

0900705 [2009] RRTA 371 (28 April 2009)

DECISION RECORD

RRT CASE NUMBER: 0900705

DIAC REFERENCE: CLF2008/155199

COUNTRY OF REFERENCE: Brazil

TRIBUNAL MEMBER: Dione Dimitriadis

DATE: 28 April 2009

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 Brazil, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

Definition of 'refugee'

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

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

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

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

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Portuguese and English languages.

Claims made to the Department

21. In the application for a protection visa the applicant stated as follows:
22. He was born in Brazil. He speaks Portuguese, Spanish and English. He has never married. He departed from Rio de Janeiro. He did not state his citizenship. His past employment was as a real estate agent for six years. He was unemployed for a few years after that. The applicant lived at Minas Gerais. He lived at an address in Rio de Janeiro and then lived at a different address in Rio de Janeiro. The applicant stated that he attended school in Brazil and he then attended university in Brazil. He stated that he obtained a Bachelors Degree as well as a post graduate qualification. The applicant also attended school in Country A. He arrived in Australia on a Brazilian passport. He has previously travelled outside his home country before his journey to Australia. He travelled to Country B for a visit and then travelled from there to Country A to study. To the question: 'Did you have difficulties obtaining a travel document (such as a passport) in your home country?' the applicant stated: "No". He departed legally from Rio de Janeiro. The applicant stated that he has not been in contact with relatives in his "home country or any other country".
23. The applicant stated that he has a right to enter or reside in Country C. The applicant stated that he has not ever had, or used any other passport or travel document.
24. He submitted a photocopy of 6 pages of a passport from Brazil. The passport had been issued in his name. The passport contained a copy of a visa on which he entered Australia.
25. The applicant stated in the application for a protection visa that he is seeking protection in Australia so that he does not have to go back to Brazil.
26. The applicant provided a statement that outlined when and where in Brazil he was born. He stated that he is Brazilian, not religious. His usual occupation is a real estate agent. The applicant left Brazil and arrived in Australia.
27. In answer to the question, 'Why did you leave that country?' the applicant stated:

Since I finished school I trying to leave the country, I am being persecuted by authorities in Brazil. Military, Mason and government. I live in another country by

that Brazil has always been and will be a country of corrupt and justice always be colluding with this system. Even though my phone, my homes and my car were also hears talk in open this whole truths. So look for another nationality in which I believe in the constitution.

In Brazil and I maligned standerous in any place they live and live, police say that I am gay, I am traitor of patria. My friends and relatives are attacked, my car CD player was stolen shortly after having arrived from [city] I am awake during the night with police sirens or telephone calls connected through my street during the day or at night, gun fire, machine gun burst to get established, so the next day I do not concentrate or cheer for work or study.

During my course in English and Spanish soldiers, police, I threatened with death or threatened my parents and my brother. The police stood in the door of the course or going with the siren on throughout the school.

When finished the college traveled to [city] in an attempt to rid the problem but I had the same persecution in [city] The people who helped me get jobs were dismissed from their jobs. My passport was stolen in the trunk that was locked in my room. Then came within a book from the School of English, [name] School, where the theme was murder and death. Throughout the time that lived in [city], my family was threatened with death, and my life too. Thus, in [city] I was sent away from all that jobs I had. So I was forced to return to Brazil. The increased persecution, threats to, and discrimination, I do not work. Military authorities and slanderous and slander me saying that I am gay, I am traitor of patria. In November [year], stole the truck from my uncle [name], as a form of punishment for having left the country.

My level of professionalism is high but no company calls me to work, much less to do interviews. Why soldiers go to the company and I slander and libel, which is sabotaging any and every kind of attempt to make money, or even me integrate socially. The continuing threat when I went down to the Rio de Janeiro before my arrival, all my cousins were attacked, my aunt [name] told although the job because I lived in your house.

Military sabotage document of your property change your property for Catholic church. Today Iracy house not is in your name, but is Catholic church property.

Real estate market worked sector bandages. [Name], Rio de Janeiro. My number of 'Creci' [number], or during that period, that was of had working on February until August, my customer was military and Masons, soon after leaving are laughing and put the finger in their mouths as a sign of silence.

Since my graduation until now, the authorities in Brazil that I cannot work or mount a company, when step on the street are a sign of "zero", not make money.

I could not bring any kind of document to prove it because the migration suspicious and could not let me enter. In the week preceding my departure, R\$3,000,00 Reals (three thousand Reals) stolen from my account. The bank returned to me but the bank would investigate the 'cloning' of the card. My bank manager sent the email statement that showed the theft of money from my account. And in the month of September deposited R\$12,00 (twelve reals), no longer lived in Brazil.

My cousin [name], was robbed week before travelling to Australia, stole his car, stopped at a signal in Rio de Janeiro When I was at the mall shopping bag to travel to a military 'paisana' passed by me and said, 'will suffer' and put the finger in their

mouths as a sign of silence and then placed his hand on the chest doing sign of Mason.

[Date] Sunday morning before travel to Australia in the neighbourhood was street..... where I lived when they go out to do a walk, a group of traffickers invaded the street and arrested all the people who passed on the street inside the bakery, including me. Traffickers through all the time for the top they had machine guns, grenades and so on. One wore a wig because hours before had taked my cousin, [name], son of [name], residents of Rio de Janeiro, and put him, the nickname of wig. Why has the big hair The traffickers threatened to everyone all the time. Stop the cars that passed on the street and threatened with death. After much fear went away. I did a brief walk and came back home to go running to the airport, I found cops on the street where they were passed by the hand into the mouth, did sign Mason, others laughed and so on.

He I am in Sydney the same type of threat by police and Mason. Threatening my parents will not let me work, slander me and slanderous me. When I turn on the passing car, i.e. the departure, (split, money go, that is, I cannot stay in Sydney). When I am passing on the street people spit Call my cell during the night. (sic)

28. The applicant then listed a number of text messages that he had received. One was sent in November and stated: "Hey you coming to Surfers? (sic)" Another read: "Hey Kylie its Erin not sure I gave u (sic) my new number yet.....But just wondering if you've been paid yet? Also are you going out tomorrow night?"

29. In answer to the question, 'What do you fear may happen to you if you go back to that country?' the applicant stated:

When I arrived in [country], my uncle [name] had stolen his truck and got stuck in the trunk of the car the robbers during several hours. In the weeks that happened the theft, soldiers dressed in civilian stayed with the car from, did 'monza' stopped with the trunk open, because my uncle had been arrested inside the trunk, and the finger in the mouth making sign of silence. The mark monza means of 'M' Mason.

So all those who are part of my group of friends or relatives are attacked or lose their jobs, my family and threatened with death. I was awake during the night, being subjected to psychological torture, as torture and execution of military and specialty in America Latin. And nocturnal and easy to simulate an assault or a kidnapping or bullet missed and I run in Brazil. In addition to justice does not work there is no research and no punishment and simple and easy for the military or police do this kind of crime.

When the police invade the slum killed over 30 people including children, elderly students and workers and nothing happened, and nobody punished. My life does not mean anything to the authorities in my country. The level of violence and very high in all aspects impunity further. (sic)

30. In answer to the question, 'Who do you think may harm/mistreat you if you go back?' the applicant stated:

Military kill me or my family or relatives or some friends. It's very simple making this because don't have investigation and don't have punish. And I don't change my opinion: I think not necessary change the Brazil, it's only go away the Brazil. Brazil history is the same, not change, corruption, poor people, in punishment, justice don't working. (sic)

31. In answer to the question, ‘Why do you think this will happen to you if you go back?’ the applicant stated:
- All the history in South America is same torture, killer, not punish, bad justice, etc.
(sic)
32. In answer to the question, ‘Do you think the authorities of that country can and will protect you if you go back? If not, why not?’ the applicant stated:
- I tried by all authorities in my country and do not get help.
- 1 Public Prosecution Service
 - 2 Human Rights of the Bar of Brazil – Rio de Janeiro
 - 3 Public Defender’s Borra da Tipico – RJ
 - 4 Advocacy Centre of Rio de Janeiro
 - 5 Tried protocol petition with the forum [name] – Rio de Janeiro, was not accepted.
 - 6 I looking for aid “caritas” of the lady that helps refugees, advised me to leave the country and get help elsewhere. So sought political refuge here in Australia. Through all these institution do not receive any kind of help or even a positive advice to my problem.
- The strategy that the authorities and use this to leave me alone, without friends without work and without any kind of help, justice. I am here in Australia alone, without friends, without family, without work. Is not easy to live like this but I believe in Australian justice. (sic)
33. At the time of lodging the application for a protection visa the applicant provided a number of photographs including a photograph of a tree with initials carved in it, a photograph of a suitcase, a photograph of the 327 bus in Sydney, a photograph of grafitti on walls and photographs that the applicant claimed had the wrong digital date on it. The applicant also provided a birth certificate, education documents and a statement of induction training. The applicant had written on the statement that the “s” had been left out of his name and this means “without job, money, friends etc”.
34. The Department held an interview. The interviewer asked the applicant if he had ever suffered from a medical condition. The applicant stated that he has not. The interviewer asked whether he had ever been treated for anything or diagnosed with any condition. The applicant stated that he has not been for a psychiatric or medical examination. The applicant stated that he is completely normal and there are symbols. The interviewer suggested that the applicant obtain help. The interviewer asked the applicant if he had been for a medical check. The applicant stated that he had. The interviewer stated that he was very concerned and asked the applicant if he would go to have some medical tests. The applicant agreed to do so.
35. On the Department’s file there is information that the applicant was approved for Asylum Seeker Assistance. An intern clinical psychologist wrote a brief report to the Asylum Seeker Assistance Scheme after seeing the applicant and the report is on the Department’s file.
36. The delegate refused to grant a protection visa and found that the applicant is not a victim of any Convention based persecution.

The application for review

37. At the time of lodging the application for review the applicant did not make any submissions or provide further evidence. On page 5 of the application for review, the applicant was informed that he should have any documents that are not in English translated by a qualified translator and he should give the Tribunal the translations with the original documents.
38. The Tribunal wrote to the applicant and acknowledged receipt of his application for a protection visa. The Tribunal informed the applicant that he should send any documents, information or other evidence that he wanted the Tribunal to consider. The Tribunal informed the applicant that any documents not in English should be translated by a qualified translator. The applicant did not respond to the Tribunal's letter.
39. The Tribunal wrote to the applicant and invited him to a hearing. In that letter the Tribunal informed the applicant that any documents or written arguments sent to the Tribunal should be in English or be translated by a qualified translator. The Tribunal informed the applicant of the telephone number of the Translating and Interpreting service.

The Tribunal hearing

40. At the hearing the applicant stated that he understood the interpreter very well. The Tribunal informed the applicant that if he had difficulties understanding the interpreter that he should let the Tribunal know. The Tribunal also informed the applicant that if he had any difficulties understanding the Tribunal's questions he should let the Tribunal know.
41. The Tribunal informed the applicant that the proceedings were informal. It informed the applicant that it accepted that he satisfied the criterion that he was outside his country of nationality. The applicant stated that he did not have problems with the interpreter and he had no questions at that stage of the hearing.
42. The applicant gave evidence of when he was born. He does not work in Australia. He worked as a real estate agent/broker in Brazil. He provided his Brazilian passport to the Tribunal. The applicant stated that he had a passport before the present one. On his current passport he has only travelled to Australia.
43. The Tribunal informed the applicant that it was going to ask questions about his application for a protection visa and his handwritten statement. The applicant stated that he did not have any help in preparing his application for a protection visa and his statement. He translated it on the internet and that is why it was not good. The applicant stated that he went to RACS and spoke with a person who gave him a form and talked to him about his case.
44. The applicant stated that the information in his application for a protection visa is correct. The applicant stated that the information in his written statement is correct. The Tribunal asked the applicant if there was anything that he had left out that he would now like to claim. The applicant stated that the Department did not take into account the information that money was stolen from his account one week before he departed Brazil although it is written there. He showed the document to the Immigration agent and he said there was a problem with the police in the applicant's country. However, for the applicant it is relevant. The Tribunal asked the applicant what he meant when he referred to the immigration agent and asked if he meant the Departmental interview. The applicant stated "yes", he meant the interview, the last

interview. The Tribunal asked the applicant if he would like to give more detail about this matter.

45. The applicant stated that the week before, he had 12,000 Reals in his account. The week before he travelled, he went to the bank to take out money and money had been stolen. He talked with the manager who said they had to investigate and it was going to take time. The applicant told her that he had to travel to Australia the following week and needed the money. He had bought a ticket and was ready to travel. She replaced the money in the account but the investigation continued. In Brazil, they clone bankcards.
46. The applicant stated that it was the government that stole the money. It was a way of putting pressure on him and threatening him. After he arrived in Australia he rang the bank manager and told her that he needed documents that the money was stolen and that the bankcard had been cloned and she sent that to the applicant by way of the internet. All that was made up by the authorities of the government to put pressure on the applicant and threaten him. He tried to show the migration agent but he did not want the applicant to show it. The Tribunal asked the applicant if he had the document with him. The applicant stated that it is not translated and he does not have it with him. He did not give the document to the Tribunal or the Department. The applicant stated that that the only thing he has is the email.
47. The Tribunal asked the applicant if the bank was able to find out who made the cloned card. The applicant stated that the email was about the clone, not who made it. The applicant stated that there were 12,000 Reals in the account, and 3,000 Reals were stolen, and then 3,000 Reals were replaced.
48. The Tribunal asked the applicant if he knows why the government is trying to persecute him. The applicant stated that his idea about Brazil is that he does not believe in that system and does not believe in justice there. They persecute him about his opinion there. The applicant was attempting to give his evidence in English and the Tribunal asked if he could speak Portuguese so that the Tribunal was clear about what he was saying. The Tribunal asked the applicant why he was persecuted because of his opinion. The applicant stated this is because the system is terribly corrupt and is still very corrupt. The justice system is not working. People at the top of the pyramid do what they want. There is no penalty. There is extreme corruption in the police. It is very dangerous.
49. The applicant decided to leave the country for a different system and that is why he is being prosecuted because he does not believe in that system. That system does not believe in the Brazilian Constitution. The applicant lived in Rio de Janeiro in Brazil before he came to Australia. His parents, who are retired, live in Minas Gerais in Brazil. It is a different state and far from the state of Rio. He has one sibling who lives in Brazil. His sibling is an academic. The applicant has had very little contact with his sibling since he has been in Australia. The applicant speaks with his parents every Sunday since he arrived in Australia. They prefer him to live in Australia because there is no violence here. It is more dangerous in Rio. He is not married and does not have children.
50. The applicant stated that he attended university in Brazil. He also has a post-graduate degree. The applicant also speaks Spanish. He studied Spanish in Brazil.
51. The applicant did some study in Country A for three months. He went there to study English. He also went to Country B, and then went to Country A. He went to Country B because his ex-girlfriend lives there. The applicant stated that he has not travelled outside Brazil other

than the trips to Country A, Country B and Australia. He lived in Brazil until he came to Australia. He tried to find a job in Australia but he does not have documents or English. The Tribunal asked the applicant if he was still doing the job of distributing newspapers that he was doing when he went to the Departmental interview. The applicant stated that he was doing that from a truck.

52. The Tribunal asked the applicant why he applied to leave Brazil to come to Australia. The applicant stated that Australia is receptive to people from Latin speaking countries and it needs qualified people. The Tribunal asked the applicant why he left Brazil. The applicant stated that it is because the government does not let him work. The police are after him. They sabotage his work. His family is threatened with death. He is threatened with death. When he attended the English course, the police would be on the doorstep with sirens blaring. He was threatened with death and all kinds of persecution of that type. They were calling him names. They called him gay. They asked why he wanted to leave his country. The applicant stated that he is not gay.
53. A lady helped him at the Red Cross. She then moved to a different sector and could not help him any more. The letter from the Australian Red Cross states that the applicant's case officer has changed and she will not be his case officer any more. The applicant stated the question is why. The Tribunal informed the applicant that these things happen (case officers change). The applicant stated that in his case it is normal.
54. The Tribunal asked the applicant if he wanted to have a break. He stated that he did not want a break and will continue. The Tribunal asked the applicant if he considered applying for refugee status in Country A when he was there. The applicant stated that he did not know about the status of refugees at that time. He had a professor in Brazil who was a teacher in a preparation course for the applicant's degree. The teacher spoke to the applicant about refugee status. The applicant was trying to do his bar exams but he was not allowed to pass the exam.
55. The Tribunal asked the applicant why he stated that he was not allowed to pass the exam. The applicant stated that he passed the multiple choice exam. He passed the second stage written exam the first time he tried and then he went to another multiple choice exam but had to go to the second one again, and failed. It was some sort of repression against migration. The Tribunal informed the applicant that it did not understand what he meant. The applicant stated that it was in Brazil but he was also affected in Country A. The Tribunal asked the applicant why he did the exams again if he had passed the multiple choice exam and the written exam. The applicant stated that you have to do it in two stages. The first step is multiple choice and then there is a practice exam. Before sitting for all those exams he had to do a short course.
56. The Tribunal asked the applicant what he fears will happen to him if he returns to Brazil. The applicant stated that he is not going to change his opinion of Brazil, of the police, or of the system. It is the second most violent country in the world. Only African countries with civil war are more violent. It is very easy for a stray bullet to finish him off that way. Instead of threatening him they will carry out an execution. It is normal to execute 30 people or 15 people when one goes to the favelas.
57. The Tribunal asked the applicant if there was one incident that caused him to fear for his safety or several. The applicant stated that on Sunday morning before travelling to Australia he was going to go for a walk in the park and he went to have a coffee at a coffee shop.

Traffickers closed the street. There was shooting with machine guns. There were hand grenades. The whole street was blocked off. Everyone ran into the coffee shop. Everyone was threatened. There was shooting. The applicant was there for about 40 minutes. He took a taxi and went to his home. He had already packed and showered.

58. The Tribunal asked the applicant if he was talking about drug traffickers. The applicant stated that his apartment is two blocks away from the favelas. There the police also come. There is agreement between the traffickers and the police about the drugs. They can carry on with the drug traffickers. They did not kill the applicant there and then because they did not want to. There were 6 to 7 traffickers there. They were 16 to 17 years old. To go back is very dangerous.
59. The Tribunal informed the applicant that from what he was saying the traffickers were not targeting him. The applicant agreed but stated that it was exactly the day that he was going to leave. He asked if that was a coincidence. It was just a few hours before he was going to leave. Why did it not happen before?
60. The Tribunal asked the applicant if he had any trouble with the authorities in Brazil. The applicant stated that it was just in the context of his opinion of the country: social group or political opinion.
61. The Tribunal asked the applicant if he had any specific trouble with the police or the government authorities. The applicant stated that outside that context “no” He attended university, studied and worked. He was not arrested. He was not detained.
62. The Tribunal asked the applicant if he paid for his own trip to Australia. He stated that he sold his car.
63. The Tribunal asked the applicant if there were any other incidents that happened to him that caused him to fear being persecuted by the authorities. The applicant stated that before he tried to find help with different government institutions in Brazil. He went to the public prosecutor’s office. When he went home there was a police car. It was not normal to have a police car there because it is a very dangerous place and near the favelas. At night when he went to bed there was machine gun fire in the street. That was the day he went to the public prosecutor’s office for help.
64. The Tribunal asked if there were other incidents. The applicant stated that he was woken in the middle of the night with police sirens. He studied English for 6 months in Rio. Police would come with their sirens. Sometimes he would get to school and the police would come with their sirens at the door. The telephone in Brazil was listened to. It is all in the file.
65. The applicant stated that the fears he has in Brazil relate to the police and the military. The Tribunal asked if there were any other groups. The applicant stated that there were not. He lived 2 blocks away from the favelas. The Tribunal asked the applicant if he had considered moving to a safer location. The applicant stated that the rent is cheaper. The Tribunal brought to the applicant’s attention that he had spent money to come to Australia and had paid money for air fare, a visa and travel costs and asked whether he had considered using that money to live in a safer area. The applicant stated that the problem in his work was that he saw military people and never saw anyone dressed in civilian clothes. He could not earn money. He tried to get help from different authorities in Brazil. He could not get help and decided to come to Australia and see if he can get help. The applicant stated that he does not

know if he was a good lawyer or a good real estate agent. He informed the Tribunal that it would have to ask the policemen and the army people.

66. The Tribunal informed the applicant that it would consider his application and his claims. The Tribunal informed the applicant that it had concerns whether his claims were Convention-related. The Tribunal also informed the applicant that it had concerns about whether he had a well founded fear of being persecuted.
67. The applicant stated that his friends and relatives were threatened. In one specific instance he found a client to buy an apartment and got the documentation ready to be financed. She was then sacked. This sort of thing happens all the time. His best friend at university, his car was stolen. The authorities in his country make the applicant totally isolated without his being able to earn a living. Harm happens to his friends or whoever tries to help him. Here he tries not to think too much about psychological torture or discrimination.
68. The Tribunal asked the applicant whether his claim was that he had been persecuted or discriminated because of his political opinion. The applicant said "exactly". The Tribunal asked the applicant how he disseminated information about his political opinion. The applicant stated that he just talked with friends at university or work. He does not hide it. He always felt like that. It is the truth. Why should he shut up? Why comply with the system he does not believe in.
69. The applicant stated that the last time he worked in Brazil was about three years ago. He worked for a real estate agency. He did not have his own business and worked on commission. The Tribunal asked the applicant if he had been to a medical test that the Department asked him to go to. He stated that he went to a psychological test and to medical tests, blood tests and x-rays. The Tribunal asked the applicant if he went just once to the psychologist. The applicant stated that he only went once to the Red Cross. The applicant stated that the Red Cross said they had trouble contacting him on the contact number and he did not have money to ring her on the telephone. The Tribunal asked the applicant if he had managed to make contact with the Red Cross since he received that letter. The applicant stated that he sent an email and he will go and see them after the hearing.
70. The Tribunal received a brief letter in Portuguese from the applicant who provided several documents in English relating to a mortgage loan. He stated that he was sending the documents to prove persecution. These documents about a mortgage loan were not in his name but appeared to have been sent to his email address. The applicant also sent a second brief letter in Portuguese relating to moneys that were taken out of his bank account in Brazil and he attached emails between himself and a bank. He also attached a bank statement in his name.

FINDINGS AND REASONS

71. The Tribunal accepts that the applicant is a citizen of Brazil. The Tribunal has had regard to the applicant's Brazilian passport. The Tribunal accepts that the applicant is outside his country of nationality.
72. The Tribunal accepts that the applicant fears returning to Brazil for a number of reasons. However, the Tribunal is not satisfied that the applicant has a well-founded fear of being persecuted for a Convention reason. The Tribunal is not satisfied that the applicant's circumstances bring him within the definition of a refugee.

73. The Tribunal has some concerns about the mental health of the applicant. He attended an intern clinical psychologist who wrote a brief report that is on the Department's file. However, there is no information in that report which would lead the Tribunal to conclude that the applicant is unable to give competent evidence. The role of the Tribunal is to determine whether the applicant is a refugee. The Tribunal finds that the applicant participated in the hearing and gave clear evidence about his claims. The applicant did not have an adviser to assist him. However, the Tribunal is satisfied that the applicant was able to give competent evidence at the hearing and did so.
74. The Tribunal informed the applicant at the hearing that it had concerns as to whether he had a well-founded fear of being persecuted for a Convention reason.
75. The applicant claims that he has been persecuted by the military, the government and the Masons in Brazil. He claims to have been threatened and slandered. He claims to have been accused of being a traitor and of being gay, which he is not, and he claims to have been prevented from working to earn a living. The applicant fears harm in Brazil. He does not believe that the Brazilian authorities are able to protect him from the harm that he fears. He believes that his telephone has been listened to and he cannot depend on the Brazilian justice system or the authorities to protect him. The applicant also claims that he was persecuted because money was removed from his bank account before he came to Australia. The applicant claimed that it was the government that stole the money and it was a way of putting pressure on him and threatening him. The applicant has never been arrested or detained.
76. The Tribunal is not satisfied on the evidence before it that one or more of the five Convention reasons is the essential and significant reason for the persecution which he fears, as required by paragraph 91R(1)(a) of the Act. The applicant has claimed that he fears being persecuted for reasons of his political opinion and his membership of a particular social group. The Tribunal finds that there is no evidence that the applicant has been singled out or persecuted for one or more of the five Convention reasons.
77. Although the applicant claimed that he has been persecuted by the police and the authorities in Brazil and that he, his home, his car and his friends and family have been targeted, the Tribunal finds on the evidence that the applicant has not been persecuted for a Convention reason. The Tribunal finds that the applicant has not been targeted or isolated by the Brazilian authorities. The Tribunal finds that the applicant has not been targeted or persecuted by the Masons, the military or the police. The applicant has also claimed that he was persecuted in Country A whilst he was studying there and has provided photographs including a photograph of a bus in Sydney, Australia. The applicant perceives threats in a number of everyday occurrences and items, including graffiti and the wrong date on a digital photograph.
78. The Tribunal accepts that the applicant may have been caught up in fighting between the police and traffickers from the favelas (or shanty towns or slums). However, the Tribunal does not accept that he was targeted or persecuted for a Convention reason.
79. Section 91R(1)(c) of the Act states that Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol does not apply in relation to persecution unless the persecution involves systematic and discriminatory conduct. Although the applicant perceives ongoing persecution and victimisation, the Tribunal finds that there has not been persecution involving systematic and discriminatory conduct.

80. The applicant's claim that he comes within the definition of a refugee because he is a member of a particular social group and because of his political opinion is not accepted by the Tribunal as the evidence provided by the applicant does not satisfy the Tribunal that a significant and essential reason that he may be targeted for harm is for reasons of his membership of a particular social group or his political opinion. The evidence and submissions provided by the applicant have not satisfied the Tribunal that the reasons he may be targeted for harm are his membership of a particular social group and his political opinion.
81. The applicant has claimed that the political system in Brazil is corrupt and the judicial system does not work there. The applicant has claimed that he has openly spoken about his beliefs. The Tribunal accepts that the applicant has these views and expressed his views to friends at university and work. However, the Tribunal is not satisfied that the applicant has been threatened or persecuted for expressing or holding these views. The Tribunal finds that the applicant has not been persecuted for reasons of his political opinion.
82. The Tribunal is not satisfied that the applicant was persecuted for reasons of his membership of a particular social group or his political opinion. The Tribunal is not satisfied that the applicant has been harmed in the past for reasons of his membership of a particular social group or his political opinion. The Tribunal does not accept as true that the applicant has been persecuted in Brazil or that there is a real chance that he will be persecuted in Brazil for reasons of his membership of a particular social group or his political opinion if he returns there.
83. The Tribunal is satisfied that there is not a real chance that the applicant will suffer serious harm amounting to persecution if he returns to Brazil. The Tribunal is not satisfied that the applicant has a well-founded fear of being persecuted for a Convention reason if he were to return to Brazil in the reasonably foreseeable future. The Tribunal is not satisfied that the applicant is a refugee. The Tribunal is not satisfied that the applicant has a well-founded fear of being persecuted within the meaning of the Convention.

CONCLUSION

84. 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

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

Dione Dimitriadis
Member

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