reforms, including the release of hundreds of prisoners and detained individuals who had participated in the disturbances of the mid-1990s.⁴¹ Consequently, the political environment in Bahrain witnessed a palpable improvement. The State Security Law was repealed, contributing to improving Bahrain’s human rights record and expanding the margin of freedom of expression, as evidenced by the fact that around 1,150 demonstrations and sit-ins were approved by government authorities in the past decade.⁴² In addition, the Tribunal was unable to find any persuasive evidence in the sources consulted to suggest that those in the applicant’s position had experienced harm or mistreatment at the hands of the authorities in 2009 and 2010. Finally, the applicant published his books under a pen name. There are no obvious links between his name as it appears on his official documents and his pen name or [Family 3]. All these factors may explain why the applicant had not experienced any difficulties during his visits to Bahrain in the period between 2006 and 2010.
79. The applicant has consistently claimed that the change in the situation in Bahrain since February 2011 prompted him to seek protection in Australia.
80. The country information before the Tribunal indicates that in response to the 2011 protests the Bahraini authorities targeted persons suspected of participating in or supporting the demonstrations. Some reports suggest that Shi’as in general may have been targeted purely due to membership of their religious sect. The sources consulted suggest that demonstrations have continued in Bahrain in 2012. Reports suggest the Government has continued to use heavy handed tactics in its attempts to contain the protests, including the use of tear gas and rubber bullets. Human rights reports also state that abuses by security forces, including arbitrary arrest and torture, have continued despite government pledges of reform.⁴³
81. On the basis of the applicant’s oral evidence and the documents submitted by him in support of his application for review, the Tribunal accepts that he is closely involved with [Organisation 3]. The Tribunal accepts that he delivers lectures in favour of Shi’a rights and against the Bahraini regime and publishes comments and articles on these topics, as well as on scholarly Shi’a related issues. The Tribunal is not satisfied that the applicant has engaged in political activity in Australia for the sole purpose of strengthening his refugee claims.
82. In view of the applicant’s profile, the profile and activities of members of his family, his activities in Australia, the Tribunal cannot rule out the possibility of the applicant agitating against the Bahraini government, providing support to the opposition or speaking out in favour of Shi’a rights. The Tribunal also considers it likely that the identity he had carefully concealed behind his pen name for many years may have now become discernible

⁴⁰ Tariq Khonji, Kuwait releases Bahraini cleric, *Gulf Daily News*, 23 January 2006, <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=133377>.

⁴¹ Bahrain Independent Commission of Inquiry 2011, *Report of the Bahrain Independent Commission of Inquiry*, 23 November, p.162 <http://files.bici.org.bh/BICIREportEN.pdf>.

⁴² *Ibid*

⁴³ Wehrey, Frederic 2012, ‘Bahrain’s Lost Uprising’, Carnegie Endowment for International Peace, 12 June, <http://www.carnegieendowment.org/2012/06/12/bahrain-s-lost-uprising/bkgv>.

as a result of his activities in Australia. The Tribunal finds that there is a real chance that the applicant will face a threat to his life or liberty, significant physical harassment and/or ill-treatment if he were to return to Bahrain now or in the reasonably foreseeable future. The Tribunal finds that the harm the applicant would be subjected to involves 'serious harm' as required by paragraph 91R(1)(b) of the Act. The Tribunal is satisfied that the applicant's political opinion, religion and membership of the particular social group of his family are the essential and significant reasons for his fear of persecution as required by paragraph 91R(1)(a) of the Act. The Tribunal finds that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason. The Tribunal is satisfied that the applicant does not have adequate and effective state protection available to him and that it would not be reasonable for him to internally relocate to avoid the harm he fears.

83. For the reasons outlined above, the Tribunal is satisfied that the applicant's fear of persecution is well-founded.

84. The Tribunal is satisfied that the applicant does not have a legally enforceable right to enter and reside in any country other than his country of nationality, Bahrain. The Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154).

CONCLUSIONS

85. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

86. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.