

1411787 (Refugee) [2015] AATA 3686 (12 November 2015)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1411787
COUNTRY OF REFERENCE:	Papua New Guinea
MEMBER:	David Corrigan
DATE:	12 November 2015
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 12 November 2015 at 8:36am

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

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 visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Papua New Guinea (PNG), applied for the visa [in] January 2013 and the delegate refused to grant the visa [in] June 2014.
3. The applicant appeared before the Tribunal on 20 February 2015 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Pidgin (PNG) and English languages.
4. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.

RELEVANT LAW

5. The criteria for a protection visa are set out in s.36 of the Act and 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 in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.

Refugee criterion

6. 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 in respect of 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).
7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
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)). Examples of 'serious harm' are set out in 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 '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 in respect of 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.

Particular social group

16. The meaning of the expression 'for reasons of ... membership of a particular social group' was considered by the High Court in *Applicant A's* case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...
17. Whether a supposed group is a 'particular social group' in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious

norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be for reasons of the person's membership of the particular social group.

State protection

18. Harm from non-state agents may amount to persecution for a Convention reason if the motivation of the non-State actors is Convention-related, and the State is unable to provide adequate protection against the harm. Where the State is complicit in the sense that it encourages, condones or tolerates the harm, the attitude of the State is consistent with the possibility that there is persecution: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [23]. Where the State is willing but not able to provide protection, the fact that the authorities, including the police, and the courts, may not be able to provide an assurance of safety, so as to remove any reasonable basis for fear, does not justify an unwillingness to seek their protection: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [28]. In such cases, a person will not be a victim of persecution, unless it is concluded that the government would not or could not provide citizens in the position of the person with the level of protection which they were entitled to expect according to international standards: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [29]. Harm from non-State actors which is not motivated by a Convention reason may also amount to persecution for a Convention reason if the protection of the State is withheld or denied for a Convention reason.

Complementary protection criterion

19. 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 in respect of 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').
20. '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.
21. 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.

Generalised risk

22. Under s.36(2B)(c) of the Act there is taken not to be a real risk that an applicant will suffer significant harm if the tribunal is satisfied that the real risk is one faced by the population generally and is not faced by the applicant personally.

Section 499 Ministerial Direction

23. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration and has done so.

CONSIDERATION OF CLAIMS AND EVIDENCE

24. I have before me material including:
- Application for protection visa;
 - Copies of the applicant's passport, birth certificate, PNG driver's licence and various documents relating to his teaching history;
 - Interview with the delegate dated [in] April 2013;
 - Email from applicant to delegate, dated [in] April 2013 setting out where he has lived and worked in PNG;
 - CD with video "[details deleted]" and articles "[details deleted]" and "[details deleted]".
 - Other articles concerning tribal violence in Enga province;
 - Agent's submission dated 15 February 2015;
 - Statutory declaration of applicant dated 15 February 2015;
 - Agent's submission dated 29 March 2015 with a copy of a photo of scar on a man's [body];
 - Further agent's submission dated 5 May 2015 referring to incidents in PNG;
 - Statement of the applicant with attached news articles and copies of photos said to be injuries caused by a machete and a spear.
25. The applicant's claims can be summarised as follows. He was born in [year] in [his home town], Enga Province, PNG. He lived and worked as a teacher in both Enga and Port Moresby. He came to Australia on [number] occasions on [temporary] visas in [year] and [year]. His most recent arrival was on a [temporary] visa [in] July 2011 which expired [in] October 2011. He was unlawful until he approached the Department [in] January 2013. His parents and [siblings] still live in Enga province.
26. The applicant is from the [Tribe 1] tribe. There has been a tribal war in the applicant's home province for [many] years with [number] people killed. The enemy tribe ([Tribe 2] who are allied with other tribes) perceive him to be wealthy because he is the only public servant from his tribe. They have been trying to kill him for over a decade because they think he uses his money to support his tribe. In fact his teaching salary was only sufficient to cover his living expenses. [Tribe 2] are jealous of him because he has used his knowledge to improve his tribe's quality of life (for example, by [taking steps] to build more infrastructure in

his village). The enemy does not have anyone educated like him. They see him as a being a threat to their old ways.

27. In [year] the applicant was teaching in the village of [Village 3] when an enemy tribe attacked the school though the applicant was unable to get away unharmed. He then taught at a few different schools in Enga. In [year] he was teaching at a [school] in [another village] when some men with machetes attacked him. He defended himself with [an object]. He was struck on the head with bush knives and then jumped to the second floor. He lost a lot of blood and had scars from his. Due to his injuries and because he was scared, he did not work and the government took him off the payroll. He travelled back to Moresby for a few weeks to sort it out. He went back to Enga province and got a job at another school. He taught there for a bit less than a year but he moved on because he heard rumours that members of the enemy tribe had moved to the village. He stayed with his tribe for a few weeks in his village and then went to work at a different school.
28. In [year], the applicant was teaching at a school in [a further village] that had been burnt down during tribal fighting. Members of the enemy tribe came and yelled "kill him". He escaped and fled to his relative's house nearby. He sold his [animals] and went to [another town] in Moresby. He got a teaching position and stayed with fellow tribesmen in shelters. There is a lot of tribal fighting there. Rent is very expensive there and it is very dangerous there. After he returned from Australia he got a job and rented a room in a boarding house. Bottles were thrown at his window. On one occasion some people broke into his office and messed everything up. He heard from a [lady] that some people had been talking about him. He saw some men entering the school that he recognised were from the enemy clan so he quickly fled.
29. Eventually, the applicant got a job at [a company] which allowed him to live in the [compound]. He got extra work through [an agency] on weekends and stayed there at this time.
30. The [Tribe 2] know he is in Australia and are waiting for him to return so they can kill him. The government does not protect its workers and have not taken any action to protect him. It is difficult to hide in PNG because of the *wantok* system. Two of his uncles were killed last year in separate occasions. Members of his tribe would have killed members of other tribes.
31. The agent has submitted that the applicant is in danger due to race and particular social group of [Tribe 1] tribe and the particular social groups of member of tribes at conflict with another, wealthy persons, his family, teachers and government employees.

Country of reference

32. The applicant claims to be a PNG national. Based on the copy of his passport, I find that PNG is his country of nationality for the purposes of the Convention and also his receiving country for the purposes of s.5(1) and s.36(2)(aa) of the Act.

Assessment of claims

[Tribe 1] tribe

33. I have considered carefully the applicant's claims but I do not consider him a credible witness. I do so for the following reasons:
 - The applicant gave significantly and fundamentally inconsistent evidence concerning the claimed attack on him at a school assembly in [year]. He told the Tribunal that

the only part of his body that was struck was his groin which was done with a spear. However, in his application for protection visa, he stated that he was struck on his head with an axe. He also told the Tribunal that that some of the children were physically injured when they were running away and broke their arms and that a teacher fell and hurt her front tooth. He said he was not aware of anybody else being struck by the men because he became dizzy. However, in his application for a protection visa, he stated that the same axe that hit him also cut a child's left shoulder. The applicant did not provide any explanation at the hearing for these inconsistencies. I note that the applicant speaks, reads and writes English and is an educated teacher and I consider these inconsistencies detract substantially from his credibility.

- The applicant's account of the [year] school assembly was far-fetched and implausible. He has claimed that he was attacked by [number] men who were armed with bush knives who speared him in the groin causing him to fall into the school children who were in front of him. He has claimed they were trying to kill him and yelled "kill him". He claims there were [a large number of] children present and he crawled amongst them to get away. However, he had also claimed that the children ran away and I do not consider it plausible or credible in the described circumstances where he there were [number] heavily armed men trying to kill him and he had already been wounded that he would have been able to escape as he did and avoid further injury or even death.
- The applicant has claimed that in [year] members of [Tribe 2] came to a school he was teaching at to target him. However, according to the applicant at the hearing he continued to teach at the school and lived outside the school for a month but did not encounter any further problems with them in that time. He stated he later saw them at gatherings but his evidence did not indicate that they attempted to harm him. The applicant has not claimed to have been the subject of any further attacks until [year]. In all these circumstances, I do not accept it as being plausible or credible that members of [Tribe 2] came to his school in [year] to target him as he has claimed.
- As set out in the delegate's decision (a copy of which was submitted to the Tribunal) the applicant came to Australia on a [temporary] visa [in year]. He came again on a [temporary] visa from [later that year]. He visited Australia again in [the following year] on another [temporary] visa. His most recent arrival was in July 2011 on a [temporary] visa which ceased [in] October 2011. He then remained in Australia unlawfully until he approached the Department [in] January 2013 and was granted a bridging visa and applied for a protection visa [in] January 2013. In his statutory declaration he claimed that an [ethnic background] man had brought him to Australia to work on a farm where had to work 12 hours a day. He claimed he thought he had to return to PNG because he did not know the law about staying in Australia. He claimed that on his most recent arrival, he had been promised by this [man] that he would enrol him in TAFE but [this] man did not and used him to work on the farm day and night. The applicant didn't want to obey [this] man and stayed beyond his visa. He claimed that he didn't really understand what it meant not to have a visa. He went to [a regional town] and talked to a librarian and then telephoned [a] University who told him he had to have a visa to enrol in their course. He said he was scared of Immigration but eventually called them and went to their office. The applicant reiterated all of this at the hearing. However, I do not accept his explanation adequately explains why he failed to apply for protection on three previous visits to Australia and why he delayed applying for protection on his last visit for such a long period and way after his [temporary] visa expired. The applicant speaks, reads and writes English and is an educated and qualified teacher. I do not accept it as plausible or credible that he would not know what it meant to not have a visa or that

he would not have made efforts to ascertain whether he could apply for protection in Australia on several visits and for a long time after his last arrival in Australia if his claims were true. I consider that his visa history and significant delay in applying for protection detracts substantially from credibility.

34. Given these highly significant concerns I have about the applicant's credibility, I do not accept that in [year] whilst teaching in the village of [Village 3] that members of an enemy tribe came to his school to look for him and that he escaped. I do not accept that in [year] whilst teaching at a school he was attacked by men with machetes and that he was injured. I do not accept that in [year] he was attacked by members of an enemy tribe and injured. I do not accept that when he moved to Port Moresby that [objects] were left his office at school by members of an enemy tribe or anyone else. I do not accept that bottles were thrown at his home in Port Moresby. I do not accept that enemy tribesmen ever came to his school to look for him or that a [lady] outside the school gate heard people talking about him. I do not accept that the applicant went to the police in Port Moresby after any of these incidents and they asked him for money. I do not accept that the applicant has ever been targeted or harmed or been of adverse interest to [Tribe 2] or any other enemy tribe for any reason including jealousy or his education or because he viewed as a threat to their old ways.
35. In making my findings, I have taken into account the Tribunal's Guidelines on the Assessment of Credibility (including the effects of anxiety and trauma on applicants and the passage of time). However, these do not overcome the highly significant concerns I have about the applicant's credibility set out above. In making my findings, I have also taken into account the copies of photos of the applicant said to show his injuries caused by these attacks. Whilst I accept that he has some scar marks, I do not accept these are as a result of the events he claims he were the cause.
36. I accept that the applicant is a member of the [Tribe 1] tribe and is from Enga province. I have considered all of the country information referred to in the delegate's decision as well as the agent's submissions and submitted articles. The US State Department in its 2014 annual report on human rights advised (similar to the 2013 report referred to by the agent) reports that tribal fighting continues in the highlands areas and that deaths from such conflicts continued to rise due the increased availability of modern weapons. Tribal conflict that began between the tribes of two rival candidates in the general election in Kandep, Enga province continued until April 2013 with there being more than 100 deaths.¹ I accept on the basis of all these reports that tribal conflict is a serious problem in the PNG Highlands and Enga Province. However, I have not accepted that the applicant has ever been harmed or been of adverse interest to opposition tribes. Asked whether anything had happened to his family, the applicant told the Tribunal that his brothers had been involved in tribal fights and one had been speared some years ago. The applicant expressed a fear that he would have to be involved in fights. The applicant said that an uncle of his was killed last year when he went to a tribal fight and that another uncle was killed when he went looking for a pig and was in the wrong place at the wrong time.
37. I consider the applicant's fears in this regard to be speculative as he is an educated teacher who had not claimed to have been involved in any of these fights in the past and I find it remote that he would become involved in these in the future. Whilst, I accept that his uncles were killed in the way he described, one was killed whilst going to a tribal fight and the other whilst wandering for his pig, I note none of the applicant's siblings or parents were harmed afterwards as a result. Whilst I accept that the applicant's brothers have been involved in fights and one was speared in the past, I consider it speculative that the applicant would seek to involve himself in such fights and remote that he would become caught up in one or

¹ United States Department of State, Human Rights Report 2014 – Papua New Guinea.

that he would be targeted or harmed because of his brothers. After considering all of the country information and the applicant's individual circumstances, I consider that the chance or risk that he will be seriously harmed or significantly harmed on account of his membership of a particular social groups consisting of [Tribe 1] tribe or Member of a tribe at conflict or his family or his [Tribe 1] tribe race is remote.

Teachers and government employees

38. I have also considered the claims that the applicant is at risk due to his membership of particular social groups consisting of teachers or government employees. I accept that he is a member of these and that they do constitute particular social groups in PNG. The submissions of the agent contain information concerning incidents where teachers have been victims of violence. However, country information indicates that there are 45,000 teachers in PNG² and the Tribunal has not identified (and none have been submitted) to indicate that individuals are targeted in PNG because they are government employees.³ I have not accepted that the applicant has ever been harmed in the past in PNG despite years of work as a teacher and government employee in the nation. Considering the country information as a whole and his individual circumstances, I consider that the chance or risk that he will be seriously harmed or significantly harmed on account of his membership of these particular social groups is remote.

Wealthy persons and crime

39. I have considered carefully the country information reports referred to and submitted by the agent and applicant and I accept that there is a substantial level of criminal violence throughout PNG. However, I do not the applicant is a member of a particular social group of "wealthy persons" given his employment in PNG has been as a teacher or that there is a real chance that he will be imputed to be a "wealthy person" merely because it would have been known that he had lived and worked in Australia for an extended period and due to his appearance (clothes, jewellery, electronic devices such as a mobile phone). In making this finding, the Tribunal has taken into account that it has not identified any reports⁴ (and none have been submitted) that suggests that people who have returned from Australia or overseas countries are or have been targeted for harm.
40. At the hearing, the applicant claimed that whilst he was living in Port Moresby there were incidents where he would be asked by persons for money but he did not give them money and he then got involved in fights and had to defend himself. Asked whether he had told the delegate about these matters, he said he was not asked about it. I note that none of the applicant's written claims and submissions referred to these incidents occurring. Given this and his general lack of credibility, whilst I accept that persons asked him for money on the streets of Port Moresby, I do not accept that he was ever involved in fights with such persons and had to defend himself.
41. Whilst there is a high rate of crime in PNG, I do not accept that the applicant has ever been a victim of it. I note that he returned three times from trips to Australia and was not harmed. Given this history, I find that the chance or risk that he will be seriously harmed or

² Radio Australia, PNG teachers threaten strike over pay dispute, 1 August 2014, <http://www.radioaustralia.net.au/international/radio/program/pacific-beat/png-teachers-threaten-strike-over-pay-dispute/1351000>. For example, the United States Department of State, Human Rights Report 2014 – Papua New Guinea and Human Rights Watch, World Report 2015, Events of 2014 do not refer to this happening.

³ For example, the United States Department of State, Human Rights Report 2014 – Papua New Guinea and Human Rights Watch, World Report 2015, Events of 2014 do not refer to this happening.

⁴ For example, the United States Department of State, Human Rights Report 2014 – Papua New Guinea and Human Rights Watch, World Report 2015, Events of 2014 do not refer to this happening.

significantly harmed in a criminal act to be remote. Even if he were to be victim of a crime, I do not accept that he would be targeted for any of the five Convention reasons but that any harm he would suffer would be motivated for financial gain. In making these findings, I have taken into account the DFAT and UK Home Office's travel advice (referred to in the agent's submissions) that states that crime is random in PNG.

42. I further do not accept that there is a real chance that the applicant will face a discriminatory withholding of state protection for any reason under the Convention including his membership of the [Tribe 1] tribe. In making this finding, I have taken into account the country information (referred to in the agent's submissions) that ethnic affiliations play a role in police investigation of crime. However, the weight of the country information suggests that the deficiencies in PNG policing are due to "a serious lack of resources" as the submitted DFAT travel advice notes. I have not accepted that the applicant was asked to pay money when he made a complaint and his circumstances do not indicate that he has ever been denied state protection for any reason including his membership of his tribe.
43. The country information that indicates that crime is random in PNG and that the police are seriously under-resourced also leads me to conclude that if the applicant is a victim of crime and the police do not respond effectively it will not be taken to be significant harm because the risk is one faced by the population of PNG generally and not him personally: s.36(2B).

Police

44. Whilst the agent's submissions make some references to reports of violence by the police, I note, however, that the applicant did not claim (even when asked by the Tribunal) that he had ever been harmed by them. I have taken into account that there are some reports of police violence, however the applicant is an educated man and teacher of many years' experience who has not been harmed by the police in the past and I consider that the chance or risk that he will be seriously harmed or significantly harmed by the police is remote.

Cumulative assessment

45. Considering the applicant's individual circumstances and the independent country information cumulatively, I find that he does not face a real chance of persecution in the reasonably foreseeable future for any Convention reason (including his membership of particular social groups consisting of "[Tribe 1] tribe", "Member of a tribe at conflict with each other", his family, teachers and government employees or his race) or for any non-Convention reason. His fear of persecution is not well-founded.
46. Considering the applicant's individual circumstances and the independent country information cumulatively, I find that there are not substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to PNG that there is a real risk that he will suffer significant harm.

Conclusions

47. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
48. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

49. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

50. The Tribunal affirms the decision not to grant the applicant a Protection visa.

David Corrigan
Member