

071267518 [2007] RRTA 87 (15 May 2007)

DECISION RECORD

RRT CASE NUMBER: 071267518

DIAC REFERENCE(S): CLF2007/15732

COUNTRY OF REFERENCE: Vietnam

TRIBUNAL MEMBER: Antoinette Younes

DATE DECISION SIGNED: 15 May 2007

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act, being persons 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 decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).

The applicants, who claim to be citizens of Vietnam, arrived in Australia and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by post.

The delegate refused the visa application on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention. The applicants applied to the Tribunal for review of the delegate's decisions.

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 applicants have 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 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).

Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.

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 Tribunal has before it the Department's file relating to the applicants who are family members. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The claims made by the first-named applicant ('applicant 1')

In the application for a protection visa, applicant 1 claimed that:

- He had previously escaped from Vietnam but "*all failed*". In the late 1980's, he was arrested and sent to education camp for several years and was subsequently under house arrest for another few years. He was only allowed to live at specified locations.
- In the mid 2000s his relative contacted him asking about the family. The applicant's relative who has been in Australia for many years and had not returned to Vietnam because of their background. The applicant wanted to apply for an Australian Visitor Visa but he knew that the Public Security would have refused the application. Together the applicants paid a substantial sum to an agent for the "*whole package*". He had to sell all his property as he thought this was his only opportunity to see his family in Australia.
- After a short period of time his absence from the locality, the local Public Security went to his home and questioned his family about his whereabouts. His family told them that they had departed to Australia. For few weeks after that, his family had to present at the Public Security for self-criticism. The family has been asked to stay at home until the applicants return to Vietnam. This happened because the applicants did not inform the authorities of their departure.
- The Public Security has known and classified family members of applicant 1 as "*reactionary element who have consistently been against the revolution outcome in April 1975*". He fears the several years he spent at the reeducation camp. If he were to return, he would be sent back to the camp.
- For the past many, he witnessed unfair and unjust measures applied to previous members of the armed forces, administrators and particularly those who served in the intelligence agencies. The Public Security has tried to brainwash them to become good citizens as they had been disloyal to the "*Socialist fatherhood*".
- Vietnam is ruled by the Vietnamese Communist Party. There is no independent agency to intervene in case of his arrest. He was a member of the Republic of Vietnam armed forces and was consequently treated differently from other members of society. He has lived in fear.

- When he was released, the Release Certificate noted that the release was temporary and that he could be arrested at any time. Although he never acted against government policy, he was arrested and re-educated. The “*clemency policy*” was only on paper and misleading. The current government might send him to re-education camp at any time.
- The applicants departed without notice to the Public Security and this is a “*criminal charge*”. The Vietnamese government announced that there have not been any political detainees and as such all “*criminal inmates*” are those who have travelled without informing the Public Security. The Communist Party controls all activities in Vietnam and there is no independent body to question unfair and unjust arrests. There is no rule of law or separation of power. There is no freedom of press. The government controls registration of mobile phones. Those with relatives overseas are particularly targeted. The applicants might be branded “*foreign agents*”.
- Some of his family members passed away in re-education camp.

The claims made by the second-named applicant (‘applicant 2’)

In the application for a protection visa, applicant 2 claimed that:

- He was born into a family where all members were involved with the previous government. [*information about family members occupation deleted in accordance with s431 as it may identify the applicant*] He has been sent to re-education camp for several years and was under house arrest for many years.
- He was only allowed to live at certain locations.
- In the mid 2000s, his other relatives contacted the family. They have been in Australia for many years and had not returned to Vietnam because of their background. They paid a substantial sum to an agent for the “*whole package*”. They had to sell all their property as they thought this was their only opportunity to see their relatives in Australia.
- After a short period of time their absence from the locality the local Public Security went to their home and questioned their family about their whereabouts. They were informed that they (the applicants) had departed to Australia. For few weeks after that this relative had to present himself at the Public Security and was asked to stay at home until the applicants return to Vietnam. This happened because the applicants did not inform the authorities of their departure.
- The Public Security has known and classified their family members as “*reactionary elements who have consistently been against the revolution outcome in April 1975*”. He fears he and applicant 1 would be sent to the re-education camp. Applicant 1 would not live any longer.
- Since his birth, he witnessed unfair and unjust measures applied to previous members of the armed forces, administrators and particularly those who served in the intelligence agencies. His relatives are also a reason to arrest applicant 1.
- Vietnam is ruled by the Vietnamese Communist Party. There is no independent agency to intervene in case of his arrest. Applicant 1 and his relatives were members of the Republic of Vietnam armed forces and have been treated as reactionary elements. In

terms of education and employment, the Government has treated him differently from other children in society. His school days were unfortunate due to applicant 1's background.

- Although applicant 1 never acted against government policy, he was arrested and re-educated. The “*clemency policy*” was only on paper and misleading. The current government might send him to re-education camp at any time.
- The Communist Party controls all activities in Vietnam and there is no independent body to question unfair and unjust arrests. There is no rule of law or separation of power. There is no freedom of press, or religion. The government controls registration of mobile phones. Those with relatives overseas are particularly targeted. The applicants might be branded “*foreign agents*”.
- Some family members had passed away in re-education camp. He tried to live in peace but was sent for re-education for several years.

Documents provided

In support of the application for a protection visa, the applicants provided written submissions by the advisor providing background information about the family. Relevantly, the advisor noted that:

- Applicant 1's relative's employment history and he was sent to re-education camp where he died in the late 1970s) (*Annexure 1*).
- One of applicant 1's relatives was in a profession and he was tortured and passed away in the re-education camp in the late 1970s.
- One of applicant 1's other relatives was a different profession and was classified as an anti-communist element. He was tortured to death at camp (*Annexure 2*).
- One of applicant 1's another relative was in a similar profession and was injured during the war. He escaped Vietnam and came to Australia in the late 1980s. He has never returned to Vietnam (*Annexure 3*).
- One of applicant 1's another relative was in a lower profession. He came to Australia in the late 1970s and has never returned to Vietnam (*Annexure 4*).
- One of applicant 1's another relative was a public servant and was re-educated for few years.
- One of applicant 1's other relative was in a workforce and was re-educated for few years.

The advisor noted that applicant 1 enlisted in the Republic of Vietnam armed forces in the mid 1960s and he participated in many operations. He was arrested and re-educated for several years (*Annexure 6*- not provided). His wife and family have been discriminated against. His children have not been allowed higher education. His wife has not been allowed a permanent job.

As well, the applicants provided a Statutory Declaration from applicant 1's relative referring to applicant 1's background, a Statutory Declaration from a family friend who knows applicant 1's relatives in Australia, a Statutory Declaration from applicant 1's relative in Australia and Annexure 6 as referred to in the written submissions.

Material provided to the Tribunal

The Tribunal received copies of the delegate's decision, documents provided to the Department as noted above (folios 1-22), a press release by Amnesty International USA (folios 23-28), a translated document entitled "*Certificate of Completion of a Prison Sentence*" for applicant 1 (folios 29-32) and written submissions, essentially summarising the applicants' claims.

HEARING

The applicants appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from a few witnesses. The Tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages.

The applicants were represented in relation to the review by their registered migration agent, who attended the hearing.

The evidence of Applicant 1

The applicant gave evidence that he does not wish to return to Vietnam as he fears being persecuted by the local authorities. He stated that he was jailed for several years and was not treated like other citizens. He said he was jailed in early 1990s for several years. He said he was jailed because of his profession. The Tribunal asked the applicant what happened to him during his detention in those years. He said he was forced to confess his thoughts and he was taken to prison. He said subsequent to his release, he was assigned to stay in the particular city where he remained under surveillance. He stated that he had to present weekly at the local council and monthly at the general council. He said he had to do so for up to several years after release. He stated that subsequent to that, he was made to attend the main ceremonies and anniversaries such as the 2nd September National Celebration. He said he was forced to present and attend those national ceremonies.

The Tribunal asked the applicant about his family and its relationship with the previous regime. The applicant stated that his family has worked for the previous government. He said that his father had worked in a profession mid a 1950s, a position which he held until early 1960s. [*Information about father's employment deleted: s431*]. He stated that after the communists took over, his father was taken to re-education camp and he passed away in the camp a couple of years later.

The applicant gave evidence that another relative was taken to re-education camp and that he passed away at the camp in the late 1970s. He said another relative was also taken to the re-education camp and passed away at the camp in early 1980s. The applicant gave evidence that another relative currently resides in Australia. He said this relative had been injured during the war. The applicant said that his relative sent to re-education camp who now in Australia. The applicant gave evidence that another relative, worked as a public servant for the former Vietnamese government. He said that he too was put in a re-education camp for few years. He said that this relative is still in Vietnam. The applicant gave evidence that this relative was in the employment and that he was sent to re-education camp for few years.

The applicant said that all members of his family had been involved with the South Vietnamese government. The Tribunal asked the applicant what happened to him personally after re-education and house arrest. He said he was not treated equally. He said although he was trying to behave normally he was made to attend ceremonies against his wishes. He said he had to participate in those ceremonies. He explained that at each ceremony welcoming foreign delegates he was made to attend. He said he was frequently asked by the police if he had had any contact with people from overseas. He said he believed that he had to go to the police station in order to prevent him from having any contact with the foreign delegates.

The Tribunal asked the applicant about his passport. The applicant stated that he had paid someone a substantial sum and that the person made all the arrangements for the passport. The Tribunal asked and the applicant confirmed that the passport is authentic; he said that it is genuine but had been obtained through bribery. He explained that the passport would not have been obtained had the family not paid the money. The Tribunal asked the applicant if he knew how the passport was obtained and the applicant stated that he did not know.

The Tribunal noted that country information available to the Tribunal indicates that whilst there are human rights issues in Vietnam, there is doubt as to whether individuals who come from families perceived to be anti-regime, are persecuted. The applicant stated that he has suffered for years. He said he had been forced to attend celebrations that he did not want to attend, and he has been treated unfairly. The applicant stated that there is no freedom in communication, or press. He said mobile phones have to be registered in Vietnam.

The applicant gave evidence that his family is still in Vietnam. He said that few weeks after they left to come to Australia, the local police went to their home asking about their whereabouts. The family had to tell them that they had gone to Australia. He said the police returned later and ordered the family not to leave the house until they returned to Vietnam.

The Tribunal discussed with the applicant the document entitled “*Certificate of Completion of a Prison Sentence*” (folios 29-32). The applicant stated that his family had received the document and sent it to him from Vietnam.

The evidence of Applicant 2

The applicant gave evidence that he does not want to return to Vietnam because he fears persecution by the security forces. He said he was persecuted in Vietnam. The Tribunal asked the applicant how he was persecuted in Vietnam and he said he could not enrol at school and had to finish schooling early. He said he could not pursue any further studies because all his applications had been rejected. He said because the family had been placed in the “*black file*” because of their history.

The applicant gave evidence that since he was at school he was treated unequally. He said he is unable to find a job in Vietnam. The Tribunal that noted one of the claims that has been made in the application for a protection visa appears to have been made by mistake, namely that he had been arrested and detained in the re-education camp for several years. The applicant and the advisor confirmed that this was a mistake. The advisor apologised for the error.

The applicant gave evidence that he does not want to return to Vietnam as there are no rights to live or work. He said his personal life would be at risk. The Tribunal asked the applicant if he knew how he had obtained his passport. The applicant said his father had looked after the matter.

Evidence of Witness 1

The witness gave evidence that he wanted to support relative applicant 1. He said he came to Australia in the late 1980s. He said in mid 1970s for several years he was in jail in Vietnam. He said he was in employment in early 1970s. He said that when his father died, he returned to Vietnam but he was only there for a few weeks. The Tribunal asked him if anything had happened to him during that period and he stated that nothing happened to him.

The witness gave evidence when he heard that applicant 1 had been imprisoned for several years, he felt a lot of compassion for him. He said he believes that applicant 1 would encounter difficulties if he were to return to Vietnam.

Evidence of Witness 2

The witness said that he has not seen applicant 1 for over many years since the witness had escaped from Vietnam. He said that applicant 1's life has been very difficult in Vietnam. He said that he has been hesitant to return to Vietnam as he was in re-education camp for several months in the mid 1970s and after his release, he tried to obtain work which enabled him to escape. He said he has never returned to Vietnam. He said he would very much like to return to see his father's tomb but could not because of the harm that he had suffered. He said his friends had told him not to return to Vietnam. He said that he was granted refugee status by the Australian government.

Evidence of Witness 3

The witness gave evidence that he wanted to support relative applicant 1. The witness gave evidence that he came to Australia as a refugee and had never been back to Vietnam. He said he was in the Army and completed the course of an officer. He said he fought against the communist regime. He said after the communist regime took over, he escaped from Vietnam. He said he and his family went to a refugee camp in another country and subsequently the Australian government accepted them as refugees. He said he believed that if applicant 1 were to return to Vietnam, his life would be at risk.

FINDINGS & REASONS

On the basis of the available information the Tribunal is satisfied that the applicants are citizens of Vietnam and that they are outside that country.

In consideration of the evidence as a whole and on the basis of the available information, the Tribunal finds that the applicants have a well-founded fear of persecution.

In consideration of the evidence as a whole and on the basis of the available information, the Tribunal accepts that applicant 1 in late 1980s was arrested and sent to re-education camp where he remained for several years and that for the few subsequent years he was under house arrest where he was monitored by the Vietnamese authorities. On the basis of the available information, the Tribunal is satisfied that subsequently, applicant 1 has had to unwillingly attend ceremonies and national celebrations. Although the Tribunal has some doubt, the Tribunal accepts as being plausible that the applicants paid a substantial sum in order to obtain their passports, and that subsequent to their departure from Vietnam, the Local Public Security went to their home and questioned applicant 1's family about their whereabouts. The Tribunal

accepts as being plausible that the family member had to present at the Public Security Office and that this is because the applicants left Vietnam without notice to the authorities.

In consideration of the evidence as a whole and on the basis of the available information, the Tribunal is satisfied that applicant 1 has relatives who were involved in the previous regime and that they held senior positions. Specifically, the Tribunal is satisfied that:

- Applicant 1's relative was on a senior position and he was sent to re-education camp where he died in the late 1970s.
- One of applicant 1's relatives was in a profession and he was tortured and passed away in the re-education camp in the late 1970s.
- One of applicant 1's relatives was a different profession, he was classified as an anti-communist element and he was tortured to death at camp.
- One of applicant 1's another relative was in a similar profession and was injured during the war. He escaped Vietnam and came to Australia. He has never returned to Vietnam.
- One of applicant 1's another relative was in a lower profession. He came to Australia and has never returned to Vietnam.
- One of applicant 1's another relative was a public servant and was re-educated for few years.
- One of applicant 1's other relative was in a workforce and was re-educated for few years.

The Tribunal is satisfied that on the basis of the available information, applicant 1 and various members of his family have been perceived by the current Vietnamese regime as having anti-regime opinions by virtue of their employment and/or association with the previous Republic of Vietnam regime. The Tribunal is satisfied that the harm suffered by the applicant personally, his father and his relatives, constitutes serious harm as stipulated by the Act. The Tribunal is satisfied that the serious harm suffered is essentially and significantly due to their imputed anti-regime political opinions.

Although the Tribunal could not find recent reports of members of families formerly associated with the government and/or the armed forces of the former Republic of Vietnam being mistreated, the Tribunal is of the view that this does not mean that ill-treatment of members of such families does not occur. Amnesty International's most recent report on Vietnam (Amnesty International 2006, *Socialist Republic of Viet Nam*, 24 May), describes the widespread restrictions placed on freedom of expression, association and religious practice, and states that "[d]espite sizeable prisoner amnesties, political dissidents remained in prison... The human rights situation in the Central Highlands and limited access to the area continued to cause concern".

The Report said:

Dissidents continued to be held on espionage charges for sharing information and opinions on political reform and human rights via the Internet. Nguyen Vu Binh, Nguyen Khac Toan and Dr Pham Hong Son, arrested in 2002 and sentenced to between five and

12 years' imprisonment, remained in prison at the end of 2005. Dr Pham Hong Son suffered serious health problems for which he did not receive appropriate medical treatment....Prisoner of conscience Nguyen Dinh Huy, 73, a former English and history professor, was released under the prisoner amnesty to mark Lunar New Year in February. He was arrested in November 1993 and sentenced to 15 years' imprisonment for planning an international conference on democracy and human rights. He had previously spent 17 years in prison without charge or trial for "re-education".

The US Department of State 2006, *Country Report on Human Rights Practices for 2006 – Vietnam*, 6 March, 2007, summarises the human rights situation as follows:

...The government's human rights record remained unsatisfactory. Some government officials, particularly at the local level, continued to commit abuses despite a concerted push by central authorities to address abuse concerns, especially of religious freedom. Citizens could not change their government, and political opposition movements were officially prohibited and some activists arrested, although several nascent opposition organizations were not completely suppressed. The government sought to reinforce its controls over the press and the Internet. In a few instances, police abused suspects during arrest, detention, and interrogation. Prison conditions were often severe but generally did not threaten the lives of prisoners. Security forces generally operated with impunity, and there was one credible report of an extrajudicial killing by security forces. Individuals were arbitrarily detained for political activities. Persons were denied the right to fair and expeditious trials. The government limited citizens' privacy rights and freedom of speech, press, assembly, movement, and association. The government maintained its prohibition of independent human rights organizations. Violence and discrimination against women persisted, as did limited child prostitution and trafficking in women and children, although the government intensified its efforts to combat trafficking. Some ethnic minority groups suffered societal discrimination. The government continued to limit workers' rights, especially to organize independently.

.....Denial of Fair Public Trial

The law provides for the independence of judges and lay assessors; however, in practice the CPV controlled the courts at all levels by retaining effective executive power to appoint judges. Most, if not all, judges were members of the Communist Party and were chosen at least in part for their political reliability. As in past years, the entire judicial system was strongly distorted by political influence, endemic corruption, and inefficiency. CPV influence was particularly notable in high profile cases and others in which a person was charged with challenging or harming the CPV or the state.

.....Political Prisoners and Detainees

There were no reliable estimates of the number of political prisoners. The government held at least two political detainees at year's end but claimed that it did not hold any political prisoners. In the past such persons were usually convicted of violating national security laws or general criminal laws.

.... Civil Judicial Procedures and Remedies

There is no clear or effective mechanism for pursuing a civil action to redress or remedy abuses by authorities. Civil suits are heard by "administrative" courts, civil courts, and criminal courts, which all follow the same procedures as in criminal cases and are adjudicated by members of the same body of judges and lay assessors. All three levels were subject to the same problems of corruption, lack of independence, and inexperience. Officials reported that, in theory, a citizen seeking to press a complaint is required first to petition the officer accused of committing a human rights violation for permission to refer the complaint to the administrative courts. If a petition is refused, the citizen may refer it to the officer's superior. If the officer or his superior agrees to allow the complaint to be heard, the matter is taken up by the administrative courts. If the administrative courts agree that the case should be pursued, it is referred either to the civil courts for suits involving physical injury seeking redress of less than 20 percent of health care costs resulting from the alleged abuse, or to the criminal courts for redress of more than 20 percent of such costs. In practice this elaborate system of referral and permission ensured that citizens had little effective recourse to civil or criminal judicial procedures to remedy human rights abuses, and few legal experts had experience with the system.

...Elections and Political Participation

The most recent elections to select members of the National Assembly were held in 2002. The elections were neither free nor fair, since all candidates were chosen and vetted by the CPV's VFF, an umbrella group that monitored all of the country's popular organizations. Consequently, 90 percent of the delegates were CPV members, and non CPV members were only nominally independent.

.... Corruption continued to be a major problem.

.... Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination based on gender, ethnicity, religion, or social class; however, enforcement of these prohibitions was uneven. While many persons formerly interned in reeducation camps on the basis of association with the pre 1975 government were well integrated into society, some continued to report varying levels of discrimination as they and their families sought access to housing, education, and employment. In the past some military veterans of the pre 1975 South Vietnamese government and their families faced economic hardship as a result of past employment restrictions and discrimination. Few of these prohibitions remained, and the declining percentage of war veterans belonging to the labor force also lessened the incidence of such discrimination.

The above independent country information supports a finding that there remained serious human rights issues in Vietnam.

In relation to applicant 2, whilst the Tribunal accepts as being plausible that he had to finish his schooling early, on the basis of the available information, the Tribunal is not satisfied that he could not pursue any further studies because all his applications had been rejected due to the family's history, or that he was unable to find a job in Vietnam for that reason. However, given the Tribunal's conclusions in relation to the applicant 1 and various members of the family and in

consideration of the evidence as a whole, the Tribunal is satisfied that applicant 2 would be imputed, because of the family's history, with anti-regime political views.

In consideration of the evidence as a whole, the Tribunal is satisfied that there is a real chance that both applicants would suffer serious harm as contemplated by the Act, in the reasonably foreseeable future if they were to return to Vietnam.

In consideration of the evidence as a whole, the Tribunal is satisfied that the applicants have a well-founded fear of persecution. In consideration of the evidence as a whole and given independent country information, the Tribunal finds that there is a real chance of harm occurring to the applicants in the reasonably foreseeable future if they returned to Vietnam. The Tribunal considers that the persecution which the applicants fear involves 'serious harm' as required by paragraph 91r(1)(b) of the Migration Act in that it involves significant physical harassment or ill-treatment. The Tribunal considers that the applicants' imputed political opinions are the essential and significant reasons for the persecution which they fear, as required by paragraph 91r(1)(a), and that the persecution which they fear involves systematic and discriminatory conduct, as required by paragraph 91r(1)(c), in that it is deliberate or intentional and involves selective harassment for one of the five Convention reasons, namely imputed political opinions.

The Tribunal finds that the applicants have a well-founded fear of persecution for a Convention reason.

CONCLUSIONS

The Tribunal is satisfied that the applicants are persons to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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

<p>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 <i>Migration Act 1958</i>. Sealing Officer's I.D. PMRTAK</p>
