

071887465 [2008] RRTA 61 (6 March 2008)

DECISION RECORD

RRT CASE NUMBER: 071887465

DIAC REFERENCE(S): CLF2007/126500

COUNTRY OF REFERENCE: Sudan

TRIBUNAL MEMBER: Jane Marquard

DATE DECISION SIGNED: 6 March 2008

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, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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).

The applicant, who claims to be a citizen of Sudan 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.

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.

The applicant applied to the Tribunal for review of the delegate's decision.

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

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.

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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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.

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.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

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

The documentary evidence in this matter is contained in the Department and Tribunal files.

According to the application for the protection visa, the applicant is a young man who was born in Sudan. He speaks, reads and writes Arabic and English. He is a Muslim. He works as a professional

His parents and siblings all live in Sudan.

He had almost 20 years of education, completing his degree in recent years.

After he finished studying he worked in his profession for more than 12 months before finding another job for a similar period.

In a statement prepared to answer question 40 in the application form “*why did you leave that country?*” the applicant provided the following answer (in summary):

- He is a professional who worked at a learning institution since the mid 2000’s. He has also worked as an assistant lecturer at a University over a similar period.
- He is a member of an overseas based professional organisation which has been based in Europe since the early 2000’s.
- He has attended many international and local conferences relating to his work.
- The last conferences he attended were in various European countries in the mid 2000’s.
- The organisation has members from countries from all around the world, including Country A. Sudan has no diplomatic relationship with Country A.
- He met a member of the Country A delegation during an international conference and built a strong relationship with him.
- The applicant’s problems with the Sudanese regime started after his return to Sudan from a European country. He was arrested at about this time. His home was raided and his research papers and personal computer were taken to Government offices. He was also taken there. He was detained without questioning for a period of days.
- Shortly after he was detained he was forced to open his email. On the following day he was subjected to questioning by a number of men. The men were dressed in civilian clothes and their questions were about the organisation’s activities and about his relationship with the man from Country A. He was also asked about the contents of some of his research. He answered all questions truthfully.

- Then the two persons beat him and kicked him, accusing him of spying for Country A and sending information about Sudan to the international organisations which he was involved with.
- After that he was blindfolded and hand tied and taken to an unknown location where he was tortured by a number of persons. He could hear a number of voices. He was made to stand in the sun for a long time. He was not given any food or water. The torturers called him a spy, and bad names. After a period of days he felt very ill and had multiple injuries.
- He was returned to the security office where he asked to see a doctor, but this was refused.
- After a period of days he was questioned again by a number of persons. One of them was a high ranking official.
- After a period of days he was released. He was forced to sign papers pledging to stop all activities with the organisations he was involved with, and forbidding him from leaving his home city. He was also ordered to attend the Government offices daily to sign.
- He was affected psychologically and physically by the detention. He received treatment at a hospital.
- After that he seriously thought about escaping from Sudan. His life became unbearable especially after his employment was terminated.
- He obtained an entry visa to Country B in the mid 2000's so he could receive medical treatment there. When he tried to obtain an exit visa from the Sudanese ministry he was shocked because they refused his application and forbade him from leaving the country.
- His life in Sudan was in danger He was continuously followed by a particular car.
- After it was announced that the high ranking official was wanted, he was taken to the Government office and kept there for a period of days. He was threatened with death if he was brought back to the building.
- After that he thought of running away from Sudan.
- In the mid 2000's he attended a conference in Australia, which he registered for through the Internet.
- He sent his passport to the Australian embassy in Country B and obtained an entry visa. He accompanied his passport with a support letter from the University.
- With the assistance of some relatives, he left Sudan without an exit visa from the ministry of the interior.
- He asked for protection as he cannot go back to Sudan due to the many risks he faces if he returns.

He said that if he goes back he will be arrested by the public security, bearing in mind that they threatened him before (they told him he would be killed if brought back to them). He said that he will be arrested if he goes back because he left the country without permission from the authorities. He said that when he gets arrested he will be killed or tortured severely.

In answer to the question “*who do you think may harm/mistreat you if you go back?*” he said that the public security is the body which will harm him. This body works for the authority and is so influential, and has more power than other security agencies, or the police or judges. He said that the public security still has the higher power because they have the power from the emergency law which is imposed on the country and because its members are from the Islamic front.

In answer to the question “*why do you think this will happen to you if you go back*” he said that it was because he was accused by the authority and the public security office that he dealt with international organisations and his contact with the delegate from Country A and because he was accused of spying for that country.

In answer to the question “*do you think the authorities of that country can and will protect you if you go back?*” he said “*the authorities (government and public security) are the one who behind my detention and the torture I faced. These authorities are the one who will persecute me and may kill me*”.

He said that he still has military service obligations in his home country.

He said that he is in contact with relatives at home by telephone and email.

The following documents were enclosed with his application:

- a copy of a letter from a Professor certifying that the applicant works for them at the university and “he was subjected to a lot of harassment from the Authority of the Security, and he was detained more than once”.
- a copy of a letter from a fellow professional certifying that the applicant was an active member of their professional association and was detained twice by the Authority of Security in Sudan, and was expelled from his job, he suffered psychological and health problem and received treatment by a group of specialised doctors.
- A letter from an organisation certifying that the applicant had attended a particular conference, and outlining the goals and objectives of this organisation.
- A certificate from another organisation certifying that the applicant had attended a conference.
- Website clippings relating to outstanding warrants for the high ranking. (Details deleted in accordance with s.431 of the Migration Act as this information could identify the applicant).
- Further clippings and attendance certificates from conferences and a business card for the applicant.

Passport details and movement records

The applicant has a Sudanese passport, issued in the mid 2000's. He travelled to Australia on a visa issued in Country B and arriving in Australia in the mid 2000's.

His movement records indicate that he previously travelled to Australia over a two week period.

Tribunal file

The Tribunal wrote to the applicant inviting the applicant to appear at a hearing . The applicant's representative requested a four week extension as he had just received instructions and wanted time to prepare the matter. The Tribunal then wrote to the applicant inviting the applicant to appear at a hearing on a later date.

The applicant's representative made the following submissions (in summary):

- The applicant's circumstances constitute a clear case of well-founded fear of persecution for a convention reason. The elements of persecution are threefold: denial of appropriate employment; denial of opportunity of professional study and advancement, and the strong possibility of further detention and physical ill-treatment (possibly involving detention).
- An example of shortcoming in the Department's delegate's decision was on page 9, second paragraph of the decision record. "*While there is an indication that a pattern of gross, flagrant or mass violations of human rights exist in Sudan this does not automatically equate to the applicant being subject to these violations. Consideration of the applicant's circumstances is a relevant matter.*" The phrase "while there is an indication" seriously downplays the strength of the comments in several source documents preceding the phrase. The documents recognise serious human rights abuses in Sudan.
- Another example is on page 11 of the decision record. The applicant put to the Department the history of the treatment he received upon his return to Sudan following an overseas conference, including detention, physical ill-treatment including kicking, virtual starvation, threats of execution, dismissal from his professional post, all of which contributed to a very understandable climate of fear and apprehension. Given this detail the following comment in the delegate's decision is bewildering: "*while the independent country information indicates that return of certain people to Sudan may result in a real chance of persecution, the applicant does not have the circumstances or profile of those mentioned*".
- The decision-maker made no reference to the statements of the two witnesses.
- On page 11 of the decision report the delegate states that "*the applicant legally departed Sudan*". The statement is astonishing as it indicates that the delegate did not read the applicant's statement or had not enquired as to its meaning.
- The reasoning in page 11 of the decision record is difficult to follow: "*due to an implied political belief in relation to association with a [Country A] citizen.*" The

decision-maker significantly downplays the significance of this factor noting that the applicant had not travelled to Country A. In Sudan there have been high profile cases of spying where the alleged spy had never visited the suspected country.

- The last two sentences in page 11 are statements of opinion lacking probative value.
- The applicant held expectations of engaging in post-graduate study. With his prior background and hopes of a bright future, why would he abandon his country of nationality and prospects unless there was a very grave reason for doing so? The applicant believes his career and ambitions in Sudan are irrevocably over.
- The decision-maker has relied on independent country information which is generic in nature. The applicant's statements are detailed and specific. Justice McHugh in the *Chan* case, said that "*since fear is subjective, the definition involves a subjective element in the person applying for recognition as a refugee. Determination of a refugee status will therefore primarily require an evaluation of the applicant's statements rather than a judgment of the situation prevailing in his country of origin*".

The applicant's solicitor wrote to the Tribunal stating that the applicant had just brought to his attention an email he had received from a friend. The solicitor said that the email appears relevant to the question of "well-founded fear of persecution" He went on to say that the applicant said that he only belatedly realised that the email could be relevant to the hearing. The translation from the Arabic was his own.

Attached to the letter was a copy of an email written in Arabic. It was translated as follows:

"hello, what's your news, we missed you, all here are doing well". Frankly the situation here is not good. You put us in a perplexed condition, we don't know why you are intending to returning back. Please don't return because the Security Service personnel will not leave you alone. They would like to know your whereabouts; they just came to the [place deleted] and asked about you in the suburb as well. Stay where you are and look for any other alternatives but don't return to Sudan whatever happen to you. Be strong, with best regards."

Independent country information

Government

The FCO's country profile 2007, states that:

"On 30 June 1989, the army overthrew the democratically elected government of Sadiq al-Mahdi and installed a Revolutionary Command Council, chaired by General Omar al-Bashir. Bashir ruled by decree at the head of the Revolutionary Command Council and banned all political parties except his own National Islamic Front (NIF) (renamed the National Congress Party in 1998). In 1996 Bashir was elected President and a National Assembly was elected in a flawed election which was boycotted by the opposition. Bashir was re-elected (with 86% of the vote) in 2000. Again a number of key opposition parties boycotted the election, claiming it was flawed and unfair."

(<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1020687852749>)

Human rights

The US State Department, in the country human rights practices report on Sudan, published 6 March 2007, summarizes the human rights situation in Sudan as:

“The government’s human rights record remained poor, and there were numerous serious problems, including evidence of continuing genocide in Darfur, for which the government and janjaweed continued to bear responsibility. Abuses included: abridgement of citizens’ rights to change their government; extrajudicial and other unlawful killings by government forces and other government-aligned groups throughout the country; torture, beatings, rape and other cruel, inhumane treatment or punishment by security forces; harsh prison conditions; arbitrary arrest and detention, including incommunicado detention of suspected government opponents, and prolonged pretrial detention; executive interference with the judiciary and denial of due process; forced military conscription of underage men; obstruction of the delivery of humanitarian assistance; infringement on citizens’ right to privacy, freedoms of speech, press, assembly, association, religion, and movement; the harassment of internally displaced persons (IDPs) and of local and international human rights and humanitarian organizations; violence and discrimination against women, including the practice of female genital mutilation (FGM); child abuse, including sexual violence and recruitment as child soldiers, particularly in Darfur; trafficking in persons; discrimination and violence against ethnic minorities; denial of workers’ rights; and forced labor, including child labor, by security forces and both aligned and non-aligned militias in Southern Sudan and Darfur.” (Country report on human rights practices – 2006: Sudan. released by the bureau of democracy, human rights, and Labor, 6 March 2007. <http://www.state.gov/g/drl/rls/hrrpt/2006/78759.htm>)

Article 29 of the Interim National Constitution (INC) which was signed on 9 July 2005 states that: “Every one has the right to liberty and security of person; no one shall be subjected to arbitrary arrest or detention nor be deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law.” (BBC Timeline, updated 24 January 2007)

The USSD report 2006 stated that: “The law prohibits arbitrary arrest and detention without charge; however, the government continued to use arbitrary arrest and detention under the state of emergency provisions (until July 9) or under the National Security Act.” The report further noted that: “Warrants are not required for an arrest, however, under the Criminal Code, an individual may be detained for 3 days without charge, which can be extended for 30 days by order of the director of security and another 30 days with the approval of the prosecuting attorney.” (Country report on human rights practices – 2006: Sudan. released by the bureau of democracy, human rights, and Labor, 6 March 2007. <http://www.state.gov/g/drl/rls/hrrpt/2006/78759.htm>)

The UK Home Office Country of Origin Information Report, Sudan, November 2007 ,AI, reporting on events in 2005 in its Annual Report for 2006, stated that: “Hundreds of political prisoners continued to be held arbitrarily in Khartoum. Arbitrary arrests, incommunicado detention, torture and restrictions on freedom of expression persisted, aimed in particular at human rights defenders, student activists and internally displaced people in and around Khartoum.

In January 2005, the Report of the International Commission of Inquiry (UN ICI) on Darfur to the United Nations Secretary-General (UN SG) was published. It reports that: “The Commission noted that the National Security Force Act, as amended in 2001, gives the security forces wide-reaching powers, including the power to detain without charge or access to a judge for up to nine months.”

The USSD report for 2006, noted that: "Although the law provides for freedom of assembly, the government severely restricted this right in practice. Authorities took no action against security forces who used excessive force(Country report on human rights practices – 2006: Sudan. released by the bureau of democracy, human rights, and Labor, 6 March 2007. <http://www.state.gov/g/drl/rls/hrrpt/2006/78759.htm>)

The report added: "The law provides for freedom of thought, expression, and of the press 'as regulated by law'; however, the government severely restricted these rights in practice.

Treatment of Sudanese citizens accused of political dissent

Collated information on the treatment of Sudanese citizens accused by the government of political dissent generally or similar activities is provided by the Sudan Human Rights Organization in Cairo (SHRO-Cairo). SHRO-Cairo publishes on an *ad hoc* basis *The Sudanese Human Rights Quarterly* which documents the situation of human rights in Sudan with regard both to the region of Darfur and other parts of the country. It has most recently published two quarterlies covering the periods 1 January to 30 April 2007 and 1 May to 30 September 2007. For the most recent period, the *Quarterly* provides the following description of events involving citizens accused of political dissent or crimes of some kind:

The Situation of Human Rights (May 1- September 30, 2007): Mohamed Hassan Daoud
SHRO-CAIRO SECRETARIAT

Between May 1st and the ending September of 2007, the violation of human rights and fundamental freedoms was never abated. Many violations were committed against the right to free press, peaceful assembly, and organization. Many citizens were arbitrarily arrested, while many suffered long months in unlawful detention without charge. Acts of violence continued unabated, including extra-judicial killings in the regions of Darfur and Southern Kordofan. The ultra-violence of police forces by firearms to suppress popular demonstrations resulted in scores of murdered people and injured victims.

... On September 20, an armed group shot eight employees working with the World Vision relief agency. Three persons were seriously injured; Mohamed Hamid al-Mahdi and 'Abd al-Rahman Eissa were shot in the head. The UN said that the attacks on relief workers increased by 150% in June this year compared by June last year.

(Sudan Human Rights Organization – Cairo 2007, *The Sudanese Human Rights Quarterly*, Issue No. 25, November, Sudan Human Rights Organization – Cairo website, pp.7-16 <http://www.shro-cairo.org/quarterly/No25E.pdf> – Accessed 31 January 2008).

The US State Department's *Country Reports on Human Rights Practices* on Sudan for 2006 provides the following summary with regard to political prisoners and detainees in the country:

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Although the Interim National Constitution, adopted in July 2005 and hereafter referred to as the "interim constitution," prohibits such practices, **government security forces continued to torture, beat, and harass suspected political opponents and others.**

..Political Prisoners and Detainees

There were no reports of political prisoners; however, **the government held an estimated 100 political detainees, including members of opposition parties. Security forces**

reportedly detained without charge, tortured, and held incommunicado political opponents ...Detentions of such persons generally were prolonged. However, security forces frequently harassed political opponents by summoning them for questioning, forcing them to remain during the day without questioning, and then ordering their return the following day--a process that sometimes continued for weeks.

In September the government detained several leaders of the opposition Umma Party for planning protests against government-backed increases for the price of sugar and fuel...

Security forces detained members of Hassan al-Turabi's Popular Congress Party; however, there were fewer such detentions than in previous years.

Security forces arrested numerous persons suspected of supporting rebels in Darfur, some of whom were tried, convicted, and sentenced to death under special courts (see section 1.e.). For example, on April 19, NISS officers in Khartoum North detained the JEM's legal advisor and confiscated his belongings. Later in the day, officials transferred him to NISS headquarters, where he was held until May 2, when he was moved to the NISS section of Khobar prison in Khartoum North and charged with undermining the constitution, espionage, and obtaining official documents. A judge later ordered the man to be released because the government had held him for too long before filing charges. However, the NISS later brought the man to another judge, who ordered him detained for another week. He was later released.

Following the May 5 signing of the DPA, the government began to release many political detainees associated with the conflict. By August, the government had released 23 persons in accordance with the DPA, according to the UN special rapporteur on the situation of human rights in Sudan (US Department of State 2007, *Country Reports on Human Rights Practices for 2006 – Sudan*, 6 March, 2007).

One report was found on the arrest of a Sudanese intelligence officer suspected of spying on Sudanese opposition groups in Germany. The article was published by *Reuters* in October 2007:

BERLIN, Oct 23 (Reuters) – German police have arrested a Sudanese man suspected of spying on Sudanese opposition groups in Germany for Khartoum's intelligence service, the federal prosecutor's office said on Tuesday.

The 39-year-old, identified as Acuil A., was arrested on Saturday in Berlin and is thought to have been spying on the groups since at least July 2005, the office said.

Investigations are continuing and no further information can be provided at this time, it added ('Germany arrests suspected Sudanese spy' 2007, *Reuters*, 23 October, SudaneseOnline.com website http://www.sudaneseonline.com/en2/publish/Latest_News_1/Germany_arrests_suspected_Sudanese_spy.shtml – Accessed 24 January 2008).

Military service

According to the UK Home Office Country of Origin Information Report, Sudan, November 2007, the War Resisters' International's (WRI's) 1998 survey 'Refusing to Bear Arms' noted that the law governing military service is the National Service Act 1992, which rendered all males aged between 18 and 33 liable for national service. However, the Danish Fact Finding Mission (FFM) of 2000 reports that "Military service is compulsory for all males aged 18 and over, the recruitment age being adjusted from time to time. The National Service Act 1992, contained at annex 4 of the Danish 2001 FFM Report outlines the general laws and penalties of avoiding or postponing military service. War Resisters' International's 1998 Survey noted that: "The right to

conscientious objection is not legally recognised. It also stated that: "Avoiding military service is punishable by two to three years' imprisonment (National Service Law, art. 28)."

Political dissent and spying

There are reports that Sudanese citizens working for either the United Nations (UN) or other international non-government bodies, especially in Darfur, have been arrested and accused of spying for the UN or the United States. The December 2005 *10th European Country of Origin Information Seminar* highlights that spying is one of nine offences for which the death penalty may be applied under Sudan's 1991 *Criminal Law*. In this context, the seminar reported the views of Mr Hans Friedrich Schodder on Sudanese citizen accused of spying. Mr Schodder was Senior Protection Officer of the UNHCR Representation in Khartoum, Sudan in 2005:

According to the 1991 Criminal Law, nine offences carry the death penalty: Attack on the power of the state, sometimes also called "crimes against the state", which is quite commonly used to persecute political opponents; ... **espionage (art.53), which is also used to accuse human rights defenders and humanitarian workers. There were several cases, especially in Darfur, where Sudanese citizens who worked for UN organizations or international NGOs were arrested and accused of being spies for the US or the UN. The offence carries the death penalty** (ACCORD 2005, *10th European Country of Origin Information Seminar*, United Nations High Commissioner for Refugees website, 1-2 December, p.11 Section 3.2.4 <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=4451d6a04> – Accessed 29 January 2008).

In May 2005, Human Rights Watch highlighted the situation of NGOs workers arrested for spying in Sudan. Members of *Médecins Sans Frontières* (MSF) were charged *inter alia* with spying, after Sudan's Humanitarian Aid Commission argued that MSF's report on rape was flawed:

Donor governments and the United Nations must condemn the Sudanese government's arbitrary arrest and intimidation of aid workers, Human Rights Watch said today. The Sudanese government should drop charges against all aid workers, including the head of *Médecins Sans Frontières* in Khartoum, Paul Foreman, who was arrested yesterday and released on bail.

It's appalling that instead of arresting the people who have burned hundreds of villages and attacked thousands of women and girls, the Sudanese government is detaining aid workers.

The Sudanese authorities detained a second *Médecins Sans Frontières* (MSF) staff member in Nyala, South Darfur, early this morning. **Foreman's arrest followed escalating public threats against MSF in the Sudanese media over the past few weeks. Sudanese authorities claim that an MSF report on rape published on March 8 violated Sudanese law and that the report is "false."** The precise charges against MSF are unclear but—according to an article in the Khartoum-based pro-government newspaper *Al-Ra'i al-Aam* include spying, provision of false information and disturbing the peace.

The government concluded that the report was false, according to Sudan's Humanitarian Aid Commission, when MSF did not respond to government demands to produce the evidence of rapes. MSF's report stated that the organization had treated more than 500 women and girls in Darfur in a period of four and a half months, and it called on local authorities to do more to

stop the abuses. The government sought names and other details, in violation of the doctor-patient privilege.

In addition to the MSF staff, more than twenty aid workers have been arbitrarily arrested, detained or threatened with arrest in the past six months in Darfur, according to Human Rights Watch research. International media are increasingly being denied visas to the region (Human Rights Watch 2005, 'Darfur: Arrest War Criminals, Not Aid Workers' Human Rights Watch website, 31 May <http://www.hrw.org/english/docs/2005/05/31/sudan11043.htm> – Accessed 29 January 2008).

There is evidence that some members within the ruling National Congress Party (NCP) government view as spies those within Sudan who favour UN troop intervention in Darfur. In May 2006, one NCP member made this accusation during a parliamentary debate on the proposed UN mission to Darfur:

Millions of Darfuris are homeless due to three years of fighting. The Sudanese parliament has debated the prospect of a UN mission in Darfur, as UN envoys tried to persuade Khartoum to accept peacekeepers.

The debate turned into an unruly quarrel in Sudan's National Assembly on Wednesday after Lam Akol, the foreign minister, gave a statement saying Sudan should "be more flexible" about the prospect of a UN deployment to Darfur.

Deputies said one member of the ruling National Congress Party, which dominates government and the assembly, called those in favour of UN troops "traitors and spies".

Deng Dongrin, a member from southern Sudan, said: "This created a big row and the speaker was not able to control the assembly and people were shouting insults at each other."

A member of parliament who spoke on condition of anonymity said: "There were divided views in parliament, but we are waiting for the outcome of the talks between the government and the UN." ('Sudan ministers split over UN mission' 2006, *Reuters*, 25 May, Media with Conscience website <http://mwcnews.net/content/view/7112/232/> – Accessed 24 January 2008).

In August 2006, the Sudanese government arrested in separate incidents two overseas citizens on charges of espionage: an American journalist working for the National Geographic Magazine and a Slovenian presidential envoy/government representative involved in the peace process between the Sudanese government and rebels in Darfur ('Slovene envoy on trial in Sudan' 2006, *BBC News*, 3 August <http://news.bbc.co.uk/2/hi/europe/5243216.stm> – Accessed 29 January 2008; 'US journalist on Sudan spy charge' 2006, *BBC News*, 27 August <http://news.bbc.co.uk/2/hi/africa/5291154.stm> – Accessed 29 January 2008). The Slovenian envoy, Tomo Kriznar, wrote of his experience in prison in Sudan for *The Independent* newspaper several weeks after his release. In the October 2006 article, he refers to the Sudanese government's view that the role of NGOs is that of spying in anticipation for a United Nations led invasion:

It is barely more than a fortnight since I was released from a prison in Darfur. My experiences, both in the prison and during seven months as a human rights envoy in Sudan, are a warning to all of us that the people of Darfur can easily be indoctrinated and turned against the international community.

The media in Sudan are telling them that the United Nations is controlled by the US. The leaders in Khartoum, who oppose international intervention, are exploiting this anti-

Americanism to stay in power and continue the destruction of Darfur, to continue to push the African population out of the region.

I saw in prison how people changed from having sympathy and empathy for me to being suspicious and hostile and believing that I was a spy. These people are being readied to go and fight against the UN. I won't forget what I saw for seven months. The fighting, the dying, the villages destroyed.

The UN must come, but only as far as the border with Chad. They need to start a radio station broadcasting across the border to give people access to information on what is really going on. At the moment, the Sudanese government has total control over all information in the country. Only the rich have access to independent media, through the internet, and they are, broadly speaking, either supporters of the present government or people preparing to leave the country.

I have been to Sudan nine times, and each time I have seen the same pattern. The government is using its own Jihadist brand of Islam to keep the people in submission. They are using the threat of an outside enemy – the international community, primarily the US – that wants to come in and take their natural resources, steal their oil.

The Chief of Security in Sudan told me himself that he fears the US will come. They have managed to make people believe that even the NGOs are evil, that they are spies preparing the ground for a UN invasion of the country.

...At the moment, they have convinced the people in Darfur that a UN force coming in across the border from Chad would be an invasion force. They have persuaded people that they must rise up and fight this invasion.

In the prison where I was held there are 550 inmates, convicted of violent crimes such as murder. These prisoners are in chains and waiting to be executed, but they have been told they will be given guns and released to go and fight the UN. These men come from the Janjaweed, the rebel groups of Minni Minawi, fighters loyal to Abdelwahid Elnur. They are a cross-section of all the armed groups in Darfur and they have been indoctrinated.

...The Janjaweed and other groups committing atrocities have spies everywhere. When I was there they would hear where I was. They learnt that I had a camera and thought it would record their faces and send the pictures which would then appear on the BBC that night. These are proud people, they don't want to be filmed cutting babies out of mother's wombs and playing with the foetuses in front of them.

The camera can be more powerful a defence than the gun in these situations. We need to find a way to train local reporters to challenge the government monopoly on information, and get them the technical gear to get their own pictures out to tell the world and the people of Darfur what is actually happening. The author is a Slovenian writer and photographer, arrested while visiting Sudan as an official envoy of the Slovenian government (Krizner, T. 2006, 'Sudan sees UN intervention as an invasion', *The Independent*, 4 October <http://www.independent.co.uk/opinion/commentators/tomo-krizner-sudan-sees-un-intervention-as-an-invasion-418603.html> – Accessed 24 January 2008).

(Information in regarding the relationship between Sudan and Country A deleted in accordance with s.431 of the Migration Act)

Details in relation to the high ranking official deleted in accordance with s.431 of the Migration Act.

Details relating to various professional organisations deleted in accordance with s.431 of the Migration Act.

Hearing

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 Arabic (Standard) and English languages. Although the applicant spoke English he agreed to use the services of the interpreter to ensure that he fully understood what was said and himself could be fully understood

As the applicant was giving evidence by video, he confirmed that he could see the Tribunal Member and hear clearly. He also confirmed that, notwithstanding the confidential nature of the review, he was happy for a student working in his solicitor's office to sit in on the hearing, as well as his solicitor.

The applicant confirmed that he is in his 20's. He has no family in Australia.

He confirmed that he was born in Sudan and finished school in Khartoum. He then went on to study at University. He said that he is fluent in Arabic and also speaks, reads and writes some English.

He said that he has a number of siblings as well as his parents, who are living in Sudan.

He was asked to describe his work experience since his qualification. He said that he worked at a teaching institution in the mid 2000's. He also held a similar role at another institution subsequent to this He was asked if he was working two jobs simultaneously. He said he did

He was asked to describe the nature of his work, which he did

He was asked which international organisations he was involved in. He said he was involved outside Sudan with two organisations, which he named. The last forum he attended was in the mid 2000's.

He was asked how he became involved in these organisations. He said that since he was a student at university he attended his first conference. He had heard about it through the university. He said he had attended a number of conferences.

He was asked for what purpose he visited Australia in the mid 2000's, and he said it was a conference run by a particular organisation.

He was asked who organised the conference in Europe in the mid 2000's and he said it was (details deleted in accordance with s.431 of the Migration Act).

He was asked what the purpose of the conference was. He said it was an annual conference with two objectives: firstly to develop the students' abilities to face tasks in their chosen field, and secondly the network to promote unity. He was asked if he could recall any of the subjects discussed. He said he could, he gave an example about a particular workshop.

The applicant was asked to describe how he got to know the delegate from Country A. He said that there was an overseas conference and there was an exhibition from his college in Sudan. The applicant attended and he met the delegate from Country A and his wife. He said

that there was also another participant from Sudan, and this person was representing the government while the applicant was an independent attendee. The Government representative is currently a Minister in Sudan and he had met this person by coincidence at the conference.

He said that he spent about five or six days with the delegate from Country A. He said they became friends and he has some photographs with the delegate, which he could show the Tribunal if necessary.

He was asked to tell the Tribunal about how his problems with the Sudanese regime began. He said that his problem with the government began after he arrived home from Europe after the last conference. He said he and a relative were living in a separate part of the family house.

He was at home after work when his relative informed him that there was someone outside who wanted him. He began to put clothes on to meet the person but before he finished he saw a number of people entering the lounge room and coming towards his room. They held him and said his name but he did not know them. They said they wanted to talk to him quickly and he asked who they were. Before he finished speaking, some of them went into his room and the other pulled him outside to where there was a private car with a "box" in it, and there were two people in it. The men took him in the car and this was when he saw that one was armed and one had a walkie-talkie. He was told who they were but it was well-known in Sudan from how they spoke that they were from the security office. He found out afterwards that they had taken things from his room including his laptop computer. He found this out two days later. The applicant said he was taken to a place he did not know, and he was kept there for a number of days and he kept asking what was happening, and he was told he would find out later. He was told the officers were from the security department.

The applicant said that these men insulted him, and sometimes he was hit. He said that to this day he does not know where he was taken to. The Tribunal asked the applicant how the men insulted him. The applicant became very distressed, saying, "everything, they called me everything!".

He asked for two minutes break and a short adjournment was held.

On resumption of the hearing, the applicant was asked what he was questioned about while in detention. He said that he was asked about his attendance at international conferences, why he travelled so much, and about the delegate from Country A. He was very surprised that the security men knew all of this. He told them that he had met the delegate at a conference and did not have any relationship with him. The same day they forced him to open his emails, under duress and "bashing". He said that in fact he had had some email contact with the delegate but he had not told the men this, he said he had had no further contact after the conference. He said the officers said they had found evidence of his on-going contact with the delegate. One of the officers told him that from that day he would never see the sun again. They took him to a small room and said they were "punishing him for not telling the truth."

He said that he had never had any trouble with the security forces before so was shocked to the core. After his release he has received treatment for the shock.

He said that after a while in detention he was transferred to a small room and he stayed there for a period of days. He said he did not know if there were other people there as he was

blindfolded with a bag. He said this affected his hearing. He said for parts of the day they were questioning him and other parts he was left alone.

He was asked to tell the Tribunal about the assaults on him in detention and the insults inflicted on him. He said there were psychological and physical assaults. They used foul language and the “least of these were that they addressed him as the son of the slut and homosexual and that they would make him be a homosexual” This was “compounded with assault and bashing on all parts of the body”. Later they started to call him “a spy”.

He said he was left in the sun without food and water. This occurred when they transferred him by car with a blindfold. He said there were some men with him. He spent a number of days mostly standing in the sun in the courtyard. He could see people in civilian clothes but did not know who they were. At the end of the courtyard were buildings.

He said he was then taken back to the first place and spent a period of days there. He was questioned by some people, one of whom was a high ranking official. The high ranking official stayed for a short period during the questioning. The applicant said that the high ranking official was a well-known person within the community. The applicant was very surprised to see him there. He did not imagine that the situation in which he was involved would be “that big”. He was questioned by the high ranking official about the applicant’s travel. The high ranking official said “You [name deleted], what are you doing, why are you working with [Country A], work with us”. The high ranking official said “why are you working on [particular work], you do not need to”. The applicant said the high ranking official did not insult him or assault him.

The applicant was asked if he suspected that the government had found out about his relationship with the delegate from Country A from the other Sudanese representative. He said that he had thought about this a long time after.

He was asked if his family tried to find out where he was while he was in detention and try and get him released. The applicant said that after he was released, his family told him that the family asked the university if he was there. They also asked at the club. The relative he lived with said he did not know where they went. The family also asked at police stations but found out nothing.

He was asked what injuries he suffered. He outlined his various injuries He needed psychological treatment and has visited a private hospital to get better. His parents tried to send him to Country B to get rest but he could not travel.

He was asked about his release. He said in the morning a person came to him and said “you animal, you can go”. After that they took him to an office where there were some people. There were papers on the desk, some printed, some blank. They gave him all the papers and asked him to sign. They put a condition on him that every day he report to an address to sign a document that he was not travelling outside his home city.

The applicant was asked what papers he had to sign. He said that he was trying to read the first paper, but the person standing next to the door said to the others in the room, that he should not be reading, he should be signing. He said that this man came over and hit him in the back and said the applicant should sign. He said he could read a bit and the document said that “under the emergency law [name deleted] committed/undertakes never to act against the

regime”. He said the document also said he had to stop any relationship with anyone outside Sudan.

He was asked why he thought that the government believed he was a spy. He said that he thinks it was because of the relationship with the Country A.

He was asked whether this had happened to anyone else he knew. He said it had not.

The Tribunal asked if the applicant ever heard much about Country A while living in Sudan. He said that their position is clear. The Sudanese government has no relationship with Country A.

The applicant said that when he was released, for a period of weeks he was under obligation to report. After that he started to feel that he was being monitored. For instance there was always a car in his neighbourhood. When he went to university someone from the administration called him and said that he should be taking a break for a holiday, as they had received a letter from the Department informing them that the applicant should not be working for a while. When the applicant asked to see the letter, the person replied that he did not have it. Also, he went to resume his work only to find out he was sacked. He found out this from his colleagues not from his employer. He said there was a notice on the Board. After that he went to his employer and asked him what was happening. He laughed and said “it does not matter there is nothing I can do, leave it as it is until we can see what is happening”

He said he was unable to resume his job after that, but the following year recommenced some work at the university.

He was asked what career plans or ambitions he had had in Sudan before this all happened. He said he thanks god that in the short time he was there he could do good things. He said his situation there was exceptional as well as his family situation, financially and also socially He hoped to become a lecturer at the university.

He was asked when he thought about coming to Australia. He said that it was in the mid 2000’s, because he wanted to leave Sudan because of what had happened. He said his life had become very difficult then.

He said he attempted to go to Country B but was informed he was unable to leave. He was not given exit permission.

He was asked to tell the Tribunal a little about the high ranking official He said he was a well known figure who had recently been involved in a high profile Court case.

After the decision relating to the high ranking official, the applicant was in a Hotel using the internet. When he was heading to the carpark to pick up his car, some people approached him – one was one of the officers who had detained him before. The applicant was trembling and fearful. The man was laughing and said “do not be scared we only need you for two minutes to sign a paper and you can come back”. So the applicant left his car and he was taken to the national security department. This time he was not blindfolded. He spent a period of days there and was in solitary detention. During the night he was assaulted and bashed. Then he was released and told “do not come back again as next time you will be killed”. He was blindfolded and taken to an area where he was released.

He was asked what has happened to the high ranking official now. He said he “does not know and does not like to know honestly”

He was asked about the reference from a member of the faculty of the University. He was asked if the faculty member would not have been afraid of repercussions for giving him such a reference. He said that the faculty member said it should only be used carefully outside Sudan and not for anyone with ties to Sudan. He said that he knows the faculty member well and worked with him for many years.

He was asked to tell the Tribunal about how he was able to leave the country and come to Australia. He said he applied on the internet to go to a conference in Australia. He said he had a passport which he sent with the letter with recommendations from the college to the Australian embassy. He said that after a few days his passport was returned with a visa. He said he knew he had a problem in getting an exit visa to leave. He said in his profession they need permission from the obligatory ministry. He knew that he was forbidden from travelling. He said that a friend of one of his relatives worked in the government and the relative spoke to him about assisting him to travel. The family prepared everything for him, the ticket and everything he needed. One day he went to the airport and stayed in the car. His relative took the passport to his friend and they came back and took him through a side office. Usually these offices are used for airport administration. The friend of the relative took him to an office and told him to wait behind closed doors. Then after a few minutes he returned and took him through a corridor for the VIPs. From that room is an exit to the aeroplane and the friend went with him to the stairs of the aeroplane where he was given his passport and ticket. He was asked why the friend of his relative would help him like this. He said that in Sudan they help each other. The Tribunal asked if the friend was not taking a great risk in helping him in this way. The applicant said that the friend was very confident and did not seem to be hiding anything.

He was asked if his family had any difficulties with the authorities. He said there is no problem, but every now and then, security personnel have shouted out “where is [applicant’s name]”, and knocked on the door.

He was asked whether he still has military service obligations, and what they are. He said that he has to serve, but did not do it up until now. He said they are strict about people in his profession doing service. He was able to defer the military service until training is finished and after graduation and then they take you to the far fringe areas where trouble is occurring.

The Tribunal asked him whether he had been called up previously. He said that after graduation they go to the relevant authority and defer going until they finish training

The applicant said that after he arrived in Australia, he thought he would attend a conference, monitor the situation in Sudan and see what was happening. He also thought he would do post graduate study in Country B to be close to Sudan so he was able to return when things got better. But his family told him not to return. Also, a friend sent an email suggesting that it was dangerous for him in Sudan, and he should not return. This was proof to the applicant that his life was in danger if he returned and he had also lost his jobs. He said he had now lost his job at the university as well.

He was asked what he feared if he returned to Sudan. He said that the last time he was informed that he would be killed by the security forces, and he also fears the torture. In Sudan the highest authority is the security department.

He said that after he had heard from family and friends, as well as hearing about all the circumstances in Sudan, he found out that he had no other choice but to apply for refugee status.

He was asked if he planned long-term to work in his profession in Australia if he was granted refugee status. He said that it is his intention to work in Sudan, Country B or Australia. He said his family struggled for him to gain his qualifications and he wants to continue his work in this field. He said that he would try and get the equivalent qualifications in Australia. He said he has approached the relevant authorities and “god-willing will do the test in May”, and so far his qualifications have been approved. He has been informed he can work in Australia if he passes the test.

He was asked about the witnesses in Sudan whose telephone numbers he had brought to the proceedings, for the Tribunal to call.

He was asked if he could tell the Tribunal who Witness A was and what evidence he/she would give. He said that he is a friend who worked with the applicant, and at the university. The Tribunal asked him what evidence this person would give. He said he was one of the people who read the decision to sack him. He also followed all the events that happened to the applicant first-hand, because he is his friend.

He was asked how he knows the second witness, Witness B. He said he also worked with the applicant and would give similar evidence to that of Witness A.

The Tribunal said that it was not necessary to ring the witnesses.

The Tribunal asked the applicant if there was anything further he wished to tell the Tribunal. The applicant, in an emotional state, said that he was forced to apply for refugee status, otherwise he would not have done so. He said his situation in Sudan was very good and he had no reason to apply for a protection visa before this happened. He said that he had travelled internationally. He said that if he wasn't forced to apply, he would not have done this. He said that he respects the opinion of the Tribunal, and is seeking a safe place to live.

The adviser said there was nothing further to raise.

The applicant said that one last point was that he emphasised that he would work in his profession and would be giving to Australia more than he takes. He said that until this moment he did not receive assistance from anyone.

FINDINGS AND REASONS

Country of nationality

Based on a copy of his passport on file, the Tribunal accepts that the applicant is a citizen of Sudan and is outside his country of nationality.

Assessment of claims

The applicant claimed that he was detained twice in Sudan because the government suspected him of anti-regime activity as he had participated in international conferences and befriended a colleague from Country A. He claimed to have been tortured, assaulted, insulted and that he was threatened with death. He also claimed that the authorities orchestrated his removal from his jobs.

The Tribunal found the applicant to be a credible witness. He could recall small, often unusual details, consistent with somebody telling the truth. He displayed emotion when recalling events and often found it difficult to tell his story, behaviour consistent with somebody who had experienced traumatic events. His written claims and oral evidence were internally consistent, corroborated with documents, and accorded with the country information available to the Tribunal. It was also evident and persuasive that he has only applied for refugee status because he had to, as he had no choice. Before the government accused him of anti-regime activities, he had a successful career ahead of him, and he was settled socially, with family, and financially.

It is clear from country information that Sudan has a poor human rights record. The Tribunal accepts that the applicant's experiences are consistent with country information in relation to arbitrary arrest and detention, torture, beatings, incommunicado detention of suspected government opponents and infringement of rights of movement. (See US State Department Report, March 2007).

There is also information that Sudanese citizens working for the United Nations or other international non-government bodies have been arrested and accused of spying for the United States or the UN. In the mid 2000's the Sudanese government arrested in separate incidents two overseas citizens on charges of espionage: an American journalist working for National Geographic Magazine and a Slovenian representative involved in the peace process (for sources see above in paragraph headed "independent country information"). According to the country information, spying is an offence to which the death penalty applies.

While these examples are not directly applicable to the applicant's situation, it is clear that spying is an offence used not infrequently by the Sudanese government against political opponents.

It is also evident from country information that Country A and Sudan consider each other enemy states. The Sudanese government have made it clear that returnee asylum seekers who had sought asylum in Country A would be punished. The Sudanese government has stated that visiting Country A is a crime. Furthermore, during Sudan's civil war, the government in Khartoum accused Country A of assisting the Sudan's People Liberation Army and armed forces in the south of the country and interfering in Sudanese affairs. More recently, Sudanese government ministers have accused Country A of involvement in various domestic events. This information puts the applicant's story in context as it indicates that the Sudanese government is very sensitive about Country A involvement in Sudanese affairs.

The applicant's evidence about the high ranking official is also consistent with independent information about him. According to the information, the high ranking official reportedly accused various people involved in the applicant's profession of violating Sudanese law by their support of political activities. This is consistent with the type of accusation being made against the applicant.

One confusion which the applicant was able to resolve was in relation to military service. From the employment record set out in his statement and protection visa application, it was unclear that he had previously been called up for military service. Country information does make it clear that military service is compulsory for all males aged 18 and over and that avoiding military service is punishable by two to three years' imprisonment. (National Service Law, article 28). At hearing the applicant explained that he had not been called up as

he was able to defer until he had completed his training, however he feared being called up in the future

On the basis of the applicant's oral and written evidence, the statements from colleagues, the documents from various organisations with which the applicant has been involved and the country information, the Tribunal accepts the applicant's claims that he was detained twice in Sudan and questioned about his involvement in international organisations and his friendship with a delegate of Country A. It accepts that he was tortured, assaulted and insulted and that his life was threatened. The Tribunal also accepts that he lost his jobs because of the authorities' suspicions.

The Tribunal accepts that he fears returning to Sudan in the reasonably foreseeable future because he left illegally, because he was tortured in the past, and because the authorities have threatened to kill him if they detain him again.

On the basis of all the evidence, the Tribunal finds that the applicant has a well-founded fear of persecution in the reasonably foreseeable future.

Convention nexus

The Tribunal finds that the applicant has a well-founded fear in Sudan because of the anti-regime political opinion likely to have been imputed to him on the basis of his international connections, particularly his contact with a citizen of Country A, for the reasons set out below.

Although the applicant was not involved in anti-regime activity, according to his evidence he was arrested because of his connection with the citizen from Country A and his involvement in international conferences. While in detention he was questioned about these matters and it is clear from the accusations levelled against him that the authorities suspected him of anti-regime activity of some sort.

As set out above, this type of accusation is not extraordinary in Sudan, where members of non-governmental organisations have been accused of spying.

Serious harm

The Tribunal finds that the harm threatened is serious harm, in that it involves the threat of assault, detention, torture, loss of liberty or even death.

It also finds that the harm involves systematic and discriminatory conduct, in that it is deliberate, premeditated conduct directed at the applicant by the authorities, because of his imputed political opinion.

CONCLUSIONS

The Tribunal is satisfied that the applicant has a well-founded fear of persecution for reasons of political opinion in the reasonably foreseeable future. It follows 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) for a protection visa.

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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. prrt44