

1008233 [2011] RRTA 805 (21 September 2011)

DECISION RECORD

RRT CASE NUMBER: 1008233

DIAC REFERENCE(S): CLF2010/67785

COUNTRY OF REFERENCE: Venezuela

TRIBUNAL MEMBER: Clyde Cosentino

DATE: 21 September 2011

PLACE OF DECISION: Brisbane

DECISION: The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being a member of the same family unit as the first named applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. 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).
2. The applicants, who claim to be citizens of Venezuela, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicants] November 2009 and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] May 2010. The delegate decided to refuse to grant the visas [in] September 2010 and notified the applicants of the decision and their review rights by letter [on the same date].
3. 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
4. The applicants applied to the Tribunal [in] September 2010 for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
9. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

10. 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.
11. 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.
12. 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.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. 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.
15. 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.
16. 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.

17. 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.
18. 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.
19. 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

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

Protection visa application

21. The applicant indicates in his application that he was born [date deleted: s.431(2)] in [City 5], Venezuela. He indicates that he is of Hispanic ethnicity and of the Catholic faith. He married his wife (the second applicant) in [City 5], Venezuela [in] September 2009. The applicant has indicated that he has lived in [City 5], [State 6] in Venezuela from 1985 to 2007. He has studied as a student at [University 1] from November 2002 to December 2008. He has obtained a Bachelor of [Medical Speciality D]. He indicates that his father, mother, brother and wife's family live in Venezuela.
22. The applicant provided a copy of his old passport and his current passport (expiring [in] May 2015). The applicant indicates in his application that he has the right to enter or reside temporarily in the United States. He has indicated that he has travelled to the United States as a tourist from August 2005 to December 2005 and again in July 2009 for 12 days. He has supplied a certified copy of a United States visa issued [in] March 2005 and expiring [in] March 2015. The visa, identified as Visa Class B1/B2, has been issued in the name of the applicant. The applicant indicates that he has travelled to Australia as a student and arrived in Australia [in] November 2009.
23. The second applicant did not make any claims in her own right and submitted a Form D with the applicant's protection visa application as a member of the family unit.
24. In the claims section of the protection visa application, the applicant claims as follows:
 - That he left Venezuela because he had the opportunity to travel overseas to learn a second language and decided to study English in Australia. He fears that if he returns to Venezuela he could be a victim of psychological or physical abuse, or even death,

as the government authorities and their civilian followers target people who openly express ideas in disagreement with the government policies. He claims that the authorities are corrupt and you have to pay a bribe for every transaction, and it is well known that members of government departments are involved in kidnapping people to force them to pay. He claims that back in 2004 he signed the referendum request to vote to revoke the constitutional power of Hugo Chavez, meaning he is on the 'Lista Tascon' and/or 'Lista Maisanta'. He believes that he is on these 'black lists' and that he is forbidden to be hired in a job within the public sector and any private company that has contracts within the government. The applicant claims he noticed this discrimination when he applied for an academic position after graduating in December 2008 and was told that he was too inexperienced. However, two of his former classmates were hired as academic staff one month later. The applicant claims that his father, a well known [Medical Speciality D] practitioner and associate professor at the local university, who has expressed openly his opposition to the current government, was twice unfairly suspended from his job and was illegally arrested in 2002. The applicant claims he is afraid that what happened to his father will also happen to him in order to keep him silent and politically unresponsive.

- That he could be targeted by anyone who might be a civilian or military officer, government party member or civilian supporters of the government. The applicant claims that civilian government supporters of the government are funded directly by the government.
- That the Venezuelan authorities will do nothing to protect his wife and himself. He is still fearful that eight years after his father's unlawful arrest, the general attorney's office is still keeping open his father's case in legal limbo to present charges against him. He claims that the university has not answered any requests from his father's legal advisors and that no institution, not even the people's ombudsman, has taken any action to assist his father, even after his father was successful in his court action to preserve his rights. The applicant believes that if this is what is happening to his father, then the authorities will not protect either his wife or himself.

25. In support of his application, the applicant provided the following documents:

- a. A certified copy of his Venezuelan passport as well as a certified copy of his wife's Venezuelan passport.
- b. A number of documents in support of the application for a protection visa in the Spanish language (untranslated) (a number of these documents were translated prior to the hearing for review).
- c. A bundle of documents titled "Documents about current political situation in Venezuela" including:
 - i. A report by Aleksander Boyd titled "Lista De Tascon: Maisanta Software Explained"
 - ii. An article by Ana Julia Jatar titled "Apartheid in the XXI century" beginning with the opening lines, 'Your vote is secret, your signature is not'.

- iii. Amnesty International report dated 1 April 2010 titled “Urgent Action: Critics of Venezuelan Government detained.”
 - iv. Online news article (Noticias24) dated 24 February 2010 writing on the American Commission on Human Rights (IACHR) report which stated, among other things, that political intolerance, lack of independence of State powers, restrictions on freedom of expression and peaceful protest, hostility to dissent, violence and impunity severely limit the effectiveness of rights in Venezuela.
 - v. Online news article (Noticias24) dated 2010 (no month provided) writing on the IACHR’s statement concerning the lack of freedom of expression in Venezuela and abuses that continue to be committed in Honduras.
 - vi. Online news article (Noticias24) dated 14 April 2010 writing on a Reuters report of armed civilian militia “swearing to defend Chavez to death’.
 - vii. Online news article (Noticias24) dated 2010 (no month provided) writing on the IACHR’s statement concerning Venezuela using its power of State to prosecute opponents.
- d. A bundle of bounded documents of general information and reports concerning the human rights situation in Venezuela (February 2009 to February 2010).

Departmental interview

- 26. The applicant attended at a Departmental interview dated [in] July 2010. At that interview the applicant made the following claims.
- 27. He was born in Venezuela and was a citizen of that country. He was not a citizen of any other country. He held a tourist visa to enter the United States of America (USA). This visa was valid until March 2015. He does not hold any other visa to enter the USA or any other country. He has visited the USA on two occasions but has not travelled to any other country except in France and Singapore where he transited in his journey to Australia.
- 28. The applicant’s family still live in Venezuela. His father, mother and brother live in [City 5]. His parents are divorced. He is in contact with his mother and father in [City 5]. The applicant has lived in [City 5] all his life.
- 29. The applicant obtained his qualifications in [Medical Specialty D] Medicine which he completed in December 2008. He indicated that he was involved in politics, not as a member of any political party but working within the community to pressure the government in power. At the public university where he studied, he was involved in politics as a university student. As the government started to take over the administration of the universities and elect who should run them, there was a greater need to discuss the lack of services provided to universities by the government. This created a political environment. The authorities would intervene. The authorities were inclined to take over the university.

30. The applicant indicated that he was member of a student group at the university. He was in charge of directing or organising actions to be taken against the university authorities (who were government appointed) concerning issues arising at the time. There was not a student organisation as such at the university. It was a number of students who came together and organised themselves and protested openly or they demonstrated their disagreement openly with some of the things that were happening at the university
31. The applicant indicated that the student organisation he was a part of protested about such things as transport services. There was also a program where the government provided meals for students of lower incomes. These services were not being provided by the university. There were also problems of lack of resources at the university. He would protest about these issues during assemblies when convened. In his case, he was from the [faculty deleted: s.431(2)]. Basically, the students would convene a meeting and the authorities would discuss solutions with them for the benefit of the student body. Authorities would not necessarily accept invitations to attend these meetings. But some would come along to the meetings to listen to the student's grievances? However, at the end of the day, the applicant claimed that there were a lot of promises by the authorities but no action by them to seek a resolution.
32. The applicant recalled on one occasion when the director of the sciences program came to see the applicant and advised him to be careful about what he did in the student organisation as he knew about his opposition to the government revolution. He told the applicant that he should be careful as action could be taken against the applicant for his involvement. The applicant did not heed his warning because he was trying to fight for the benefit of the students at the university.
33. After graduating from university in December 2008, the applicant applied for work in his selected field. He wanted to teach [subject deleted: s.431(2)]. In December 2008, the head of the [subject deleted: s.431(2)] area, told the applicant he could not have the job because he was too recently graduated and that he had no experience. The applicant graduated as number two of [number deleted: s.431(2)] students who graduated in his class. In January 09, two people who graduated with the applicant, and who had exactly the same experience as the applicant but who graduated lower than the applicant, were provided jobs at the university. The applicant felt very disillusioned as a result of this. The applicant believed that he was not employed at the university because the authorities identified his political tendencies as opposing those of the authorities as he had already demonstrated clearly what his political tendencies were. He also indicated that his father used to be a teacher at this faculty – the [Medical Speciality D] sciences faculty. His father had been persecuted because of these political tendencies.
34. The applicant was asked what he meant when he spoke about “political tendencies”? He responded that the government came into power when he was a teenager. He witnessed the how his father was mistreated by government authorities at the University. As he grew up and was able to form his own idea about things, he realised that this was not a government that was offering the best conditions for his country. Upon entering university, he personally experienced lack of resources and lack of government support for students. He also observed first hand arbitrary decisions such as suspensions and sackings of administration staff because they were identified as being in opposition to the government.
35. When asked if he expressed his opposition to the government in any way, the applicant responded that at the university it was clear that he did not agree with the authority's power to arbitrarily intervene with university matters. He also demonstrated his political tendencies

through the assemblies meetings and meetings at community level which he participated in. He was not an organiser of these meetings but his active participation was enough to make him an enemy of the government.

36. The applicant was asked to explain the community meetings that he participated in. He responded that the meetings in the community were, at times, jointly organised. For example, some of these meetings were convened from the university. These activities could be held at the university but were mostly outside the university. People would carry banners, sing songs and demonstrate in a civil way but they were nonetheless in opposition to the government.
37. The applicant indicated that when he demonstrated, he clearly expressed his opposition to the government. He did not hesitate to do it openly but, many times, he would have to be careful of what place and what time he would express his opinion because the government had different groups such as 'Bolivarian circles', or the 'peasant militia's', who were heavily armed, who supported the government and which group the government accepted openly. This militia is there to defend the revolution from aggressors – internally and externally. The applicant claimed that it is the situation that this hate and aggression has been fostered not only by well-known government organised groups but also civilians who support the government. Venezuela had become a much radicalised society.
38. The applicant indicated that he voted, with his signature, at the 2003 referendum which was held by the electoral commission to determine if they had enough grounds to revoke the presidential mandate. The applicant was [age deleted: s.431(2)] at the time that the signatures were being taken. He indicated that one needed to be older than 18 to vote in Venezuela. The signatures were collected in 2003 for them to be acted upon in 2004. He knew that by the time that they were acted upon, he would be [age deleted: s.431(2)]. The electoral commission allowed people who were 17 years old to sign because the time the referendum took place the following year, many of them would have turned 18 years old.
39. The applicant indicated that he put his signature to the referendum in 2003 when he was [age deleted: s.431(2)], and then voted in the election in 2004. The applicant indicated that this is where the problems arose because by calling the referendum, it became more obvious as to who was opposing the government. The applicant indicated that one government minister asked for a copy of the lists of all the people who had signed at the referendum. This list became known as the "Tascon" list – "Tascon" being the Member of Parliament who requested a copy of the list. As far as the applicant understood, this list became the first point of call to check one's political tendencies. For example, if one applied for work in the public sector, the first thing that would be determined was whether one was on that list or not. If they were, they would not be offered that job.
40. The applicant indicated that being on this list has affected his life in Venezuela. He indicated that after university, he applied for another job. He had a friend who worked for a government company. This company had an agricultural department which was looking for [Medical Speciality D] doctors. The applicant sent him his curriculum vitae. It was sent to Caracas. The applicant was asked to come in for an interview. His friend advised the applicant that all interviewees would be checked to see if they are on the Tascon list. Anyone who was would not be offered the job. He also advised the applicant that anyone who was offered the job would have to participate in pro-government activities. The applicant indicated that after hearing this he gave up in applying for the job as he did not want to support government activities while he was working in his chosen field.

41. The applicant indicated that he and his wife initially decided to leave Venezuela to come to Australia to learn English in order to broaden their opportunities, to help improve their ability to find work in Venezuela if they had to return to Venezuela. However, he was always living in fear while he was in Venezuela. He had witnessed the arbitrary actions of the government against his father and his right to employment. His father is also a well-known person with anti-government political attitudes. He is very well known in the city and the State that the applicant lives in and the applicant carries his father name. The applicant was always fearful that what happened to his father would also happen to him.
42. The applicant indicated that he was fearful that he would not be offered work because of his opposition to the government and because of his father's political background. He indicated that his speciality in [Medical Speciality D] was in [subject deleted: s.431(2)]. Most of the [workplace deleted: s.431(2)] in Venezuela are State owned [workplaces deleted: s.431(2)]. Most of the private [workplaces deleted: s.431(2)] are being taken over by the government. He feared for the welfare of his wife and himself. He also feared that he might be killed by militia for opposing the government.
43. The applicant indicated that his fear that he always had was been getting greater every day as he had been talking to family and looking at the news. It was getting worse every day in Venezuela, particularly for people opposing the government. It was in May 2010 that the applicant decided to apply for a protection visa.
44. The applicant also indicated that because of his father's past anti-government involvement, he feared that groups supportive of the government could get back at his father by harming the applicant and his wife. The applicant indicated that the entire police force and security agencies were all supporters of the government so he could not rely on them to protect him or his wife.
45. The applicant indicated that his father was suspended twice from his post at university and arrested on one occasion. He was an associate professor at the time. In 2002, he was arrested and detained by police because of his political views. There was no decision ever made on his father's arrest and charges.
46. The applicant indicated that while he was in Venezuela, his father supported him as he could not find work. His father supported the applicant in his travel to Australia and his education costs here as well.

Application for Review

47. The applicants applied to the Tribunal [in] September 2010 for review of the delegate's decisions.
48. The applicant provided to the Tribunal a statement as follows:

TO WHOM IT MAY CONCERN

My name is [Applicant 1]. I was born on [date] in [City 5], Venezuela. I belong to the Hispanic ethnic group and I am a [Medical Speciality D] Bachelor in Sciences; I am married to [Applicant 2], also [Medical Speciality D] Bachelor in Sciences. I left Venezuela on the [date] November 2009 and arrived at Australia on the [date] November 2009. I am currently living at [Australian address].

Firstly, when I came to Australia, with my wife (also a [Medical Speciality D] Practitioner), our only intention was to study English as a second language, currently a very useful tool for any professional anywhere in this planet. However, once we started our language courses in Brisbane (Queensland) our plan of a temporary stay in Australia was suddenly changed to an application for a protection visa. This decision was something we never considered we had to do even though, for us, since the national and regional government started to harass my father, we already lived in fear while in Venezuela.

Between late December, 2009 and first three months of 2010 became dear to us that if we returned to Venezuela, it would mean risk our wellbeing, freedom or even our lives.

However, I had no supporting documentation to demonstrate my claims, fact that produced part of my delay to submit my application (nearly one month away from my student visa expiry date). For instance, the "Police Report" took between four and five months to be issued by the pertinent office in Venezuela. The same goes for some of the other documents. It is important to -consider that, I did not even mention and include in my written statement vital Information in regards of my participation in many protests (while I was a member of the University Student Guild, because I had no physical evidence that could corroborate my claims. In addition, I did not know what sort of documents I could use because I have not legal, professional advice due to our economic situation. Nonetheless, now I am able to provide with local newspaper articles and some videos from the local television which prove my active participation in protests and meetings against the different levels of the government (University Authorities, police department, State Governor and National government institutions) and statements of witnesses as testimony of what I describe in this communication.

It is crucial to consider that being involved in any public demonstration against the Venezuelan government is sufficient to be identified as part of the opposition movement and considered an "Enemy of the Revolutionary Process,, (or "Squalid", as they label us). Even worse, I will be stay jobless because I am in the government blacklist (those whom actively oppose to the regime), be a potential target to be orally and physically abused, being harassed by the local or national police, army, government militia, government officer or public servant (by denying or delaying official documents, procedures or assistance), or the members of the current President political party (PSUV) or even civilians (government's supporters), who are never arrested nor prosecuted by the pertinent authorities.

All this discriminating process makes me fear that, once I return to Venezuela, my wife and myself will be forced (literally) to do things against our personal belief, principles and education such as participate in public meetings to support the government, or protests (even riots) against those who publicly oppose the regime; as well as wear clothes with the colours and slogans of the government political party, In order to find a job, to be able to buy a house, to live in peace; ultimately, to be considered a "citizen". I am afraid that I will be living under a permanent fearful state of mind, forced to give up any fight for my human rights and live a humiliating submissive -and unresponsive life, just to be allowed to stay alive, free and "alive". Otherwise, I will be viciously, aggressively and violently punished.

A clear and bold example of what I describe above Is as follow: When I was a [Medical Speciality D] student I received an spoken warning from [Professor A], [position] of the [Medical Speciality D] program at that moment, my former teacher and friend, asking me to stop my opposition activities because I was already in a "list of names", identified as "activist" against the university authorities and the national government regime; he said that if I do not obey, the higher authorities of the university would expel me from the institution, even though I was one of the students with best markings in the [Medical Speciality D]

School. I managed to finish my studies and graduated as the second best student of [Medical Speciality D] Sciences at the moment of the graduation ceremony.

However, most recently, my parents tried to obtain a written statement on the matter from [Professor A] (VMBSc), who initially accepted to supply such statement. But later he said he was unable to do so, because the highest authorities of the university were notified (through an unknown source) about my parents' claim and university's authorities forbid him to sign such statement. This situation makes me even much afraid of my (and my wife's) safety, freedom or our lives because, now the university's authorities, and regional and national government officers are aware of my claim for protection in Australia. My request of protection in a foreign nation (considered within Venezuela sort of treason against the country) must have been already passed on throughout government followers and supporters, so I am certain that my (and my wife's) safety, freedom or our lives are in danger. I am even afraid that my closest relatives still in Venezuela (father, mother and brother) could be orally or physically abuse, deprived of their elemental human rights or even other civil, administrative, or criminal actions against them.

Later on, a friend of mine suggested me to apply for a position in a local branch off the [company], but after I submitted my job application, he realized (and let me know) that, if I appeared in the blacklist created in 2004 (called "Lista Tascon" in honour" of Mr Luis Tascon, a Member of the Parliament, supporter of Hugo Chavez, who gather and published the database In his personal website), I will not be considered for that position.

[Applicant 1]

49. He also provided the following further documents in support of his application for review:

- a. A letter of support from [Official 2] of [City 5] (Venezuela) dated [in] October 2010. In this letter of support [Official 2] writes that the applicant is known to him and that the applicant was a person who has expressed openly his ideas and political preferences. He indicates that he was a proactive member of the student guild at the local university and as a result of his activities was threatened to be expelled from the university. He indicated that the government continued to harass the applicant after his graduation by placing him on a blacklist that impeded him getting a job, either in a private company or a public institution. [Official 2] finished his letter by stating that, without further comments, he puts forward this document as requested by the applicant.
- b. An online news article (Noticias24) dated 12 November 2010 reporting on a mechanic who was arrested on criminal charges for wearing a shirt which stated "The Revolution is [expletive]".
- c. A translated statement from [Doctor B], retired lecture at [university deleted: s.431(2)] dated [in] October 2010 which stated that he knew the applicant and that he knew of the applicant's active membership at the university because of his activities at the university. He also states that he was threatened with expulsion from the university and that, after graduation, the applicant was stopped from gaining employment in the private and public sectors. Attached to the statement is a personal merit of commendation from the Vatican to [Doctor B] for his contribution to the Catholic Church in Venezuela, as well as a copy of Venezuelan identification card of [Doctor B].

- d. A translated statement from [Official 4] of the “Advanced Student Movement” at the “Agriculture and Marine Sciences” section of [University 1], Venezuela stating that the applicant was an active member of the movement and participated in student protests at the university from 2004 to 2008. The writer goes on to say that he the applicant was harassed and threatened with disciplinary sanctions by the university authorities because of his participation in student protests.
- e. An online news article reporting on 33 persons being arrested for violent protests in Metro de Caracas.
- f. A news article titled “Venezuelan genocide’.
- g. Two TV videos where the applicant indicated he appears in. Attached is a certification from a person from [television station deleted: s.431(2)] (where the videos were stated to be taken from) certifying that the applicant appeared on these videos. The applicant indicates that Video 1 refers to student opposition and student supporters of the Chavez government arguing on the issue of resuming academic activities at the educational complex [University 3]. He indicates that Video 2 is a summary of a demonstration convened by the opposition to support the call for a recall referendum. (Folio 127 of Tribunal file)
- h. A newspaper article (La Manana) containing a photograph of a group of students with subtitle “[title].” The applicant indicates by way of an arrow where he is photographed with the other students in this article.
- i. A newspaper article (La Manana) containing a photograph of a group of students with subtitle “[title]”, after the student movement took action against university authorities for inadequate resources. The applicant indicates by way of an arrow where he is photographed with the other students in this article.
- j. A certified copy of marriage certificate (translated) of the applicant and his wife issued [in] September 2009.
- k. A certified copy of birth certificate of his wife (translated).
- l. A certified copy of birth certificate of the applicant (translated).
- m. A certified copy of a “No criminal record certificate - Venezuela” of the applicant's wife (translated) dated [in] April 2010.
- n. A certified copy of a “No criminal record certificate - Venezuela” of the applicant (translated) dated [in] April 2010.
- o. A certified copy of a newspaper article titled "One student injured and 21 arrested in riots at [City 5]"
- p. A certified copy of a court document dated [in] July 2003, revoking a one year suspension to his father as an academic lecturer made against him [in] June

2002 but dismissing an appeal from his father of a decision to suspend him for one year without entitlement to salary made [in] March 2002.

- q. A certified copy of a document from [University 1] dated [in] March 2002, issuing a temporary one year suspension to his father without entitlement to salary. His father was charged under Article 70 of the university's constitution which included, amongst other things, that he participated in acts or actions that jeopardised the integrity of the institution or its dignity by disturbing public order at the university.
- r. A certified copy of a formal resolution made by [University 1] against the applicant's father dated [in] October 2002 refusing the promotion of his father to the category of professor.

Tribunal hearing (25 November 2010)

- 50. The applicants appeared before the Tribunal [in] November 2010 to give evidence and present arguments. The Tribunal also received oral evidence from [Mr C] on the request of the applicants. The Tribunal hearing was conducted with the assistance of an interpreter in the Spanish and English languages.
- 51. The applicant provided at the hearing the following further documentation:
 - a. Online news article (Noticias24) dated 22 November 2010 titled “Alejandro Sanz charge against ‘radical Chavez’: In Venezuela, I saw a lot of fear and threats”.
 - b. A copy of his expired passport and visa entry stamp to the USA.
 - c. Statement from [University 1] certifying that the applicant had completed the programme of [Medical Speciality D] Sciences on 12 December 2008.
 - d. Further online news article from Noticias24 dated 26 October 2010.
 - e. A Certification from [University 1] certifying that the applicant attained a position of 2 out of 43 graduates in the program of the [Medical Speciality D] sciences.
- 52. The Tribunal put to the applicant that his wife had completed a Form D only and had not made any claims in her own right. The applicant confirmed that his wife did not have any claims in her own right and that she would not be giving any evidence at the hearing.
- 53. The applicant stated that he held a United States (USA) Tourist Visa. When asked why he did not apply for protection in the US, the applicant responded that he never thought about asking for a protection visa there. The applicant indicated that while he was here in Australia the situation in his home country had deteriorated and this added to his fear. He indicated that his fear grew in such a way that he decided to apply in Australia for a protection visa. The applicant indicated that he had no difficulty in entering or exiting the USA. He indicated that when entering the USA, the maximum amount of time permitted to stay there was six months. He indicated that they were limitations on the visa such as no work rights or study rights. He indicated that this visa did not give him permission to gain permanent residence in the USA.

54. He indicated that he had his passport renewed in Venezuela. He also indicated that he was given his first Venezuelan ID card when he was [age deleted: s.431(2)].
55. The Tribunal asked the applicant why he feared he would be a victim of psychological or physical abuse, or even death, if he returned to Venezuela. The applicant stated that he did not suffer any physical attacks back in Venezuela. He indicated that he was threatened by the university authorities. He indicated that the threats came in the form of expulsion because of his participation against the government and the university authorities. The applicant indicated that any actions that he participated in against university authorities were also taken as being actions taken against the national government. The university authorities were appointed by the national government.
56. The applicant indicated that while he was in an engineering student on campus, he was only a member of the student organisation there. However, while he was a student of [Medical Speciality D], he was a member and active organiser for the student organisation on campus. The student organisation, in which he was a part of on campus, had a constant membership of between 15 to 20 people who were the key organisers. The student organisation had the support of a great number of students on campus. He maintained his role as a member and organiser of the student organisation throughout his entire [Medical Speciality D] degree. He supported demonstrations on campus by the students and took on leadership roles within the group. He indicated that this was the reason why he was threatened to be expelled by the university authorities. He indicated that the university authorities had the backing from violent groups and attacks by these groups could happen at any time.
57. The applicant indicated that he came to Australia to study English as a second language and, based on the fear that he and his wife had in Venezuela, found a way to leave that country. When asked again whether he had a fear for his safety when he first came to Australia, he indicated that he did. When the Tribunal put to him that he had made it clear in this application that he did not have a fear when he first came to Australia, he responded that he answered the question in the application as he understood it but had no legal aid or immigration assistance to help him understand the question. He reiterated that he had a fear for his safety before leaving Venezuela to come to Australia. He indicated that his fear for his safety was always there while in Venezuela. He indicated that his father had been a victim of the government because of his father's opposition to it. His father had been arrested illegally and suspended from his work on several occasions because of his views against the government. He indicated that the government's intimidation and aggression against opposition to it escalates every day. He has no protection from any government body or Tribunal or the police force.
58. The Tribunal again put to him that he thought of applying for protection when he was in Australia. It asked him what made him apply for protection when he arrived in Australia. The applicant responded that he was ignorant of the process. His fear for his safety was real before arriving to Australia. He indicated that he learnt about how to apply for a protection visa when he was in Australia. The applicant reiterated that his fear for his safety existed while he was in Venezuela but that this fear became greater when he was here in Australia.
59. The Tribunal raised with the applicant its concerns about the length of time that elapsed between when the applicant arrived in Australia and when he applied for a protection visa (six months in total). The applicant responded that he became aware that he could apply for a protection visa in Australia one or two months after arriving in Australia. When completing his application for protection he did not have all the necessary documents to support his

claims. It took time to obtain these supporting documents from Venezuela while he was here in Australia. This contributed to the delay in applying for his protection visa. He believed that he had enough documents to support his application for a protection visa when he lodged it in May 2010.

60. The Tribunal asked the applicant what he meant when he wrote in his application that between late December 2009 and March 2010 it became clear to his wife and himself that if they returned to Venezuela, it would mean risking their well-being, freedom and even their lives. The applicant responded that since arriving in Australia, they had been in contact with their relatives in Venezuela who have indicated that things have become worse in Venezuela. The applicant has been obtaining news reports of the worsening situation in Venezuela and how the government has been hardening its position against people and groups who oppose its views or who have opposed its views. The applicant has also been observing how the government has been oppressing people who have been in opposition to it. As a result of all this, the applicant fears that his freedom, and even his life, might be in danger if he was to return to Venezuela. The applicant indicated that his fear of harm has been gradual over the course of 10 years prior to arriving in Australia. It has been in recent times that the country has deteriorated due to the oppression of the government and, after talking to his father and his other relatives back in Venezuela, the applicant has a heightened fear that he will be harmed if he returned to Venezuela. The applicant indicated that he was very scared to return to Venezuela now. He had been previously active in opposing the government in Venezuela. He indicated that his principles would tell him to continue to oppose the government.
61. He further indicated that by having the surname of his father, who had already been persecuted by the government, this would also put him at risk of harm. The applicant indicated that one month prior to the hearing, he had applied for a letter from one of his former professors, [Professor A], who first indicated that he would write the letter but later declined to do so. He had told the applicant that the university authorities had prohibited him signing any declaration on the applicant's behalf. The applicant's fear in returning to Venezuela increased after hearing this from the Professor. The applicant claimed that this was clear evidence that the government authorities were aware of the applicant and his political background and were aware that he had applied for a protection against the government. The applicant feared in this regard that he might be seen as a traitor by the government.
62. The Tribunal asked how the applicant came across the information that [Professor A] was prevented from signing any letter on the applicant's behalf. The applicant indicated that he received this information from his father. His father was supposed to obtain the letter from [Professor A]. However, [Professor A] told his father that he could not sign the letter because the university authorities had become aware of what he was doing. The applicant could only conclude that the reason why the professor would not write him this letter was because of the applicant's political background.
63. The Tribunal asked the applicant how he knew that the authorities back at home were aware of his claims in Australia. The applicant responded that his father was asked what the letter was being used for. The conversation between his father and [Professor A] was supposed to be confidential. His father had lectured [Professor A] back in his time and [Professor A] lectured the applicant when the applicant was a student at the University. The applicant and his family had a close relationship with [Professor A]. The applicant indicated that this is why they trusted [Professor A]. The applicant stated that his father had told [Professor A] at the applicant was in Australia and that the applicant needed the requested letter. [Professor A]

was told that the applicant needed to demonstrate that he had been threatened by the university authorities because of his opposition as a student.

64. The Tribunal then asked the applicant what made him believe that [Professor A] had passed this information onto the authorities. The applicant responded that he did not know who passed the information on. The applicant indicated that all he knew was that [Professor A] was elected by the university authorities to lecture there and the university authorities are in turn elected by the government. The Tribunal asked the applicant why he believed that he is claims that he made in Australia had been passed on to the authorities in Venezuela. The applicant responded that [Professor A] told his father that he had gone to the university authorities who told him not to write the letter. The applicant indicated that on this basis he has assumed that the information about his claims in Australia have been passed on to the authorities in Venezuela. The applicant indicated that his fear in returning to Venezuela was real. He trusted [Professor A] based on the professor's friendship with his family. He did not request the letter from [Professor A] because he was trying to strengthen his claim in Australia. He trusted [Professor A] to write a letter on behalf of the applicant of the facts that existed when the applicant was at the university.
65. The applicant indicated that in this instance the government would see this action of his applying for a protection visa in Australia as an act of treason. The Tribunal asked the applicant why he thought that a request for protection in a foreign country was treason in Venezuela. The Tribunal put to the applicant that it did not appear to have any country information to support his claim in this regard. The applicant responded that he was aware that adverse information is passed on to the Venezuelan authorities.
66. The Tribunal then asked the applicant to explain about the first video that he submitted to the Tribunal. The applicant responded that the events in this video occurred in January 2003 at [University 3] in [City 5]. This video showed that he participated in a student gathering at the University. The video was taken from a state TV channel. The applicant indicated that he was identifiable in that video. He indicated that the video allowed authorities at different levels to identify which persons participated in opposition activities. Action could then be taken against the people identified in the video by government authorities when the opportunity arose. The applicant stated that his mother was able to obtain the video from the TV channel that took the video on the day. The applicant was identified in the video and a red circle placed around the applicant's head to show that it was him. The applicant indicated that it was very difficult for his mother to obtain this video. However, the applicant had provided information to his mother about the student demonstrations that he was at and his mother was then able to make contact with the TV broadcasters about the particular TV footage taken at the time. The Tribunal put to the applicant that in this video it was difficult to identify the applicant. The applicant indicated that the person who was identified by the red circle was definitely him. The Tribunal indicated that it would be difficult for any government authority to identify the applicant in a video. The applicant admitted that it was difficult to identify him in this case but that there were a number of other videos where he could be identified at student demonstrations. The applicant indicated that his mother was only able to obtain two videos.
67. The applicant identified himself as the person who is wearing the [clothing deleted: s.431(2)] in the background of the gathering of people who were supporting the person at the front who was talking and whose name was [Mr D], [Mr D] was the representative of the regional legislative council and opposition. At the time of the video, he was discussing with the police the marches that were taking place. At the time of the video, [Mr D] was explaining to the

police that they all had permits to march yet the police were not allowing the demonstrations to go ahead. In the video [Mr D] was showing the police officer the permits. In the video the applicant indicated that he was a participant but not an organiser of this demonstration and about 400 or 500 people were participating in this demonstration. The applicant indicated that in this video the demonstration occurred in one of the main streets of [City 5] [in] January 2003. He indicated that there was a police crackdown on the marchers in this video. He said that they endured tear gas which was fired at them by police. He indicated that the police were also firing on the demonstrators and that everyone started running up to this point. The applicant indicated he was lucky that he was not injured.

68. The Tribunal put to the applicant that the events in the two videos provided by him both occurred in 2003. However there was no evidence before the Tribunal that any repercussions occurred to the applicant either then or at a later date. The applicant responded that as far as the government actions were concerned there was a difference between the government of 2003 and the government are now. The applicant indicated that if he returned to Venezuela now the government could identify the applicant in those videos and other videos that they had of the applicant participating in demonstrations opposing the government's political views. The applicant feared that there was a greater chance of him being harmed now by the government of Venezuela because of the military ruled by the government and the deterioration of the country presently. He indicated that the government was acting in a more brutal way now than it did in 2003. The applicant stated that the government institutions were being manipulated by the government now which did not happen in 2003. He indicated that the government now had greater autonomy to do what it liked than it did in 2003. The applicant indicated that there was another video of him participating in demonstrations in 2007. However he was not able to get a copy of the video. The applicant indicated that while he was a student representative back at university, he gave declarations on TV channels in opposition to government policy, and that it would be easy for the government to obtain information from these videos about applicant.
69. The Tribunal put to the applicant his claim that his father, a well-known [Medical Speciality D] practitioner and associate professor at the local university who had openly expressed his opposition to the current government, was twice unfairly suspended from his job and was illegally arrested in 2002. The Tribunal put to the applicant his claim that he was afraid that what happened to his father would also happen to him in order to keep silent and politically unresponsive. The applicant responded that his father had been a [Medical Specialist D] from 1976 to present. He had worked as an associate professor at the university where the applicant attended. His father lectured at the university for 25 years. He was not lecturing there now and retired in November 2005 or 2006. The applicant indicated that while the university pays his father in an official capacity his father was still experiencing problems in getting his salary. The applicant stated that while his father gets paid from the University the university salary that he is entitled to he does not get the government pension which is also entitled to. The government won't allow his father to access it. When his father has queried the government about his pension he has been given the excuse that it is a bank system error. However his father has attended to the banking details several times but has not received any payment of his pension. His father owns his own home and lives in [City 5]. The applicant stated that his father in the 1990's, before the current government came in power, was [position and ministry deleted: s.431(2)] in the [State 6] office. He was [position deleted: s.431(2)] for six months. His father is currently the [position deleted: s.431(2)] in an opposing faction.

70. In 2002, the applicant's father was arrested illegally because he was close to demonstrations that were occurring but which he did not participate in. However, for the simple fact of being identified as a political opponent the police stopped his car and arrested him illegally. His father was arrested with two other people. His father was jailed for one day and charged. The case against his father eight years on has not been completed. The applicant indicated that it was a way of controlling his father. When his father went to the Tribunal to obtain a copy of the complaint that had been made against him, he found information that the case was still open against him and that there was no final decision on the charges that were laid against him in 2002.
71. The Tribunal asked the applicant what the court documents on file were about. The applicant indicated that the court documents were related to his father when he was suspended at the university and denied a promotion for his supposed participation in the demonstrations against the authorities in 2002. The applicant indicated that his father and his family were affected by the events that took place against his father for no apparent reason. His father did not receive any salary while he was suspended. He was suspended on the first occasion for one year but then was reinstated after six months when his father appealed the suspension. On the second occasion his father was suspended for a whole year and received no salary during that time. In total his father was not able to draw a salary for himself or his family for 1 1/2 years.
72. The Tribunal asked the applicant how the family survived if they did not receive a salary from the applicant father. The applicant stated that although his parents were divorced they still lived together. His mother helped to support the family. His father tried to find money from friends to stay afloat.
73. The Tribunal then asked the applicant about the court documents that he provided as evidence. The applicant referred to the first document concerning his father's arrest in 2002 in which his father's case had still not been finalised. The applicant referred to the court document which revoked his father suspension allowing his father to be reinstated as a university lecturer. The applicant then referred to the court document which suspended his father for one year with no salary entitlement. The applicant indicated that in total his father was suspended with no salary entitlement for 1 1/2 years. The applicant also referred to the university document which decreed that his father could not seek promotion. The applicant indicated that his father has never been able to be promoted since that time. The applicant retired with the title that he had at the time but could never be given the title of professor. The applicant indicated that if his father continued with his work he would be subject to oppression from the university authorities. His father made the decision to retire in order to give him immunity away from the university authorities. His father was now [position deleted: s.431(2)] which gave his father certain protection.
74. The Tribunal asked the applicant why his father's experience and history put the applicant at risk in future. The applicant responded that one of the ways that the government stopped political opposition to it was to attack the family unit. The applicant indicated that it was easy to identify him because he used the same name as his father and he was living in the same city as his father. The applicant indicated that country information in support of this claim.
75. The Tribunal put to the applicant country information which stated that individuals on the Maisanta and Tascon lists have been subject to discrimination including the loss of private sector and government jobs, refused employment, and denial of identity papers and passports.

The applicant had his passport renewed [in] May 2009 by the Government of Venezuela. The Tribunal indicated to the applicant that this might lead it to conclude that the government was not concerned with him as an activist or that he was not on the Maisanta and Tascon lists. The applicant responded that he has been denied the possibility of work at the university as a member of the university staff. The Tribunal asked the applicant why he was denied employment at the university. The applicant responded that he went to the university to find out about his application to be a staff member in 2008. He spoke to the [official and department deleted: s.431(2)] who was responsible for assessing applicants for that position. He told the applicant that he could not aspire to the position that he was applying for because he had no experience. However, a month later two students who had graduated with the applicant but with lower marks than the applicant, were employed in similar positions which had been denied to the applicant previously. The applicant indicated that this demonstrated discrimination against him by the university authorities and that the people who were given those positions were put there by the government authorities. The Tribunal put to the applicant that it could be argued that the other two persons who were granted the job position instead of the applicant fitted the job description better. The applicant responded that he did not consider this possible. He was applying for a job in a reproduction project that was similar to his studies and that he attained the second highest score out of the [number deleted: s.431(2)] graduates in this field of study. He indicated that the two persons who were given the position did not have the qualifications that he did.

76. The Tribunal put to the applicant that presuming that he had signed the referendum in 2003, what would prevent applicant from working in the private sector. The applicant indicated that the private sector represented only 20 to 25% of the job market relating to his field of work. Another 20 to 25% of the jobs were in the public sector and 50% were a mixture of both. The applicant indicated that once a person was on the Maisanta and Tascon lists they could not obtain work in the public sector. It was now fact that the private sector was diminishing constantly as the government took control of the private sector. The applicant stated that it is also important to consider that many of the companies within the private sector are directly employed by the public sector and therefore have to follow the rules of the public sector. This means that anyone who is trying to find work as a professional in one of these companies must be assessed against the Maisanta and Tascon lists. The applicant indicated the government was taking control of whole production systems in Venezuela in order to control the population by making them reliant on the government.
77. The Tribunal asked the applicant why the government would have reissued him a passport when country information suggests otherwise if the applicant was on the Maisanta and Tascon lists. The applicant responded that not all passport renewals went through the same person. The applicant gave an example of his uncle who had to apply for his passport in three different cities before being granted his passport.
78. The Tribunal asked the applicant who applied for his police certificate. The applicant responded that it was his wife's mother. He stated that the certificate was not really issued by the police. It was issued by the Office of Ministry of Interior. He stated that it was obvious that his name was given to the Office as it was the only way to obtain his certificate. He sent a letter to his mother-in-law who was able to apply for the relevant certificate. The Office of Ministry of Interior did not pay his mother-in-law too much attention but she had to wait between 4 to 5 months before she could obtain the certificate.
79. The Tribunal referred to the letter of reference from [Official 2] of [City 5]. The applicant indicated that the Catholic Church opposed the government in Venezuela. He stated that

[Official 2] had known the applicant for many years. The applicant had gone to a Catholic school both at primary and secondary levels. The applicant indicated that he maintained a friendship with [Official 2] who was a friend of his father.

80. The Tribunal referred to the letter of reference from [Doctor B]. The applicant indicated that back in the 1980's, [Doctor B] was in charge of [University 1]. He was now a retired lecturer. [Doctor B] lectured the applicant's father. The applicant indicated that [Doctor B] knew the applicant and lived in the same city as the applicant. He was also the applicants brother's Godfather.
81. The Tribunal referred to the letter from the Advanced Student Movement. The applicant responded that when he was a [Medical Speciality D] student, he was part of this particular group of students. This student group now has a name, are more organised and know the applicant. The applicant referred to the newspaper articles provided to the Tribunal. In one of the newspaper articles a student was assassinated by the police. The applicant provided this article to demonstrate how being part of a student organisation could place a person at risk of harm. The Tribunal indicated to the applicant that it would weigh up the documents which were dated 2003. The Tribunal indicated that the date of the event (2003) was a factor which it also needed to consider.
82. The Tribunal then heard evidence from [Mr C]. He provided evidence that he was a lecturer at [University 1] where the applicant studied. He confirmed that the applicant was an active member of the student guild at the university. He indicated that the applicant was a very good student. He also stated that the applicant was a victim of the government. He stated that from what he knew of the applicant, he was not involved in a political party but was active politically.
83. The witness gave account of his own life in Venezuela. He was openly in opposition to the government. He was victimised by the government and his family were attacked at home. He indicated that he was denied fundamental rights as an academic staff at the university.
84. [Mr C] stated that he was aware of the applicant's activities at the university. [Mr C] taught the applicant in second semester in 2004. He stated that he knew the applicant was active with the student guild at the university and that he participated in demonstrations outside the university. He knew the applicant as active in defending student rights at the university. [Mr C] never took part in the activities on campus organised by the student organisation.
85. [Mr C] again indicated that he knew first hand that the applicant was an active member of the student guild on campus and would participate in demonstrations on campus. [Mr C], while not participating himself in any student organised activities, saw what was happening on campus which is how he knew of the applicant's involvement. He admitted that any activities in which the applicant participated in outside of the university would be information that came to [Mr C] third hand. He did not have first hand accounts of these activities.

[Mr C] indicated that the government's repression of opposition demonstrations, including student demonstrations, has gotten worse over time. [Mr C] came to Australia to study himself. However, some time after arriving in Australia, his older son was kidnapped, badly beaten and threatened with his life if he involved himself with political activities. His son was also threatened that his family would be harmed as well. [Mr C] indicated that his family were attacked by followers of the regime. He applied for protection in Australia in 30 April 2009 and was granted a protection visa on 27 July 2009. He is currently completing his PHD

at [Australian university name deleted: s.431(2)] University. He stated that he had a Masters degree in Ecology at the University of Wales (UK). [Mr C] did not have anything further to add nor did the applicant have anything further to say in response to [Mr 's] evidence except to confirm that he was taught by [Mr C] in 2004.

INDEPENDENT COUNTRY INFORMATION

Overview of political and human rights situation in Venezuela

86. A 2010 report by the US Congressional Research Service provides the following overview of the situation in Venezuela since Chavez was first elected in 1998:

Under the rule of President Chávez, first elected in 1998 and re-elected to a six-year term in December 2006, Venezuela has undergone enormous political changes, with a new constitution and unicameral legislature, and a new name for the country, the Bolivarian Republic of Venezuela. Human rights organizations have expressed concerns about the deterioration of democratic institutions and threats to freedom of expression under President Chávez. The government benefitted from the rise in world oil prices, which sparked an economic boom and allowed Chávez to increase expenditures on social programs associated with his populist agenda.

These programs have helped reduce poverty levels significantly, but the Venezuelan economy has been hit hard by the global financial crisis and economic downturn. In February 2009, Venezuelans approved a controversial constitutional referendum that abolished term limits and allows Chávez to run for re-election in 2012. Since 2009, the government has increased efforts to suppress the political opposition, including elected municipal and state officials. In January 2010, the government shut down the cable station RCTV-Internacional, prompting domestic protests and international concern about freedom of expression. Upcoming elections for the National Assembly scheduled for September 26, 2010, will be an important test for the opposition and Chávez's ruling party.¹

87. The 2011 Freedom House report on Venezuela contains a useful overview of the political and human rights situation.² For example, the Transparency International ranked Venezuela 164 out of 178 countries surveyed in its 2010 Corruption Perceptions Index. Further reporting indicates that while Constitutional guarantees of religious freedom are generally respected, tensions remain high between the government and the Roman Catholic Church... Academic freedom has come under mounting pressure in recent years, with the formulation of a new curriculum that emphasizes socialist concepts. A new Organic Education Law enacted in 2009 was praised for provisions that explicitly detailed the state's obligations, but criticized over ambiguities that could lead to restrictions on private education and increased control by the government and communal councils. In universities, elections for student associations and administration positions have become more politicized, and rival groups of students have clashed repeatedly over both academic and political matters... The government encourages the formation of workers' militias and socialist patrols to deepen the "revolution" within industrial enterprises... At approximately 48 homicides per 100,000 inhabitants, Venezuela's murder rate is now one of the world's highest. The police and military have been prone to corruption, widespread arbitrary detention and torture of suspects, and extrajudicial killings. In 2009, the justice minister admitted that police were involved in up to 20 percent of crimes. Although hundreds of officers are investigated each year, few are convicted, partially due to a shortage of prosecutors. A plan to modify and purge the police was completed in early 2008,

¹ US Congressional Research Service 2010, *Venezuela: Issues in the 111th Congress*, 3 September, Federation of American Scientists website <http://www.fas.org/sgp/crs/row/R40938.pdf> - Accessed 19 November 2010

² Freedom House 2011, *Freedom in the World – Venezuela*

and pilot operations involving a new force trained in human rights began in 2010. Although the prison budget has moderately increased and pre-trial detention has been limited to two years, prison conditions in Venezuela remain among the worst in the Americas. The NGO Venezuelan Prison Observatory reported 476 violent deaths within prison walls in 2010, a 30 percent increase from the 2009 toll... In recent years, the division of responsibility between the military and civilian militias has become less clear, and informal pro-government groups have been responsible for attacks on press outlets and, occasionally, individual journalists and opposition supporters.

88. Reports indicate high levels of corruption in Venezuela. Corruption is endemic within the police force, judiciary, all levels of government and within government bureaucracies.³ The 2010 Corruption Perception Index, published by Transparency International, ranked Venezuela 164 out of 178 countries. This is the worst ranking of all the 28 countries in the 'Americas' region.⁴ Human Rights and government organisations have described the Venezuelan judiciary as chronically corrupt and politicised.⁵ In March 2010, the US Department of State (USDOS) described the judiciary as "characterized by trial delays and violations of due process".⁶ Human Rights Watch also reported that the Supreme Court in Venezuela "has largely abdicated its role as a check on executive power."⁷ Corruption and impunity within the police force is also a major and widespread problem in Venezuela.⁸ A 2009 article titled *The Politics of Corruption in Venezuela* by Dr Leslie Gates, Associate Professor of Latin America and Political Sociology at Binghamton University, states that "since 2005, Venezuelans have considered the police as the agency most affected by corruption."⁹ Freedom House provided the following assessment of the extent of corruption within the police force:

The police and military have been prone to corruption, widespread arbitrary detention and torture of suspects, and extrajudicial killings. In 2009, the justice minister admitted that police were involved in up to 20 percent of crimes. Although hundreds of police are investigated each year, few are convicted. A plan to modify and purge the police was completed in early 2008, and in late 2009 a new national police force began operations.¹⁰

Corruption within government departments and government agencies

³ Coronel, G. 2008 'The Corruption of Democracy in Venezuela', CATO Institute website, March http://www.cato.org/pub_display.php?pub_id=9254 - Accessed 9 November 2010; Orces, D. 2009, 'Municipal Corruption Victimization', Americas Barometer Insights, no.22, Vanderbilt University <http://www.vanderbilt.edu/lapop/insights/I0822en.pdf> - Accessed 9 November 2010; US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March; Freedom House 2010, *Freedom in the World – Venezuela*

http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2010&country=7948&pf - Accessed 8 November 2010; Human Rights Watch 2010, *World Report 2010 – Venezuela*, January.

⁴ Transparency International 2010, *Corruption Perception Index 2010* http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results - Accessed 10 November 2010.

⁵ Freedom House 2010, *Freedom in the World – Venezuela* http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2010&country=7948&pf - Accessed 8 November 2010; US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March; Gates, L. 2009, *The Politics of Corruption in Venezuela*, Latin American Studies Association, 21 July, p.4 <http://lasa.international.pitt.edu/members/congress-papers/lasa2009/files/GatesLeslie.pdf> - Accessed 9 November 2010.

⁶ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March.

⁷ Human Rights Watch 2010, *World Report 2010 – Venezuela*, January.

⁸ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March; Gates, L. 2009, *The Politics of Corruption in Venezuela*, Latin American Studies Association, 21 July, p.4 <http://lasa.international.pitt.edu/members/congress-papers/lasa2009/files/GatesLeslie.pdf> - Accessed 9 November 2010; Human Rights Watch 2010, *World Report 2010 – Venezuela*, January; US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March.

⁹ Gates, L. 2009, *The Politics of Corruption in Venezuela*, Latin American Studies Association, 21 July, p.4 <http://lasa.international.pitt.edu/members/congress-papers/lasa2009/files/GatesLeslie.pdf> - Accessed 9 November 2010.

¹⁰ Freedom House 2010, *Freedom in the World – Venezuela* http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2010&country=7948&pf - Accessed 8 November 2010.

89. Corruption is reported to be pervasive in all levels of government in Venezuela.¹¹ In 2010 Freedom House stated that the government's significant role in the economy allows for high level corruption¹² A 2008 article published by the CATO Institute, a US public policy research organisation, states that the three major areas of government corruption in Venezuela include grand corruption, bureaucratic corruption and systemic corruption.¹³ The following descriptions of these three areas of corruption demonstrate the extent of corruption in Venezuela:

- Grand corruption is “derived from major policy decisions” made by President Chavez. This includes the acceptance of foreign contributions by Chavez, “expenditure and promises made to political leaders and countries of the Western Hemisphere to buy their political loyalties and “corruption at the State of Barinas Sugar Mill”.¹⁴
- Bureaucratic corruption involves “bribery, extortion, stealing of public funds, abuse of political power, nepotism and other varieties of illegal or unethical use of public assets.” Reported examples of bureaucratic corruption include government contracting without bidding, corruption at the National Electoral Council and high levels of mismanagement at *Petroleos De Venezuela*, the state owned petroleum company.¹⁵
- Systemic corruption is described as corrupt transactions between government bureaucrats and the private sector. The ownership of private corporations by government officers is an example of systemic corruption.¹⁶

90. Bribery is a form of corruption undertaken within government departments in Venezuela. Surveys assessing direct experience and reports by international experts provide differing assessments regarding the extent and scale bribery and its impact on the local population.¹⁷ A 2006 article on corruption in Venezuela also published by the CATO Institute states that “ordinary citizens must pay bribes to accomplish bureaucratic transactions”. According to the report:

Bureaucrats now rarely follow existing bidding regulations, and ordinary citizens must pay bribes to accomplish bureaucratic transactions and have to suffer rampant neglect of basic government services

...In interacting with the government bureaucracy there was little that an average Venezuelan citizen could do without having to bribe someone. Intolerable delays took place if there was no bribe. Corruption had become a way of life in Venezuelan society.¹⁸

Kidnapping in rural and urban areas.

¹¹US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March.

¹² Freedom House 2010, *Freedom in the World – Venezuela*

http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2010&country=7948&pf - Accessed 8 November 2010.

¹³ Coronel, G. 2008 ‘The Corruption of Democracy in Venezuela’, CATO Institute website, March

http://www.cato.org/pub_display.php?pub_id=9254 - Accessed 9 November 2010

¹⁴ Coronel, G. 2008 ‘The Corruption of Democracy in Venezuela’, CATO Institute website, March

http://www.cato.org/pub_display.php?pub_id=9254 - Accessed 9 November 2010.

¹⁵ Coronel, G. 2008 ‘The Corruption of Democracy in Venezuela’, CATO Institute website, March

http://www.cato.org/pub_display.php?pub_id=9254 - Accessed 9 November 2010.

¹⁶ Coronel, G. 2008 ‘The Corruption of Democracy in Venezuela’, CATO Institute website, March

http://www.cato.org/pub_display.php?pub_id=9254 - Accessed 9 November 2010.

¹⁷ Coronel, G. 2006, *Corruption, Mismanagement, and Abuse of Power in Hugo Chávez’s Venezuela*, CATO Institute, Recivex website, 27 November, no. 2, pp. 1 & 8 <http://www.recivex.org/ens-2006-11-27-EN.pdf> - Accessed 9 November 2010; Gates, L. 2009, *The Politics of Corruption in Venezuela*, Latin American Studies Association, 21 July, p.4 <http://lasa.international.pitt.edu/members/congress-papers/lasa2009/files/GatesLeslie.pdf> - Accessed 9 November 2010

¹⁸ Coronel, G. 2006, *Corruption, Mismanagement, and Abuse of Power in Hugo Chávez’s Venezuela*, CATO Institute, Recivex website, 27 November, no. 2, pp. 1 & 8 <http://www.recivex.org/ens-2006-11-27-EN.pdf> - Accessed 9 November 2010.

91. Kidnappings are a significant problem in Venezuela. Kidnappings for criminal purposes have increased in Venezuela in recent times and are reported to be widespread throughout rural and urban areas. Reports indicate that several police officers have recently been investigated, charged and convicted for kidnapping offences in Venezuela. Furthermore, governmental sources report that many kidnappings are not reported due to concerns of police collaboration with kidnappers.¹⁹ The 2010 US Department of State *Country Report on Human Rights Practices* for Venezuela provides the following information on kidnappings in Venezuela:

In August a court preliminary hearing upheld the indictment of 10 Lara State police officers charged in late 2008 with involvement in the October kidnapping, torture, sexual abuse, and execution-style killings of six persons (including four minors) in Portuguesa State; continued their detention; and ordered a trial.

...In April a court sentenced four police officers and nine civilians to 30 years in prison for the 2006 kidnapping and killing of three boys and their driver.

...There were no substantiated reports of politically motivated disappearances.

92. However, criminal kidnappings for ransom were reportedly widespread in both urban centers and rural areas. PROVEA reported that in the first nine months of the year there were 518 kidnappings, an increase of 41 percent from the 366 it reported for all of 2008. The National Federation of Cattle Ranchers president announced late in the year the recording of 360 abductions between January 1 and December 16, mainly in states along the country's western border with Colombia. On December 23, the director of the government's Scientific, Penal, and Criminalistic Investigative Corps (CICPC) stated that kidnappings had increased by approximately 63 percent during the year, with a total of 616 cases reported. NGOs noted that many victims did not report kidnappings to police or other authorities.
93. Media frequently reported the public perception of collaboration between police and kidnappers. According to the NGO Active Peace, in 2008 the average total cost of a kidnapping--based on an average of 12 days in captivity, a negotiator's fee, and ransom paid--was approximately the equivalent of \$118,000. Human rights NGOs reported approximately 20 percent of kidnapping victims were minors or students.

...In July for instance, General Juan Francisco Romero Figueroa, vice minister of citizen security in the Ministry of Interior and Justice, illustrated the need for police internal investigations by reporting that 1,800 of the 9,000 Metropolitan Police officers were under investigation for alleged misconduct or human rights violations--including kidnapping, torture, unlawful arrest and detention, and extrajudicial killing--stemming from cases filed in the previous eight years. In October Interior and Justice Minister Tarek El Aissami stated that police committed approximately 15-20 percent of the country's crimes, including the most violent ones.²⁰

94. In December 2009 *Time* reported that Venezuela has the highest kidnapping rate in the western hemisphere. According to the report a recent survey by the independent Venezuelan Observatory of Violence in Caracas estimated that 9,000 kidnappings are committed in the

¹⁹ US Congressional Research Service 2010, *Venezuela: Issues in the 111th Congress*, 3 September, p.9 <http://www.fas.org/sgp/crs/row/R40938.pdf> - Accessed 10 November 2010 ; US Department of State 2010, *Country Reports on Human Rights Practices 2009 - Venezuela*, 11 March; Devereux, C. 2009, 'Venezuela's Plague of Kidnappings', *Time*, 29 December <http://www.time.com/time/world/article/0,8599,1950227,00.html> - Accessed 11 November 2010

²⁰ US Department of State 2010, *Country Reports on Human Rights Practices 2009 - Venezuela*, 11 March.

country each year. The report also states that sources inside Venezuela's federal crime-investigation agency "concede that police have been involved in kidnappings".²¹

Lista Tascon/ Lista Maisanta

95. The Chavez government has generated and maintained black lists of several million people who signed a petition seeking a recall referendum to remove Chavez from office. These black lists are known as the Tascon list and the Maisanta list.²²
96. The Tascon list is named after Luis Tascón, a member of the National Assembly and Chavez's coalition government. Tascón compiled a list of individuals who signed a petition in 2003 to hold a recall referendum on President Chavez.²³ Reports indicate that approximately 3.2 million Venezuelans signed the petition.²⁴ Tascon posted the list on a web site.²⁵ The International Crisis Group (ICG) have reported that in October 2003 Chavez stated that "those who sign against Chávez will sign against the fatherland and will be registered for all history, as they will have to provide their name, surname, signature, identification number and fingerprint".
97. The list of petitioners was removed from the Tascon website after the August 2004 recall vote which returned Chavez to power.²⁶ The Tascon list was, however, incorporated into a computer software program called 'Maisanta'.²⁷ The Maisanta Program reportedly contains detailed information on all registered voters including whether they signed the recall referendum petition, employment information and personal data".²⁸ A 2010 academic article states that the Maisanta CDs were "distributed throughout the public sector and used by the Chavez regime as an enemies list".²⁹ On 15 April 2005, reportedly in an effort to escape controversy, Chávez ordered officials to stop using the Tascón list.³⁰ Reports indicate that

²¹ Devereux, C. 2009, 'Venezuela's Plague of Kidnappings', *Time*, 29 December <http://www.time.com/time/world/article/0,8599,1950227,00.html> - Accessed 11 November 2010

²² Coronel, G. 2006, *Corruption, Mismanagement, and Abuse of Power in Hugo Chávez's Venezuela*, CATO Institute, Recivex website, 27 November, no. 2, p.3 <http://www.recivex.org/ens-2006-11-27-EN.pdf> - Accessed 9 November 2010; US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March, Section 1.f; Hsieh, C.T., Ortega, D., Miguel, E. & Rodríguez, F. 2010, *The Price of Political Opposition: Evidence from Venezuela's Maisanta*, University of California, Berkeley website, July http://elsa.berkeley.edu/~emiguel/pdfs/miguel_maisanta.pdf - Accessed 11 November 2010.

²³ Coronel, G. 2006, *Corruption, Mismanagement, and Abuse of Power in Hugo Chávez's Venezuela*, CATO Institute, Recivex website, 27 November, no. 2, p.3 <http://www.recivex.org/ens-2006-11-27-EN.pdf> - Accessed 9 November 2010; US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March, Section 1.f

²⁴ Murphy, H. 2006, 'Chavez's blacklist of Venezuelan opposition intimidates voters', *Bloomberg*; Hsieh, C.T., Ortega, D., Miguel, E. & Rodríguez, F. 2010, *The Price of Political Opposition: Evidence from Venezuela's Maisanta*, University of California, Berkeley website, July, p.23 http://elsa.berkeley.edu/~emiguel/pdfs/miguel_maisanta.pdf - Accessed 11 November 2010.

²⁵ Murphy, H. 2006, 'Chavez's blacklist of Venezuelan opposition intimidates voters', *Bloomberg*

²⁶ Hsieh, C.T., Ortega, D., Miguel, E. & Rodríguez, F. 2010, *The Price of Political Opposition: Evidence from Venezuela's Maisanta*, University of California, Berkeley website, July, p.9 http://elsa.berkeley.edu/~emiguel/pdfs/miguel_maisanta.pdf - Accessed 11 November 2010.

²⁷ Fleischman, L. 2010, 'The Electoral Illusions of Venezuela's Totalitarian Regime', *The Cutting Edge News*, 27 September <http://www.thecuttingedgenews.com/index.php?article=21637&pageid=13&pagename=Analysis> - Accessed 11 November 2010 ; International Crisis Group 2007, *Venezuela: Hugo Chávez's Revolution*, Latin America Report no.19, 22 February, p.15 -; Hsieh, C.T., Ortega, D., Miguel, E. & Rodríguez, F. 2010, *The Price of Political Opposition: Evidence from Venezuela's Maisanta*, University of California, Berkeley website, July, p.9 http://elsa.berkeley.edu/~emiguel/pdfs/miguel_maisanta.pdf - Accessed 11 November 2010.

²⁸ International Crisis Group 2007, *Venezuela: Hugo Chávez's Revolution*, Latin America Report no.19, 22 February, p.15; US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March, Section 1.f Murphy, H. 2006, 'Chavez's blacklist of Venezuelan opposition intimidates voters', *Bloomberg*; Fleischman, L. 2010, 'The Electoral Illusions of Venezuela's Totalitarian Regime', *The Cutting Edge News*, 27 September <http://www.thecuttingedgenews.com/index.php?article=21637&pageid=13&pagename=Analysis> - Accessed 11 November 2010

²⁹ Hsieh, C.T., Ortega, D., Miguel, E. & Rodríguez, F. 2010, *The Price of Political Opposition: Evidence from Venezuela's Maisanta*, University of California, Berkeley website, July, p.1 http://elsa.berkeley.edu/~emiguel/pdfs/miguel_maisanta.pdf - Accessed 11 November 2010.

³⁰ Murphy, H. 2006, 'Chavez's blacklist of Venezuelan opposition intimidates voters', *Bloomberg*; International Crisis Group 2007, *Venezuela: Hugo Chávez's Revolution*, Latin America Report no.19, 22 February, p.15.

this appeal did not, however, stop the blacklisting.³¹ The Maisanta program or list is named after the grandfather of Hugo Chávez.³²

98. Individuals on the Maisanta and Tascon lists have been subject to discrimination including the loss of private sector and government jobs, refused employment, denial of identity papers and passports, and refusal of access to public sector programs.³³ In April 2007, *Bloomberg* reported that thousands of listed people had been dismissed from the civil service and refused government contracts.³⁴ Transparency International have reported that a 2007 academic study reported that “those signing have very low chances of being employed in the public sector, and much higher of ending up in the black economy”³⁵ The ICG reported in 2007 that “more than 800 former employees of 42 public entities have filed law suits claiming they were fired because they signed the recall referendum petition.”³⁶ The loss and denial of government jobs has a large personal impact in Venezuela as government and state run companies employ approximately 20% of the workforce.³⁷
99. According to a 2007 report published by *Bloomberg* police may also be using the Maisanta list to pressure people. The report states that “Domenico Tuccinardi, who served as the chief observer of the congressional elections in December for the European Union, said “political forces” are using the Maisanta List “as a tool to pressure and intimidate the electorate.”³⁸ The ICG reported in 2007 that according to an unidentified source “many individuals asserting discrimination must petition the attorney general’s office to be removed from one or more of these lists.” ICG states, however, that the “the Andean Commission of Jurists, an NGO, has questioned the impartiality of the attorney general’s office”.³⁹
100. In 2003 the Tascon list was posted on a web site.⁴⁰ The list was removed from the website after the August 2004 recall vote.⁴¹ The Tascon list was then incorporated into a computer software program called ‘Maisanta’ which was distributed throughout the public sector.⁴²
101. The International Crisis Group reported in 2007 that, according to an unidentified source, individuals can petition the attorney general’s office to be removed from the Tascon or

³¹ International Crisis Group 2007, *Venezuela: Hugo Chávez’s Revolution*, Latin America Report no.19, 22 February, p.15; Murphy. H. 2006, ‘Chavez’s blacklist of Venezuelan opposition intimidates voters’, *Bloomberg*; Transparency International 2009, *Global Corruption Report 2009*, p.245 http://www.transparency.org/publications/gcr/gcr_2009#6.2 - Accessed 12 November 2010

³² Coronel, G. 2006, *Corruption, Mismanagement, and Abuse of Power in Hugo Chávez’s Venezuela*, CATO Institute, Recivex website, 27 November, no. 2, p.3 <http://www.recivex.org/ens-2006-11-27-EN.pdf> - Accessed 9 November 2010.

³³ Murphy. H. 2006, ‘Chavez’s blacklist of Venezuelan opposition intimidates voters’, *Bloomberg*; US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March, Section 1.f; International Crisis Group 2007, *Venezuela: Hugo Chávez’s Revolution*, Latin America Report no.19, 22 February, p.15; Transparency International 2009, *Global Corruption Report 2009*, p.245 http://www.transparency.org/publications/gcr/gcr_2009#6.2 - Accessed 12 November 2010 -; Wagner, S. 2005. ‘Attorney General starts investigation of the practice of black listing in Venezuela’, *Venezuelanalysis.com*, 28 April

³⁴ Murphy. H. 2006, ‘Chavez’s blacklist of Venezuelan opposition intimidates voters’, *Bloomberg*

³⁵ Transparency International 2009, *Global Corruption Report 2009*, p.245 http://www.transparency.org/publications/gcr/gcr_2009#6.2 - Accessed 12 November 2010 -.

³⁶ International Crisis Group 2007, *Venezuela: Hugo Chávez’s Revolution*, Latin America Report no.19, 22 February, p.15.

³⁷ Murphy. H. 2006, ‘Chavez’s blacklist of Venezuelan opposition intimidates voters’, *Bloomberg*

³⁸ Murphy. H. 2006, ‘Chavez’s blacklist of Venezuelan opposition intimidates voters’, *Bloomberg*

³⁹ International Crisis Group 2007, *Venezuela: Hugo Chávez’s Revolution*, Latin America Report no.19, 22 February, p.15.

⁴⁰ Murphy. H. 2006, ‘Chavez’s blacklist of Venezuelan opposition intimidates voters’, *Bloomberg*.

⁴¹ Hsieh, C.T., Ortega, D., Miguel, E. & Rodríguez, F. 2010, *The Price of Political Opposition: Evidence from Venezuela’s Maisanta*, University of California, Berkeley website, July, p.9 http://elsa.berkeley.edu/~emiguel/pdfs/miguel_maisanta.pdf - Accessed 11 November 2010.

⁴² Hsieh, C.T., Ortega, D., Miguel, E. & Rodríguez, F. 2010, *The Price of Political Opposition: Evidence from Venezuela’s Maisanta*, University of California, Berkeley website, July, p.1 http://elsa.berkeley.edu/~emiguel/pdfs/miguel_maisanta.pdf - Accessed 11 November 2010; Fleischman, L. 2010, ‘The Electoral Illusions of Venezuela’s Totalitarian Regime’, *The Cutting Edge News*, 27 September <http://www.thecuttingedgenews.com/index.php?article=21637&pageid=13&pagename=Analysis> - Accessed 11 November 2010; International Crisis Group 2007, *Venezuela: Hugo Chávez’s Revolution*, Latin America Report no.19, 22 February, p.15 -; Hsieh, C.T., Ortega, D., Miguel, E. & Rodríguez, F. 2010, *The Price of Political Opposition: Evidence from Venezuela’s Maisanta*, University of California, Berkeley website, July, p.9 http://elsa.berkeley.edu/~emiguel/pdfs/miguel_maisanta.pdf - Accessed 11 November 2010.

Maisanta lists. The “impartiality” of the attorney general’s office has, however, been questioned by the Andean Commission of Jurists, an international NGO based in Peru.⁴³

Discrimination in employment

102. Reports indicate that individuals have been subject to discrimination within the public sector on political grounds. This includes the dismissal of government employees with views that oppose government policies.⁴⁴ Judges can also be dismissed from their positions if they make decisions which impact negatively on government interests.⁴⁵ As indicated in question four of this country advice individuals who signed a petition in 2003, seeking a recall referendum to remove Chavez from office, have been subject to discrimination in terms of access to government and private sector employment.⁴⁶
103. The 2010 US Department of State Country Report on Human Rights Practices for Venezuela reports on discrimination in public sector employment on political grounds. The report states that during 2009 “NGOs expressed concern over official political discrimination against, and the firing of, state employees whose views differed from those of the government.” According to the Venezuelan Program of Education Action in Human Rights (PROVEA) claimed that “the government used coercion and the threat of dismissal to compel state employees to attend partisan political functions.”⁴⁷
104. A 2009 report by the Inter-American Commission on Human Rights also states that public sector employees are discriminated against in the work place if they fail to support the government. The report states that judges can also lose their positions if they make decisions which impact negatively on government interests. The report states that:

The Commission is troubled by the fact that State employees are threatened with losing their jobs if they fail to support the official government option. The Commission has also received information to the effect that civil servants have also been the protagonists of official campaigns, openly participating in political proselytism and devoting long hours of their official workdays to these activities.

...Moreover, the IACHR notes that obstacles are thrown in the path of those identifying with the opposition not only in the context of political contests, but also that citizens and organizations that make their disagreement with governmental policies public often become victims of retaliation, intimidation, disqualification, exclusion, discrimination in the workplace, and in some instances are even subject to legal attack and deprived of their liberty.

...As established in the present report, over half of the judges of Venezuela enjoy no stability of employment; they are therefore subject to removal when they make decisions that affect the government’s interests.⁴⁸

⁴³ International Crisis Group 2007, *Venezuela: Hugo Chávez’s Revolution*, Latin America Report no.19, 22 February, p.15

⁴⁴ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March, 1.f; Inter-American Commission on Human Rights 2009, *Democracy and Human Rights in Venezuela*, 30 December, pp. 10, 290 & 292 <http://www.cidh.org/pdf%20files/VENEZUELA%202009%20ENG.pdf> – Accessed 16 November 2010; Human Rights Watch 2008, *A Decade Under Chávez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela*, p.28 <http://www.hrw.org/reports/2008/venezuela0908/> - Accessed 16 November 2010.

⁴⁵ Inter-American Commission on Human Rights 2009, *Democracy and Human Rights in Venezuela*, 30 December, pp. 10, 290 & 292 <http://www.cidh.org/pdf%20files/VENEZUELA%202009%20ENG.pdf> – Accessed 16 November 2010.

⁴⁶ Murphy. H. 2006, ‘Chavez’s blacklist of Venezuelan opposition intimidates voters’, *Bloomberg* -; US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March, Section 1.f; International Crisis Group 2007, *Venezuela: Hugo Chávez’s Revolution*, Latin America Report no.19, 22 February, p.15 -; Transparency International 2009, *Global Corruption Report 2009*, p.245 http://www.transparency.org/publications/gcr/gcr_2009#6.2 - Accessed 12 November 2010

⁴⁷ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March, 1.f.

⁴⁸ Inter-American Commission on Human Rights 2009, *Democracy and Human Rights in Venezuela*, 30 December, pp. 10, 290 & 292 <http://www.cidh.org/pdf%20files/VENEZUELA%202009%20ENG.pdf> – Accessed 16 November 2010.

105. A 2008 report by Human Rights Watch states that in 2002 the State Oil company Petróleos de Venezuela, S.A. (PDVSA) fired more than 18, 000 employees for participating in a two month strike. The report states that “PDVSA blacklisted the dismissed employees from future employment in the oil sector as well as in its subsidiaries and contractors.”⁴⁹

Targeting of family members perceived as having anti-government views.

106. In March 2010 the USDOS reported that “opposition political leaders and their families suffered physical assaults by unknown assailants and selective prosecutions.” The report provides the following information regarding the murder of a brother of a political opponent in 2009:

... On February 19, Carlos Azuaje, the brother of a National Assembly deputy, was shot and killed in Barinas. The deputy, who was expelled from the ruling PSUV in 2008 after accusing the Chavez family of corruption, blamed the killing on the Barinas governor, the president’s brother, whom he accused of “inciting” the crime. Authorities arrested two suspects in the killing. A court convicted and sentenced one to 20 years’ imprisonment in November; the second suspect’s trial was pending at year’s end.⁵⁰

107. In 2009 Amnesty International reported that police tried to break into the house of the sister of José Luis Urbano, a human rights defender. According to the report while attempting to break in to the sister’s house the police shouted threats against José Luis Urbano. Amnesty reported that “it is believed this was in reprisal for José Luis Urbano having reported harassment from a member of the same police force.”⁵¹

108. A 2009 report published by the Inter-American Commission on Human Rights lists the torture of a relative as a “frequent” form of torture by security forces in Venezuela. The report does not, however, provide further information regarding the circumstances in which a family member would be targeted. The report states that:

the Support Network for Justice and Peace, an organization with more than 20 years’ experience working with torture victims in Venezuela, states that “torture is an ingrained practice in the State’s security forces, has spread to all police and military agencies, and has not been effectively banned or punished.” According to this organization, the Scientific, Criminal, and Criminalistic Investigations Corps, the Metropolitan Police, the National Guard, the state and municipal police forces, and the army, as well as other bodies, have been involved in acts of torture. It adds that different methods of torture are used in Venezuela, with physical and psychological torture generally being combined. The most frequent forms of torture are beating and kicking; death threats and/or torture of an individual or relative; verbal assaults; handcuffing; isolation and denial of sustenance; asphyxiation with plastic bags; throwing victims against walls, on to the floor, or down stairs; tying their hands and feet; stripping off clothes; blindfolding; and electric shocks. These incidents of torture and mistreatment occur during detention at police and military facilities, as a form of discipline, to maintain control in the country’s prisons and jails, to secure confessions during investigations, or to maintain order during demonstrations and protests, as well as in other contexts.⁵²

⁴⁹ Human Rights Watch 2008, *A Decade Under Chávez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela*, p.28 <http://www.hrw.org/reports/2008/venezuela0908/> - Accessed 16 November 2010 -.

⁵⁰ US Department of State 2010, *Country Reports on Human Rights Practices 2009 – Venezuela*, 11 March, 2.c.

⁵¹ Amnesty International 2009, *Amnesty International Annual Report 2009 – Venezuela*

⁵² Inter-American Commission on Human Rights 2009, *Democracy and Human Rights in Venezuela*, 30 December, pp. 10, 290 & 292 <http://www.cidh.org/pdf%20files/VENEZUELA%202009%20ENG.pdf> – Accessed 16 November 2010 -.

109. Individuals, who seek justice and redress for family members who have been victims of human rights violations, are also subject to threats, harassment, intimidation and attacks by the security forces.⁵³ Amnesty International's 2010 Annual Report on Venezuela states that relatives seeking justice and redress for victims of human rights violations continue to be "attacked, threatened and harassed by the security forces." The report contains the following information on the Barrios family which have been murdered and harassed after reporting the killing a relative by police officers:

...In October, Oscar Barrios was shot dead in the town of Guanayen, Aragua State, by two armed men dressed in similar clothing to that worn by police officers. The shooting followed a six-year campaign of harassment and intimidation against the Barrios family which began after they reported the killing of Narciso Barrios by police officers in 2003. Further killings of family members took place: Luis Barrios was killed in 2004 and Rigoberto Barrios in 2005. The Inter-American Commission on Human Rights called on Venezuela to take the necessary measures to guarantee the right to life and security of the Barrios family and to bring those responsible for the killings to justice.⁵⁴

110. The Inter-American Commission on Human Rights report also states that individuals who officially complain about the abuses of family members by state authorities have been frequently targeted. This includes family members who push for official investigations, organise relatives of the victims and investigate abuses by State authorities. The report states that the relatives have been subject to threats, intimidating behaviour and harassment. The Vicariate of Human Rights of Caracas has documented five murders of relatives of victims of extrajudicial executions in Venezuela between 1997 and 2007. The report also contains the following incidents relating to the treatment of family members in Venezuela:

For example, according to the information received, Sara Mier y Terán, coordinator of the Life Peace and Liberty Association, and members of the committee of relatives of victims of police abuse in the state of Aragua were victims of acts of aggression and were watched and followed in June 2006 and January 2007; Melquiades Moreno, a relative of a victim of extrajudicial execution and founder of the committee of victims against police and military abuse in the state of Anzoátegui, received threats in February 2006; Lisbeth Sira, a relative of Victoria Samaria, who disappeared on March 11, 2007, in the state of Portuguesa, allegedly at the hands of the Scientific, Criminal, and Criminalistic Investigations Corps (CICPC, by its Spanish acronym) officers, has been the victim of threats since March 2007; Mirla Quiñones, a member of the committee of victims against impunity in the state of Lara, received threats in May 2007; and Samira Montilla, a relative of Adriana Galindo, who disappeared on March 11, 2007, in the state of Portuguesa, allegedly at the hands of CICPC officers, has also received threats since March 2007; Mr. Carlos Mora, father of Carlos Eduardo Mora, who was allegedly murdered by police officers in 2006, was the victim of an attack in December 2007; in January and February 2008, the wives of officials charged in the events of April 2002, Mmes. Castro, Simonovics, and Vivas, reported having been victims of harassment due to their actions in defense of their husbands; the relatives of victims of executions and arbitrary detentions allegedly carried out by police officers in the state of Lara reported having been victims of harassment since February 2008; and the relatives of Maicol Caripa Andrade, who was killed on May 16, 2008, allegedly by officers of the Directorate of Intelligence and Prevention Services (DISIP, by its Committee of Relatives of Victims of the Events of February-March 1989 (COFAVIC, by its Spanish acronym) Spanish acronym), report having received serious threats since June 2008. In July 2008 Mrs. Nancy Marcano

⁵³ Amnesty International 2010, *Amnesty International Annual Report 2010 – Venezuela* - Inter-American Commission on Human Rights 2009, *Democracy and Human Rights in Venezuela*, 30 December, pp. 10, 290 & 292 <http://www.cidh.org/pdf%20files/VENEZUELA%202009%20ENG.pdf> – Accessed 16 November 2010.

⁵⁴ Amnesty International 2010, *Amnesty International Annual Report 2010 – Venezuela*.

said she had received threats and told to desist in her complaint related to the death of her son Carlos Joel Marcano Rojas, who was killed in May 2007—allegedly by others in custody—in full view of Anzoátegui state police officers while he was being detained at that entity’s police headquarters.⁵⁵

B1/B2 Business and Tourist visa (USA)

111. The United States embassy in Canberra (<http://canberra.usembassy.gov/business-tourist.html>) gives a summary of the B1/B2 Business and Tourist visa for entry into the USA:

Combined Visa for Business or Pleasure (B1/B2 visa)

Under the Visa Waiver Program Australians and nationals of 26 other countries, including the UK and New Zealand, can travel to the U.S. for tourism or business stays of less than 90 days without obtaining a visa if certain requirements are met. (Venezuela does not fall within the countries specified for this program).

If you do not meet the requirements of the Visa Waiver Program, you may be eligible for a visitor visa which is a nonimmigrant visa for persons desiring to enter the United States temporarily for business (B-1) and for pleasure or medical treatment (B-2). As examples, if the purpose of your planned travel is recreational in nature, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature, then a visitor visa (B-2) would be the appropriate type of visa for your travel. As additional examples, if the purpose for your planned travel is to consult with business associates, travel for a scientific, educational, professional or business convention, or conference on specific dates, settle an estate, or negotiate a contract, then a business (B-1) visitor visa would be the appropriate type of visa for your travel.

Business/Visitor Visas

A temporary visitor for business or pleasure must establish that he or she:

Has a residence abroad which he or she does not intend to abandon

Is coming to the United States for a definite temporary period

Will depart upon the conclusion of the visit

Has permission to enter a foreign area after his or her stay in U.S.

Has access to sufficient funds to cover expenses of the visit and return passage

... ..

FINDINGS AND REASONS

112. The Tribunal has considered all the material that has been provided by the applicant and contained on the department and Tribunal files. The Tribunal makes its findings and reasons having considered this material and other material contained on the files, as well as the oral evidence provided at the hearing and country information before the Tribunal.

⁵⁵ Inter-American Commission on Human Rights 2009, *Democracy and Human Rights in Venezuela*, 30 December, pp. 13 & 166-168 <http://www.cidh.org/pdf%20files/VENEZUELA%202009%20ENG.pdf> – Accessed 16 November 2010 -.

113. Having viewed the passports and other documents of identification, the Tribunal finds that the applicants are citizens of Venezuela.
114. The Tribunal finds on the basis of the marriage certificate provided that the applicant is married to [Applicant 2]. On the evidence, the Tribunal finds that the applicant's wife does not have claims in her own right but is a member of the family unit of the applicant (s.5(1) of the Act).
115. The Tribunal has considered the evidence of the applicant's visa Class B1/B2 into the USA which is valid until [a date in] March 2015. The applicant's evidence, that the maximum amount of time permitted to stay in the USA on this visa is six months, is consistent with country information. The Tribunal notes the applicant's evidence that there were limitations placed on him while temporarily residing in the USA on this visa. These limitations included having no work rights or study rights. The Tribunal notes the applicant's evidence that this visa did not give him permission to gain permanent residence in the USA. The Tribunal notes the applicant's evidence that he did not want to apply for protection in the USA as his fear was heightened after his last entry into the USA.
116. The Tribunal refers to *WAGH v MIMIA* where the applicants in that case held US visas "for the purpose of business and tourism". Justice Lee in that case held that the right to enter and reside in s36(3) is a right which a person may exercise pursuant to a prior acceptance or acknowledgement by the relevant country, to enter and reside and, implicitly, to receive protection equivalent to that to be provided to that person by a contracting state under the Convention. While the right to reside may not be permanent, it must be co-extensive with the period in which protection equivalent to that to be provided by Australia as a contracting state would be required.⁵⁶
117. Justice Lee observed that the applicant wife's right to enter and reside in the United States "would be a right to enter and to reside for the purpose of tourism or business, not a right to enter and reside in the United States for the purpose of receiving protection or some equivalence to that to be provided by a Contracting State under the Convention".⁵⁷ His Honour held, with Carr J agreeing on this point, that a temporary six month visa issued "for the purpose of business and tourism" would not be sufficient to provide the holder with a legally enforceable right to enter the United States for purposes outside of business or tourism. Their Honours noted that in the circumstances of the case, the appellants would not be travelling to the United States for the purposes of tourism or business and would thus obtain no entitlement to be admitted into that country upon arrival.⁵⁸
118. The Tribunal finds that it is bound by the findings of Justice Lee and Justice Carr and that the applicant's B1/B2 (visa issued for the purpose of business and tourism) would not be sufficient to provide him with a legally enforceable right to enter the United States for purposes outside of business or tourism, that is, for the purpose of receiving protection or some equivalence in the USA. The Tribunal accepts the applicant's evidence that his B1/B2 visa does not permit him to work or study in the USA nor does it give him permission to apply for permanent residence there. Having considered the evidence before it, and having

⁵⁶ *WAGH v MIMIA* (2003) 131 FCR 269 at [34]. See also *SZMQ v MIAC* [2010] FCAFC 97 (Rares, Besanko and Flick JJ, 6 August 2010). Rares J commented at [35] that "the right can be temporary in nature and last for no particular period greater than the time taken to meet the exigency that gave rise to the non-citizen's well-founded fear of persecution in the country whence he or she had fled."

⁵⁷ *WAGH v MIMIA* (2003) 131 FCR 269 at [42], with Carr J agreeing at [75].

⁵⁸ *WAGH v MIMIA* (2003) 131 FCR 269 at [43], with Carr J agreeing at [75].

regard to the decision in *WAGH v MIMIA*, the Tribunal finds that the applicant does not have a right to enter and reside in the USA for the purposes of s.36(3) of the Act.

119. The applicant claims can be summarised as follows. The applicant studied at [University 1] in [City 5], [State 6], and obtained a Bachelor of [Medical Speciality D] there. He was involved in politics as a university student in a very active way. He was a member of a student organisation at the university. He helped direct and organise actions taken against the university authorities (who were appointed by the government) concerning student issues arising at the time. He protested openly as a member of the student organisation on behalf of students. He was approached by the Director of the Sciences program to be careful about his involvement in student protests.
120. He participated in demonstrations, public assemblies and meetings at community level in opposition to government policy and abuses.
121. He claims that he has been discriminated against because of his political activism by being denied employment at [University 1], which was given to persons who had lesser grades than him.
122. He claims that he is on the “Tascon/Maisanta list”, which lists all persons who signed the 2003 referendum held by the electoral commission to determine if they had enough grounds to revoke the presidential mandate. The applicant indicated that if a person was on this list, and tried to apply for work in the public sector, they would first be checked against this list. If their name appeared on this list, they would not be offered the job. The applicant indicated that being on this list has affected his life in Venezuela as it has affected his opportunities to work in Venezuela and particularly in his specialty of [Medical Speciality D] in large animals such as cattle and horses.
123. The applicant’s father was a former high-standing professional at [University 1]. Because of his father’s past anti-government involvement, his father had been targeted by the authorities by being suspended twice from his post at the university and arrested on one occasion. The applicant feared that he would suffer serious harm because of his association with his father.
124. The applicant claims that if he returns to Venezuela he will be the victim of psychological or physical abuse and even death based on his political opinion or his imputed political opinion. He claims that the authorities are aware of his political activism because of his profile as a student leader at the university and his identifiable participation in public demonstrations and community assemblies against the government. He also claims that he bears the surname of his father who, as a high profile figure at [University 1], has been persecuted by the authorities for his anti-government views. He claims that while he has never suffered physical abuse in Venezuela he has been threatened by the university authorities appointed by the government to stop his anti-government views.
125. He fears that he will be targeted by government security forces, police, or groups supported by the government such as the Bolivarian militia.
126. The applicant claims that the Venezuelan authorities are aware that he has applied for protection in Australia and that this puts him at risk of serious harm if he returns home.
127. The applicant provided a statement from [University 1] certifying that he completed the program of [Medical Speciality D] sciences [in] December 2008. He also provided a

certificate from the same university certifying that he obtained a position of 2 out of [number deleted: s.431(2)] graduates in the same program. The Tribunal accepts that the applicant studied at [University 1] in Corro, that he completed the program of [Medical Speciality D] sciences [in] December 2008 and that he obtained a ranking of 2 out of [number deleted: s.431(2)] graduates in the program.

128. The Tribunal has heard the applicant's evidence about his leadership role and active participation in the student organisation which he was a member of on campus. The applicant indicates that his active role included speaking out on campus against the university authorities (who were appointed by the government) for not doing more for the students at the University. [Mr C] provided evidence as a witness in support of the applicant stating that he knew the applicant was active with the student guild and in defending student rights at the University. The Tribunal has had the opportunity to read [Doctor B]'s statement in support of the applicant whereby he stated that he knew of the applicant's active membership at the university. The Tribunal has had the opportunity to read the [Official 2] of [City 5]'s statement whereby he stated that the applicant was a proactive member of the student guild at the local university. The Tribunal has had the opportunity to read the statement of [Official 4] of the Advanced Student Movement at [University 1] whereby he states that the applicant was an active member of the movement and participated in student protests at the university from 2004 to 2008.
129. The Tribunal finds [Mr C] to be a credible witness to the events that he witnessed, of the applicant, while on campus. The Tribunal has no reason to doubt the authenticity of the supporting letters from [Doctor B], [Official 2] of [City 5] and [Official 4] of the Advanced Student Movement. The Tribunal has concerns that [Doctor B] and [Official 2] of [City 5] have not provided reasons in their statements as to how they came to know that the applicant had been blacklisted or stopped from being employed in the private and public sector after his graduation. However, notwithstanding these concerns, the Tribunal accepts the statements made that the applicant was an active and important member of the student organisation at the university and that he held anti-government views which placed him at risk of discrimination from the authorities.
130. On the evidence, the Tribunal finds that the applicant was an important and active member of the student guild/organisation at [University 1] and that he was politically active in this role. While the applicant has provided evidence that he has not suffered any physical harm while a student activist in Venezuela, the Tribunal is satisfied that there is a real chance that he would suffer serious harm in the reasonably foreseeable future were he to return. The 2011 Freedom House Report on Venezuela indicates that in universities, elections for student associations and administration positions have become more politicized, and rival groups of students have clashed repeatedly over both academic and political matters. The Tribunal accepts that the politicisation of student associations and administrations at universities brings students opposing the government to the attention of the authorities. This is concerning, considering that the US Congressional Research Service has reported that since 2009, the government has increased efforts to suppress political opposition. The Tribunal finds that, while the applicant had not suffered physical harm in the past on the basis of his student political activities, there is a real chance that the applicant will suffer serious harm in the reasonably foreseeable future by reason of his past political activities.
131. The Tribunal has heard the evidence by the applicant concerning his participation in demonstrations, public assemblies and meetings at community levels in opposition to government policy and abuses. The applicant has provided two videos in support of this

claim. The Tribunal was unable to identify the applicant in the first video taken on January 2003 at [University 3] in [City 5] and put this to the applicant, who accepted that he could not be identified on video. Accordingly, the Tribunal places no weight on this evidence in support of the applicant's claims. In relation to the second video of a demonstration that took place [in] January 2003 in [City 5], the Tribunal accepts that the applicant participated in this demonstration and that this demonstration took place in [City 5]. The Tribunal accepts from the evidence of the video that the applicant was present with other people and that there were a number of police monitoring the situation. While the Tribunal has no evidence from the applicant to support his claims that following this demonstration there was a police crackdown on the marches and that the police fired on the demonstrators, including the applicant, the Tribunal does not have evidence to support a contrary finding. In the circumstances, the Tribunal is willing to afford the applicant the benefit of the doubt on this matter, namely that the applicant and demonstrators at the time were violently dispersed, based on the authenticity of the video and country information indicating the government's hard-line stance against any opposition to it (2010 US Congregational Research Service) and the brutality of its police force against Venezuelan citizens (2010 Freedom House report). The Tribunal finds that the applicant suffered threats to life or liberty while participating in the demonstrations in [City 5] in 2003 for reasons of his political opinion.

132. In relation to the applicant's claims that he was discriminated against because of his political activism by being denied employment at [University 1], the Tribunal finds itself having to consider two letters of support – from [Official 2] of [City 5] and [Doctor B]. Both these letters indicate that after the applicant's graduation, he was prevented from gaining employment in the private and public sectors. The Tribunal has already raised its concerns that [Doctor B] and [Official 2] of [City 5] have not provided reasons in their statements as to how they came to know that the applicant had been blacklisted or stopped from being employed in the private and public sector after his graduation. Further, the Tribunal also has concerns that [Doctor B] and [Official 2] of [City 5] have provided evidence of a wider account of discrimination faced by the applicant in the workplace than the applicant himself has claimed.
133. The Tribunal has, however, already accepted the reliability of the letters and also accepts that the evidence in these two letters is not inconsistent with the applicant's claims that he has been discriminated in being prevented employment because of his past political activism. On this basis, and on the evidence that the applicant was a key political activist in a student organisation at [University 1], the Tribunal accepts that he was discriminated against in his employment at the university. The Tribunal also accepts on country information (2011 Freedom House Report) that government authorities have control over appointments of university authorities and that there is an indisputable connection between university authorities and the government. The Tribunal finds it not unreasonable that adverse information held by university authorities about a student may be passed onto the government. The Tribunal concludes that adverse information about a university student may be used against the student when seeking employment within government and its agencies, or private companies which are connected to government (See Cato Institute website which identifies ownership of private corporations by government officials as one example of corruption within government influencing the private sector).⁵⁹ The Tribunal finds that the applicant has, in the past experienced serious harm, in particular a denial of a capacity to earn a livelihood which threatens his capacity to subsist for reason of his past political activities,

⁵⁹ Coronel, G. 2008 'The Corruption of Democracy in Venezuela', CATO Institute website, March http://www.cato.org/pub_display.php?pub_id=9254 - Accessed 9 November 2010.

and that there is a real chance that he will suffer serious harm, in particular a denial of a capacity to earn a livelihood which threatens his capacity to subsist, in the reasonably foreseeable future for reason of his past political activities in both the public and private sector.

134. The applicant has claimed that his name appears on the “Tascon/Maisanta list” because he voted in the 2003 referendum, and that this will mean that he will be subject to discrimination by way of employment in the future. The Tribunal finds this claim difficult to accept on the basis that the applicant has provided no evidence that his name actually appears on this list. Further, his two key witnesses – [Doctor B] and [Official 2] of [City 5] – while stating that the applicant has been prevented from being employed, do not base their claims on the applicant’s name appearing on the “Tascon/Maisanta list” While country information supports the fact that persons on this list may well be refused employment, the Tribunal attributes the applicant’s denial of employment based on his particular circumstances of being politically active while a student at [University 1]. Country information also documents the fact that persons on this list would be subject to denial of identity papers and passports. The applicant was issued his current passport after he voted in the 2003 referendum. On the evidence, the Tribunal does not accept that the applicant’s denial to employment is based on his name appearing on the “Tascon/Maisanta list” but rather, on his membership and profile activity with the student organisation at [University 1].
135. In relation to the applicant's claims that he will be placed at risk if he returns to Venezuela on the basis that he has applied for asylum in another country, the applicant concluded in evidence that this was his assumption after speaking to his father on the telephone, who informed the applicant of the conversation had between himself and [Professor A] at [University 1]. The Tribunal finds that the applicant has not received the information directly in conversation from [Professor A]. The applicant has not provided evidence from his father to verify the conversation that was had between himself and [Professor A]. The Tribunal finds no country information to support this claim nor has the applicant provided any independent country information to indicate that this fear is well founded. In the circumstances, the Tribunal finds that that the applicant’s fear of harm based on his being an asylum seeker in another country is not well founded.
136. Having considered the evidence before it, Tribunal accepts that the applicant’s father was a high standing professional academic at [University 1] and that his father was suspended at the University and arrested on the basis of his past anti-government involvement. The Tribunal accepts the evidence presented by the applicant relating to court action taken against his father. The Tribunal has heard the applicant’s evidence in relation to his father’s suspension at the university without entitlement to salary and preventing him being promoted in his field. The Tribunal found the applicant a credible witness when questioning him about his father’s activities in Venezuela. The Tribunal also found the applicant’s evidence consistent with the court documents provided relating to his father. There was nothing before the Tribunal to suggest that the documents were not genuine or not related to his father. In the circumstances, the Tribunal finds that the applicant’s father suffered harm through his arrest, and by being denied employment and income as well as being denied promotion in his chosen field, for reason of his political opinion or his imputed political opinion. The Tribunal accepts that the applicant attended the same university his father attended when he was an academic there. The Tribunal accepts the applicant claims that he carries his father's surname and that this identifies the applicant to his father who has been identified as holding anti-government views. Independent country information (USDOS 2010, Amnesty International

2009 and 2010, Inter-American Commission on Human Rights 2009) supports the applicant's fears that, as family member to his father, there is a real chance that he will suffer serious harm in the reasonably foreseeable future because he would be perceived as having anti-government views based on his father's political history notwithstanding that he has not been targeted in the past.

137. The Tribunal has had regard to all of the applicant's claims cumulatively. It finds that the persecution the applicant fears for the claims of student political activism, participation at political demonstrations in the community and being associated to his father who has been perceived of having anti-government views, is for his political or imputed political opinion and that this Convention reason constitutes the essential and significant motivation for the persecution feared for each claim.
138. The Tribunal finds that the applicant has suffered serious harm by way of denial of capacity to earn a livelihood and threats made to him that he will be denied capacity to earn a livelihood. The Tribunal finds that he was attacked at demonstrations in [City 5]. The Tribunal finds that his father suffered serious harm by way of arrest and denial of capacity to earn a livelihood because of his political opinion or imputed political opinion. The Tribunal notes that the applicant has not suffered physical harm for reason of his political or imputed political opinion while in Venezuela. However, the applicant's fears that he will be harmed because of his political past and the political past of his father, is well-founded based on country information discussed already. There is a real chance, and not a remote chance, that the applicant will suffer serious harm for reason of his political opinion or imputed political opinion in the reasonably foreseeable future. The Tribunal has considered the applicant's claims cumulatively and makes its finds accordingly.
139. Country information indicates that corruption is pervasive at all levels of government in Venezuela (US State Department of State Reports) making it one of the top 14 corrupt countries in the world. This corruption pervades its police force and security apparatus (2011 Freedom House) The Tribunal finds on the country information before it that the prevalence of corruption in Venezuela, at all levels of government and its security apparatus, indicates an inadequate standard of protection by the state against the applicant for a Convention reason, when assessed against international standards. The Tribunal finds that the applicant's fear to avail himself the protection of his country is well-founded.
140. The Tribunal finds on the evidence that his past denial of capacity to subsist for reason of his political opinion, his father's arrest and denial of capacity to subsist and prevention of promotion for reason of imputed or political opinion, and the applicant's political past as a student activist are not isolated incidents involving minimal or low level harm. The Tribunal finds that these past circumstances have been systematic and discriminatory conduct on the part of government authorities against the applicant and his father. On the evidence, there is clear motivation on the part of government authorities to prevent the applicant and his father the right of capacity to earn a livelihood because of their political opinion or imputed political opinion. The Tribunal finds that the applicant will suffer serious harm in the reasonably foreseeable future and that country information indicates that the government authorities or its security apparatus or militia would be motivated to inflict serious harm.
141. The applicant carries the surname of his father who is a well-known person both in academic circles and government in [City 5], as well as having established a reputation, imputed or otherwise, for having anti-government views at [University 1]. The applicant has also established a name for himself as a student activist within the same university. The

applicant's activities have been verified by [Official 2] and other academics there. It would not be difficult for the applicant to be traced by government security apparatus or militia supporting the government through his family name. In the circumstances, the Tribunal finds that it would not be reasonable in the sense of practicable for the applicant to relocate given his particular circumstances and likely impacts upon his family, such as his wife.

CONCLUSIONS

142. The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided he satisfies the remaining criteria for the visa.
143. The Tribunal is not satisfied that the other applicant is a person to whom Australia has protection obligations. Therefore she does not satisfy the criterion set out in s.36(2)(a) for a protection visa. The Tribunal is satisfied that the wife is a member of the same family unit as the first named applicant for the purposes of s.36(2)(b)(i). As such, the fate of her application depends on the outcome of the first named applicant's application. As the first named applicant satisfies the criterion set out in s.36(2)(a), it follows that the other applicant will be entitled to a protection visa provided she meets the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa.

DECISION

144. The Tribunal remits the matter for reconsideration with the following directions:
 - (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
 - (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being a member of the same family unit as the first named applicant.