0909643 [2010] RRTA 142 (18 February 2010)

DECISION RECORD

RRT CASE NUMBER:	0909643
DIAC REFERENCE:	CLF2009/126315
RRT CASE NUMBER:	0909647
DIAC REFERENCE:	CLF2009/81748
COUNTRY OF REFERENCE:	Colombia
TRIBUNAL MEMBER:	Luke Hardy
DATE:	18 February 2010
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decisions not to grant the Applicants Protection (Class XA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. These are two separate protection visa review applications, lodged by members and dependents of the same Colombian family.

2. In both cases, these are applications for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the respective applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).

3. In the first case, going by date of entry into Australia, the applicants are an adult male, [Applicant 1a], and his pregnant fiancée, [Applicant 1b], who is a national of Peru. [Applicant 1a] is a commercial pilot who arrived in Australia on a student visa [in] June 2007. He was notified of the intended cancellation of his student visa [in] May 2009. He lodged a protection visa application with the Department of Immigration and Citizenship (the Department/DIAC) [in] September 2009. [Applicant 1b], who entered Australia [in] July 2008 as a student. She was included in [Applicant 1a]'s protection visa application as a member of [Applicant 1a]'s family unit (a "Part D" applicant), apparently as [Applicant 1a]'s spouse. As a "Part D" applicant she was not claiming refugee status in her own right, and was dependent on the success of [Applicant 1a]'s application.

4. The delegate decided to refuse to grant [Applicant 1a and Applicant 1b] visas [in] November 2009 and notified them of the decision, and of their review rights, by letter [on the same date].

5. In the second case, the applicants are [Applicant 1a]'s mother, [Applicant 2a], and his brother [Applicant 2b], who both arrived in Australia on visitor visas [in] May 2009. On their way they transited through the USA on combined B1/B2 visas ("Business/Pleasure"). These visas did not apparently provide a right to reside in the USA. Going by the dates in their entry stamps they may only have cleared immigration and customs before boarding another flight. They did not seek protection in the USA. Their entry visas gave them permission to stay for about five months. After arriving in Australia, it appears they reunited with [Applicant 1a]. They applied to the Department for Protection (Class XA) visas [in] June 2009. [Applicant 2b], who has disabilities and special health and social needs, was included in the application as a dependent ("Part D") applicant. They included [Applicant 1a] in their application, also as a "Part D" applicant, but the Department advised them that [Applicant 1a] did not meet the criteria of "member of the family unit" for the purposes of her protection visa application, as he was not a spouse or dependent as defined in the regulations. Accordingly, [Applicant 1a] later lodged his own application, and once it was received and logged by the Department, the application of [Applicant 2a and Applicant 2b] was also processed and issued with a file number. The delegate decided [in] November 2009 to refuse to grant the visas for which [Applicant 2a and Applicant 2b] applied and duly notified them of the decision and their review rights by letter [on the same date].

6. In both cases, the delegate refused the visa application on the basis that the applicants were not persons to whom Australia had protection obligations under the Refugees Convention.

7. Both pairs of applicants applied to the Tribunal [in] December 2009 for review of the delegate's respective decisions.

8. The Tribunal finds that the delegate's decisions are RRT-reviewable decisions under s.411(1)(c) of the Act. The Tribunal finds that the respective applicants have made valid applications for review under s.412 of the Act.

9. It is important to note that [Applicant 1a]'s hearing was originally scheduled [on a date in] February 2010. [Applicant 2a] did not attend, which is not a concern in itself, as she was invited to give evidence in her own right the following day. However, the Tribunal asked [Applicant 1a] [at the original hearing in] February 2010 if he would be happy to proceed in a joint hearing with [Applicant 2a] the following day. He said he was happy to reappear the next day, and his hearing was therefore adjourned as a part-heard matter, essentially at his request, to [the following day in] February 2010. NO substantive claims were heard or discussed at the [original date in] February 2010 hearing.

10. [In] February 2010, proceedings were formally introduced as a continuation of the hearing of [Applicant 1a]'s application and a commencement of the hearing of [Applicant 2a]'s application. [Applicant 2a] raised no objection to [Applicant 1a]'s evidence being heard in conjunction with her own, and this is not surprising since she originally sought to include him in her own original protection visa application.

11. Having regard to the fact that both applications rely on shared history and common facts, also having regard to the fact that the bulk of the evidence supporting both applications appears in the DIAC file pertaining to [Applicant 2a and Applicant 2b], and for the sake of convenience, economy and clarity, the Tribunal has decided to present its decisions in this common document.

RELEVANT LAW

12. 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.

13. 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).

14. 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.

15. 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'

16. 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.

17. 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.

18. 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.

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

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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

26. 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 respective decisions, and other material available to it from a range of sources.

Evidence to the Department

27. In their applications to the Department, [Applicant 2a] is described as a divorcee and mother of three: [Applicant 1a, Applicant 2b] and daughter [Ms A].

28. In both applications, the applicants told the Department of the kidnapping of [Ms A] in 1994 by the insurgent group FARC (specifically Front 34 of FARC). A ransom was demanded and the sum was negotiated down. Evidently it was not paid, or negotiations faltered before it could be paid, and [Ms A] was never returned. A process of investigations and a chain of informants pointed to the involvement of a local criminal gang and in particular one of its members, a man named [Person A] who was eventually arrested, charged and detained pending trial. On trial in 2004, [Person A] was acquitted for lack of evidence directly implicating him. The family received threats over the years and these intensified after [Person A]'s release. [Applicant 2a] later told the Tribunal that she did not dare leave Colombia throughout all the years since the kidnapping as she had clung to the hope that her daughter might still be alive and might be freed. She implied she had given up hope after an attack on [Applicant 1a] in 2006. In that incident, it is claimed that [Applicant 1a] was approached on the street and shot twice, both bullets hitting him in the leg. Implicit in this claim is an element of revenge by or on behalf of [Person A] for the trouble caused him and perhaps for the failure to pay the ransom originally demanded. When the Tribunal put such positions to the applicants at the hearing they agreed.

29. The family decided from 2006 onwards that since [Applicant 1a] seemed to be the most immediate target, he should go abroad as soon as possible. The family arranged for him to study in Australia The applicants say they were watching to see if things improve. They did not cite any specific incident that precipitated [Applicant 2a] and [Applicant 2b] following [Applicant 1a] to Australia in 2009, although there is evidence to suggest that he was

struggling to meet the conditions of his student visa, which might have made his ability to remain here for the longer term seem uncertain. [Applicant 2a] claimed to the Department that she could not take the stress and uncertainty in Colombia any more and came to Australia on the pretext of tourism, having every intention from the outset to claim protection upon arrival. The applicants claimed the authorities in Colombia could not protect them from FARC as the authorities are already stretched by inadequate resources and also since there are too many cases like theirs, meaning that the police cannot protect everyone who is targeted by FARC.

30. [Applicant 2a]'s DIAC file includes copies of documents to which both her and [Applicant 1a]'s evidentiary statements speak: evidence of the births of [Applicant 1a], [Applicant 2b] and [Ms A]; [Ms A]'s ID card valid until September 1994; a [date in] March 2000 certification from the *Secretaria Común* in [Town A] attesting to the kidnapping of [Ms A]; two notarial declarations witnessing the impact on the family of the kidnapping; a certificate citing [Applicant 2a]'s divorce from [name deleted: s.431(2)] in November 2000; and a clinical report relating to the gunshot wounds sustained by [Applicant 1a] in January 2006.

Country information

31. The following summary provided by BBC News describes FARC in the context of a number Colombia's combatant groups:

> Colombia's civil conflict spans more than four decades and has drawn in left-wing rebels and right-wing paramilitaries.
>
> Here are profiles of the three main armed groups:
>
> REVOLUTIONARY ARMED FORCES OF COLOMBIA (FARC)
>
> The Farc is the oldest and largest group among Colombia's left-wing rebels - and is one of the world's richest guerrilla armies.
>
> Alfonso Cano is now the Farc's main leader.
>
> The group was founded in 1964, when it declared its intention to use armed struggle to overthrow the government and install a Marxist regime.
>
> But tactics changed in the 1990s, as right-wing paramilitary forces attacked the rebels, and the Farc became increasingly involved in the drug trade to raise money for its campaign.
>
> According to a US justice department indictment in 2006, the Farc supplies more than 50% of the world's cocaine and more than 60% of the cocaine entering the US.
>
> The Farc, which is on US and European lists of terrorist organisations, suffered a series of blows in 2008. Several leaders died, including the top commander, Manuel Marulanda.
>
> The most dramatic setback was the rescue by the military of 15 high-profile hostages, including the former presidential candidate Ingrid Betancourt. The hostages had long been seen as a key element in the rebels' attempts to exchange their captives for jailed guerrillas.
>
> President Alvaro Uribe, who swept to power in 2002 vowing to defeat the rebels and was re-elected in 2006, launched an unprecedented offensive against the Farc, backed by US military aid.

Desertions from the rebel ranks suggest morale has been hit. The group had about 16,000 fighters in 2001, according to the Colombian government, but this is believed to have dropped to about 9,000.

However, the rebels still control rural areas, particularly in the south and east, where the presence of the state is weak, and in 2009 they stepped up their attacks and ambushes.

The International Crisis Group suggests that under their new leader, Alfonso Cano, the Farc have shown themselves able to adapt and fight on.

In December 2009, the Farc and the smaller National Liberation Army (ELN) announced they were joining forces against the state. But it was not clear to what extent this was a practical proposition, as the two groups have clashed in some regions, mainly over control of the drugs trade.

NATIONAL LIBERATION ARMY (ELN)

The left-wing group was formed in 1965 by intellectuals inspired by the Cuban revolution and Marxist ideology.

It was long seen as more politically motivated than the Farc, staying out of the illegal drugs trade on ideological grounds.

The ELN reached the height of its power in the late 1990s, carrying out hundreds of kidnappings and hitting infrastructure such as oil pipelines.

The ELN ranks have since declined from around 4,000 to an estimated 1,500, suffering defeats at the hands of the security forces and paramilitaries.

However, in Ocotber [sic] 2009, ELN rebels were able to spring one of their leaders from jail, indicating that they are not a completely spent force.

The group's main source of funding is also now drug trafficking, rather than ransom or "protection" payments.

There have been several rounds of exploratory peace talks with the government in recent years, held in the Cuban capital, Havana, but no concrete progress.

The group is on US and European lists of terrorist organisations.

UNITED SELF DEFENCE FORCES OF COLOMBIA (AUC)

This right-wing umbrella group was formed in 1997 by drug-traffickers and landowners to combat rebel kidnappings and extortion.

The AUC had its roots in the paramilitary armies built up by drug lords in the 1980s, and says it took up arms in self-defence, in the place of a powerless state.

Colombia extradited 15 ex-paramilitary leaders to the US in May 2008

Critics denounced it as little more than a drugs cartel.

The AUC's influence stemmed from its links with the army and some political circles, and its strength was boosted by financing from business interests and landowners.

The group has carried out massacres and assassinations, targeting left-wing activists who speak out against them.

> In 2003, a peace deal was signed with the AUC, under which paramilitary leaders surrendered in exchange for reduced jail terms and protection from extradition.
>
> However, the Colombian authorities have extradited 17 former paramilitary leaders to the US to face drug trafficking charges since 2008, saying they had violated the terms of the peace deal.
>
> Since 2003, some 31,000 paramilitary fighters have been demobilised.
>
> But the legal framework underpinning the process has been widely criticised for allowing those responsible for serious crimes to escape punishment.
>
> There is also evidence that new armed gangs have formed.
>
> The International Crisis Group, in a 2007 report, highlighted concerns over the merging of former paramilitary elements with powerful criminal organisations, often deeply involved with drug trafficking.
>
> Inquiries have also been opened into dozens of current or former members of congress over their alleged ties to the AUC in what has been dubbed the "parapolitics" scandal.
>
> The AUC is on US and European lists of terrorist organisations.
>
> (BBC News, "Profiles: Colombia's armed groups," as updated on 23 December 2009, http://news.bbc.co.uk/2/hi/americas/4528631.stm)

32. The following information indicates that over the years FARC has kidnapped men, women and children from various sectors of the Colombian population. An article published on the *Colombia Journal* website describes the kind of people targeted for kidnapping by FARC and outlines the reasons for such kidnappings:

> The FARC has utilized kidnapping and detention, not only for political gain, but also for other purposes. Essentially, there are three categories of prisoners held by the FARC: high-profile political prisoners such as [French-Colombian Ingrid] Betancourt… and other politicians and government officials; police and soldiers captured in battle who could be considered prisoners of war; and kidnapped civilians who are held for ransom.
>
> In addition to those politicians that it kidnaps for political purposes and the prisoners of war that it holds captive, the FARC has also abducted civilians to hold for ransom in order to help fund its insurgency. Those kidnapped in order to raise revenues are primarily from the middle and upper classes as they are the ones best situated to pay ransoms. Unlike political kidnapping, this revenue-raising strategy has proven successful from a tactical perspective. However, many would argue that the negative political and public image fallout that has resulted from this strategy significantly outweighs the financial benefits accrued through the practice
>
> (Leech, G., 'FARC Should Release All Civilian Hostages', Colombia Journal, 2 April 2008, http://www.colombiajournal.org/colombia281.htm)

33. The US Department of State report on human rights practices in Colombia for the year 2007 provides the following information on FARC kidnappings:

> …FARC and ELN terrorists continued to take hostages for ransom. The FARC and ELN also kidnapped politicians, prominent citizens, and members of the security forces to use as pawns in a prisoner exchange. The National Indigenous Organization (ONIC) stated that through July the FARC kidnapped 12 indigenous persons.
>
> … Fondelibertad reported that during the year guerrillas kidnapped 149 persons (38 percent

of those in which a perpetrator was identified), the FARC 121 persons, and the ELN 28 persons.

Kidnapping for ransom remained a major source of revenue for both the FARC and ELN.

("Colombia", the US Department of State, *Country Reports on Human Rights Practices for 2007* [Washington DC, March 2008]).

34. A 2008 report located on the Colombian Commission of Jurists website states:

> According to data of the País Libre Foundation, 8,451 persons were kidnapped between January 2002 and December 2007. Of the total number of kidnappings registered in that period, 23% of the victims are women (1,944) and 14.6% are younger than 18 years (1,235). The alleged perpetration is attributed, in 76.8% (6,491) of the cases to common delinquency, guerrilla groups, and paramilitary groups. Of this number, 2,410 cases are attributed to the FARC-EP guerrilla group, 1,474 to the ELN guerrilla, 511 to paramilitaries, 141 to dissidents of these groups and other organizations. Also, a few cases are known in which active or retired State agents have participated. However, official statistics do not divulge the cases of hostage-taking perpetrated by State agents.
>
> … During the course of this year, 21 persons who were in the hands of the FARC have been freed thanks to the good offices of international facilitators, to unilateral gestures, and to a military operation. However, an understanding has not been possible between the guerrilla and the Government to lead to humanitarian agreements guaranteeing the life and integrity of the 1,512 persons who remain in captivity, their prompt return to freedom, and the full respect of international humanitarian law.
>
> (Colombian Commission of Jurists, 'Report for the Universal Periodic Review on Colombia', July 2008, pp.2-4, www.coljuristas.org/archivos/ngouprcol.pdf)

35. A variety of sources report that civilian hostages kidnapped by FARC include wealthy landowners, religious leaders and practitioners, journalists, teachers, medical workers, nurses, researchers, university students, peasants, farmers, indigenous persons as well as tourists, U.S. defence contract workers and missionaries (sources consulted include the US Department of State's, *International Religious Freedom Report for 2008 - Colombia*, September 2008, Section II; Section 1.f of the "Colombia" chapter of the US Department of State's *Country Reports on Human Rights Practices for 2007*, March 2008; 'Two guerrillas escape in lieu with two kidnapped in Los Llanos', *CACOM 2 (Comando Aéreo de Combate No.2)* website, source: El Espectador, 13 January 2009, http://www.fac.mil.co/index.php?idcategoria=34444; Hanson, S., 'FARC, ELN: Colombia's Left-Wing Guerrillas', Council on Foreign Relations website, 11 March 2008, http://www.cfr.org/publication/9272; 'New Farc kidnappings in Colombia', BBC News, 14 January 2008, http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/7188509.stm; 'Colombia FARC Kidnap 10 During Prayers in Meta' (undated), Latin American Herald Tribune, http://www.laht.com/article.asp?CategoryId=12393&ArticleId=323850, accessed 30 January 2009; Special Contingency Risks (SCR), 'Kidnap Bulletin', August 2006, pp.5-6 http://www.scr-ltd.co.uk/documents/SCR_Kidnap_Bulletin_August_2006.pdf; Watchlist on Children and Armed Conflict, *Colombia's War on Children*, February 2004, http://www.watchlist.org/reports/files/colombia.report.php).

36. Independent sources (e.g., ABC News, "Colombia's FARC rebels battered, but surviving," 16 September 2008, http://www.abc.net.au/news/stories/2008/09/16/2365661.htm?site=news; see also http://ckutnews.wordpress.com/2007/06/14/humanitarian-crisis-in-ciudad-bolivar-colombia/) indicate that FARC sometimes co-opts local gangs to carry out some of the criminal activities.

37. Independent evidence indicates that Colombians are at risk of deportation and do not enjoy protection from being forcibly returned from neighbouring counties like Ecuador and Venezuela (US Committee for Refugees and Immigrants, *World Refugee Survey 2009*, Ecuador and Venezuela chapters, US Committee for Refugees and Immigrants website http://www.refugees.org/countryreports.aspx?id=2366).

Evidence to the Tribunal

38. As discussed earlier, the four applicants appeared before the Tribunal [in] February 2010 to give evidence and present arguments. The Tribunal took evidence from [Applicant 1a] and [Applicant 2a]. The other applicants [Applicant 2b] and [Applicant 1b] were also sworn in. The Tribunal indicated that it would not necessarily require [Applicant 2b] or [Applicant 1b] to give evidence. This was in consideration of [Applicant 2b]'s condition and in view of [Applicant 1b], from Peru, not having made any refugee claims of her own, having been included in [Applicant 1a]'s protection visa application only as a member of his "family unit" and not having been a witness to the relevant events in Colombia. However, the Tribunal indicated to all of the four applicants that if there was a desire that the two dependent applicants give evidence, all present were welcome to ask the Tribunal to hear from the latter before the conclusion of the hearing. No further request for the Tribunal to hear oral evidence from either [Applicant 2b] or [Applicant 1b] was made.

39. The Tribunal hearing was conducted with the assistance of an interpreter in the Spanish and English languages.

40. The two main applicants, [Applicant 2a] and [Applicant 1a], and their respective dependent applicants, [Applicant 1b] and [Applicant 2b], are unrepresented.

41. During the hearing, the Tribunal listened to evidence from [Applicant 1a] and [Applicant 2a] relating to such matters as negotiations with the kidnappers back in 1994, threats received over the years since then, the way in which FARC identified itself during occasions when it threatened the family, and the shooting of [Applicant 1a] in January 2006. [Applicant 1a]'s account of the shooting in 2006, an account apparently supported by medical evidence, included plausible details that suggested it occurred in the context of some kind of conspiracy not inconsistent with the one that is claimed to have affected his family since the time of the kidnapping of [Ms A].

42. By the evidence of both [Applicant 1a] and [Applicant 2a], it appeared the threats and harassment against their family increased upon the release of [Person A] in 2004. Both [Applicant 1a] and [Applicant 2a] gave evidence about the difficulty in Colombia for anyone trying to secure protection from the state from harm from armed gangs like the one they claimed to be led by [Person A] whether he was connected with FARC or not. Both of the main applicants said they believed FARC was involved in the ongoing harassment because the people who used to threaten them always associated themselves with FARC's 34th front. They were not so clear in the linking of [Person A] to FARC, but they did say that they heard indirectly of his involvement in the kidnapping, for which FARC had claimed responsibility, and they both accused [Person A] of directing the harassment against them after his acquittal.

43. The Tribunal put to both of the main applicants that a potentially significant issue in their case was whether or not the harm they fear is Convention-related harm. The Tribunal explained to the applicants that, putting aside the issue of the credibility of their claims, and the "well founded"-ness of their fear, it was necessary for the Tribunal to determine whether

the essential and significant reason for the harm they feared is a Convention-related reason: "race, religion, nationality, membership of a particular social group or political opinion". Essentially, the Tribunal had to be satisfied that the perpetrators of the harm, in this case a non-state source, would harm them for a Convention-related reason and/or that the state would fail to provide protection to them from that harm for a Convention-related reason.

44. The two main applicants were put on notice in the delegate's decision about the importance of establishing a Convention nexus for the harm feared. [Applicant 2a] and [Applicant 1a] both acknowledged the delegate's findings as to a lack of convention nexus by listing in separate but identically-written submissions to the Tribunal what they regarded as the essential and significant reasons for the harm they fear.

45. In their submissions, at RRT file 0909643 folio 27 and RRT file 0909647 folio 35 respectively, [Applicant 1a] and [Applicant 2a] said their family constitute members of a "particular social group" which they described as "victims of FARC or some criminal group". They both said that after exhaustive investigations the authorities in Colombia had not been able to ascertain who the authors of the crimes affecting them had been. They both indicated in their separate statements that their family was targeted by "who knows? a group affiliated to FARC or simply, or a criminal group affiliated to FARC, or simply a criminal group operating on its own."

46. The two main applicants also said in their written submissions to the Tribunal that there was a mercenary motivation for the harm inflicted upon them, as evidenced by the ransom demanded for the release of [Ms A]. However, they claimed, the motivation for harming them had moved beyond the purely criminal, mercenary motivation in the beginning to become a desire punish the family for its defiance, in not complying with the kidnappers demands, and for informing the authorities who then led an "exhaustive investigation which put the authors and coauthors of the crime at risk."

47. At the hearing, both [Applicant 1a] and [Applicant 2a] reiterated that the motivation for kidnapping [Ms A] was mercenary. [Applicant 1a] said that money was the motive. [Applicant 2a] said their adversaries only wanted money. There was some discussion about the possibility of using the intended ransom money to further FARC's political agenda, but neither [Applicant 1a] nor [Applicant 2a] appeared to suggest in any way at the hearing that their family was targeted in the kidnapping plot for reasons of their race, religion, nationality, membership of a particular social group or political opinion. At the same time, they both said that they were having some difficulty arguing Convention nexus in relation to their protection visa applications because they were unrepresented. The Tribunal undertook to take this into account.

48. The Tribunal reminded the two main applicants at the hearing that they had raised the suggestion in their written submissions that they might have been targeted for serious harm for reasons of being members of a "particular social group" described by them as "victims of FARC or some criminal group" The Tribunal put to the two main applicants that the problem with this proposal as to "membership of a particular social group" was that the group was to a significant extent characterised by the harm it feared: it was a circular formulation to suggest, say in the case of FARC, that FARC wanted to victimise them because they were victims of FARC, or in the case of [Person A]'s gang that the gang wanted to victimise them because they were the gang's victims. (see discussion under **FINDINGS AND REASONS** below)

49. [Applicant 1a] asked on behalf of himself and [Applicant 2a] asked if they could seek help from someone in Colombia to find out if such a person might be able to suggest a Convention-related factor for the harm they feared. The Tribunal considered the request, but decided not to grant the applicants a specified period of time for further submissions. The Tribunal would of course consider, nevertheless, any information submitted by them up to the time of its decisions. The Tribunal put to the two main applicants that their own recollections might be helpful to the process of considering whether or not any Convention-related reasons were essential and significant factors in the harm they feared. The Tribunal proposed asking the applicants questions about the circumstances in which [Ms A] was kidnapped, about what was said during the ransom/release negotiations and about other clues as to how they might have been regarded in the eyes of their tormentors over the years.

50. The Tribunal tried to prompt the applicants to see if they could recall any motivation for the kidnapping of [Ms A] beyond a desire for money, and to see if they could recall whether FARC might have targeted them for reasons additional to seeing them as a potential source of FARC revenue. The applicants did not suggest that [Ms A] or the family were targeted for reasons of class or socio-political status.

51. The Tribunal asked [Applicant 1a] and [Applicant 2a] why they thought [Ms A] had been targeted in the first place and they said it was probably because [Ms A]'s father was locally known to have money. The Tribunal asked why the kidnappers might have assumed their family had money and [Applicant 2a] said her ex-husband owned a [business].

52. The Tribunal turned its mind to whether it could reasonably be inferred from this information that, on the basis of [Applicant 2a]'s ex-husband's ownership of the [business], this might have characterised him and/or his family in the minds of FARC as a member of a particular social group such as "the middle class" or "businesspeople" or "families of businesspeople" or suchlike. The applicants tended to say, however, that this kind of thing was happening to "lots of people" or "everybody", a fact that seemed to be made out in some of the independent country information cited earlier, where it is indicated that FARC has been linked to the kidnapping-for-ransom of women, children, wealthy landowners, religious leaders and practitioners, journalists, teachers, medical workers, nurses, researchers, university students, peasants, farmers, indigenous persons as well as tourists, U.S. defence contract workers and missionaries.

53. The Tribunal asked the two main applicants if the kidnappers had ever used specific words to characterise any members of their family, such as might suggest that their family was perceived by the kidnappers as belonging to a cognisable group in society, and targeted by them for such reasons. [Applicant 1a] said he had heard that the kidnappers called his father names. The Tribunal asked him if he could recall any of the names his father had been called, and he said his father had been called a "son of a bitch" by the kidnappers during the ransom negotiations. [Applicant 2a] could not recall her family having been classified in any particular way by the kidnappers. She said she cried a lot at the time of the kidnapping, suggesting that she was distracted (understandably) by more immediate concerns over the abduction of [Ms A]

54. [Applicant 1a] and [Applicant 2a] told the Tribunal that the people seeking to harm them now were probably angered at not having received the money they set out to extort. They said that the people seeking to harm them now were motivated by revenge for the actions taken by the family over the years, in not paying the ransom and getting the police involved to a point where [Person A] was arrested, charged and detained pending trial.

55. Both [Applicant 1a] and [Applicant 2a] said that the kind of thing they suffered is happening to lots of families. They said this in reference to the original kidnapping and, implicitly, to the events that followed it, and they also said this in regard to the failure of the state to protect them.

56. The two main applicants indicated that in the event of the Tribunal not being able to find in their favour for some reason, they wished their case to be considered by the Minister with regard to non-binding powers available to him under s.417 of the Act.

FINDINGS AND REASONS

57. The Tribunal accepts on the passport evidence that [Applicant 2a] and [Applicant 1a] and [Applicant 2b] are all Colombian nationals.

58. The Tribunal accepts that these three applicants are related as claimed: a mother and her two sons.

59. The Tribunal accepts that [Applicant 2a] was formerly married to [name deleted: s.431(2)]. The Tribunal accepts they were divorced in 2000.

60. The Tribunal accepts that [Applicant 2a] has or had a third child called [Ms A], a daughter who was kidnapped in 1994 in circumstances where a ransom was demanded, negotiated and ultimately not paid. The Tribunal accepts that [Ms A] was never released or returned after the failure to resolve the ransom issue.

61. The evidence indicating that FARC was responsible is somewhat problematic: without equivocation both [Applicant 2a] and [Applicant 1a] asserted at hearing that the kidnappers identified themselves in ransom negotiations as members of the 34th front of FARC, and generally indicated to the Tribunal that they believed for their own part that the kidnappers were indeed members or affiliates of FARC. However, as noted, both [Applicant 2a] and [Applicant 1a] indicated in their written statements to the Tribunal that they were not sure who was responsible for the kidnapping, where they each said the kidnappers were "who knows? a group affiliated to FARC or simply, or a criminal group affiliated to FARC, or simply a criminal group operating on its own."

62. The Tribunal, accepting that [Ms A] was kidnapped for ransom in 1994 is prepared to accept it as quite likely that her kidnappers were affiliated with FARC. The use of a local criminal gang to carry out the kidnapping does not necessarily preclude the involvement of FARC, as indicated in some of the country information cited earlier (see paragraph 36).

63. It seems less certain to the applicants that the person identified here as [Person A] was an actual member of FARC and that he was responsible for the original kidnapping, although they claim to have heard to their satisfaction how he might have been, but what the evidence clearly argues is that [Person A] was arrested in connection with the kidnapping and held and tried, and afterwards acquitted. The two main applicants have argued that [Person A] is a local gangster and they claim that [Person A] and his cronies have seriously harassed them over the years in response to his arrest. The Tribunal accepts that this has happened.

64. The Tribunal accepts [Applicant 2a]'s argument as to why she never left [Town A] and never tried to seek refuge outside of Colombia until recently. It is reasonable to expect that a mother might hang on at some risk to herself in the hope that her daughter might one day

reappear, and in this particular case, [Applicant 2a] has evidently continued to care for [Applicant 2b], who has evident health and social needs; this would have limited her choices as to the seeking of refuge inside and outside of Colombia.

65. The Tribunal accepts on the evidence before it that there is a greater than remote, and therefore *real* chance that [Person A] and his cronies and/or FARC will continue to harass and harm to the [Applicant] family in the reasonably foreseeable future, notwithstanding evident government success (or claims of success) in combating FARC and criminal gangs in some respects in recent years. The Tribunal is satisfied that the harm described is serious harm to the persons of the applicants, as evidenced in the shooting of [Applicant 1a], within the meaning of s.91R(1)(b) of the Act.

66. The Tribunal accepts that the authorities would have difficulty protecting the [Applicant] family from harm at the hands of the adversaries identified in these applications for the very reasons that the two main applicants have provided: the authorities' resources are stretched in circumstances where organised crime can and does impinge on the lives of the population generally. The two main applicants put it very simply and clearly: the police cannot protect everybody; and they did not suggest that the police are, in those circumstances, selective or discriminatory, let alone in any Convention-related way, about which kind of people they will or will not protect.

67. The Tribunal notes that [Applicant 2a] and [Applicant 2b] did not seek protection in the USA. One might take the view that they did not take reasonable steps to avail themselves of the protection in a third country by not remaining in the USA and by not claiming asylum there. The Tribunal has considered that in the absence of [Applicant 1a], whose evidence could be regarded as adding weight to their story, it seems reasonable to expect that [Applicant 2a] might have believed that an application, by herself and [Applicant 2b], for protection in the USA would be futile.

68. All things considered, the Tribunal draws no negative inferences as to the credibility of the applicants' claims from an apparent lack of attempts to seek refuge abroad until their recent arrival and reunion in Australia.

69. The Tribunal draws no negative inferences from the fact that [Applicant 1a] entered Australia on a student visa or from the fact that he might have utilised the visa and studied here for a substantial period.

70. The Tribunal is of the view that, ultimately, the central issue in this case is a matter of nexus to the Convention.

71. As discussed in paragraphs 21 and 22 above, s.91R(1)(a) of the Act requires:

> 91R Persecution
>
> For the purposes of the application of this Act and the regulations to a particular person, Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless:
>
> (a) that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution; …

72. Whether or not a Convention reason can be regarded as the essential and significant reason for the harm feared is a question of fact to be determined on the evidence.

73. As noted, the applicants claim that the motivation for kidnapping [Ms A] was to raise money. They claimed that their family may have been targeted for the kidnap because of an assumption about their family having money. They claim that the persecution since the kidnapping, the persecution that they claim to face in the reasonably foreseeable future is motivated by anger over the failure to pay the ransom and by revenge over the implication of [Person A] in the original kidnapping. The applicants, who fear being victimised by FARC and/or a local criminal gang, have tried to define themselves as a "particular social group" characterised as "victims of FARC and/or criminal gangs". They do not claim fear of persecution for reasons of race, religion, nationality or for reasons of actual or imputed political opinion.

74. Focusing on the question of "membership of a particular social group", the Tribunal has had regard to the guidance of the Courts provided in a number of leading cases including *Applicant A & Anor v MIEA & Anor* (1997) 190 CLR 225, *Applicant S v MIMA* (2004) 217 CLR 387, *Morato v MILGEA* (1992) 39 FCR 401 and *Ram v MIEA & Anor* (1995) 57 FCR 565.

75. *Applicant A*'s case remains the leading judgment on particular social group. After reviewing statements made in that case, Gleeson CJ, Gummow and Kirby JJ in the joint judgment in Applicant S v MIMA summarised the determination of whether a group falls within the Article 1A(2) definition of "particular social group" in this way:

> First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in Applicant A, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". As this Court has repeatedly emphasised, identifying accurately the "particular social group" alleged is vital for the accurate application of the applicable law to the case in hand. [at [36] per Gleeson CJ, Gummow & Kirby JJ]

76. Justice McHugh in *Applicant S* summarised the issue in broadly similar terms:

> To qualify as a particular social group, it is enough that objectively there is an identifiable group of persons with a social presence in a country, set apart from other members of that society, and united by a common characteristic, attribute, activity, belief, interest, goal, aim or principle. [at [69] per McHugh J]

77. Justice Gummow in *Applicant A* (at 285, citing *Ram* at 569) found:

> There must be a common unifying element binding the members together before there is a social group of that kind. When a member of a social group is being persecuted for reasons of membership of the group, he is being attacked, not for himself alone or for what he owns or has done, but by virtue of his being one of those jointly condemned in the eyes of their persecutors, so that it is a fitting use of language to say that it is 'for reasons of' his membership of that group.

78. In Applicant A (at 242), Dawson J stated:

> There is more than a hint of circularity in the view that a number of persons may be held to fear persecution by reason of membership of a particular social group where what is said to unite those persons into a particular social group is their common fear of persecution. A group thus defined does not have anything in common save fear of persecution, and allowing such a group to

> constitute a particular social group for the purposes of the Convention "completely reverses the statutory definition of Convention refugee in issue (wherein persecution must be driven by one of the enumerated grounds and not vice versa)" That approach would ignore what Burchett J in Ram v Minister for Immigration called the "common thread" which links the expressions "persecuted", "for reasons of", and "membership of a particular social group", namely:
>
>> "a motivation which is implicit in the very idea of persecution, is expressed in the phrase 'for reasons of', and fastens upon the victim's membership of a particular social group. He is persecuted because he belongs to that group".

79. In the same case (at 263) McHugh J said:

> The concept of persecution can have no place in defining the term "a particular social group". ... Allowing persecutory conduct of itself to define a particular social group would, in substance, permit the "particular social group" ground to take on the character of a safety-net. It would impermissibly weaken, if it did not destroy, the cumulative requirements of "fear of persecution", "for reasons of" and "membership of a particular social group" in the definition of "refugee".

80. *Applicant S* establishes that there is no requirement of a recognition or perception within the relevant society that a collection of individuals is a group that is set apart from the rest of the community.

81. Having regard to the views of various Courts, the Tribunal finds that the applicants' characterisation of themselves as persons who fear harm from FARC and/or criminal gangs for reasons of being "victims of FARC and/or criminal gangs" is a circular one in the sense discussed in *Applicant A* at 242: persecution and, indeed, the specific sources of persecution define and unite the group. Insofar as the characterisation as "victims of FARC and/or criminal gangs" is applied with regard to FARC, [Person A], his gang or any criminal gang, it is cannot correctly be regarded as a "particular social group" in the present case.

82. With regard to the state, and state protection, [Applicant 1a] and [Applicant 2a] do not even argue that the state will fail to protect them *because* the state views them as "victims of FARC and/or criminal gangs". They simply claim that the state is unable to protect them due to limited resources to protect *everybody* Meanwhile, the independent country information argues convincingly, in the Tribunal's view, that the state genuinely tries to protect its citizens from harm by both FARC and criminal gangs. The Tribunal is not satisfied on the facts before it that any failure of the Colombian state to protect the applicants' family would involve any systematic or discriminatory conduct for any Convention-related reason by the authorities.

83. The Tribunal has taken into account the fact that the applicants are unrepresented and might have had some difficulty articulating legal argument in support of their applications. The Tribunal has thus considered that the applicants might mean to claim fear persecution in Colombia for reasons of being actual or imputed "opponents of FARC and/or criminal gangs" or actual or imputed "class enemies of FARC and/or criminal gangs".

84. Putting aside membership of these potential "particular social groups", for the moment, as potential reasons for harm *more directly* at the hands of FARC and/or Colombian criminal gangs, the Tribunal finds that the evidence in these applications does not support the position that this is, or would be, a reason for denial or failure of state protection. The two main applicants' evidence with regard to state protection, again, indicates that the state's willingness or unwillingness is not an issue. The main applicants' evidence with regard to

state protection is evidence of the state simply being limited in its logistical capacity to protect everyone all the time.

85. Also relevant to the question of state protection on the basis discussed here, the independent country information does not support a conclusion to the effect that the authorities in Colombia would deny protection to its citizens from harm by either FARC or criminal gangs because of those citizens being opposed to or class enemies of either (or both). The Tribunal is not satisfied that the Colombian state will fail to protect the applicants for reasons of their being actual or imputed "opponents of FARC and/or criminal gangs" or actual or imputed "class enemies of FARC and/or criminal gangs".

86. The Tribunal is of the view that the authorities in Colombia demonstrate the implementation of reasonable measures to protect Colombian citizens and others in Colombia from harm at the hands of FARC and/or criminal gangs.

87. The Tribunal will now discuss whether membership of these (or other) "particular social groups" are essential and significant reasons why the applicants and their family face persecution from FARC and/or criminal gangs. The main applicants' own evidence does not support such a finding, i.e., as a question separate from the question of effective state protection.

88. The main applicants' own evidence is that the kidnapping of their family member [Ms A] was motivated by an interest in obtaining money by force. Both of the main applicants have described a case of extortion here; they told the Tribunal that the kidnappers just wanted money. Their evidence regarding the motivation for the harm they face now and in the foreseeable future is that they will be harmed for having failed to pay the ransom once demanded of them and for the perception of their role in the process that saw [Person A] arrested, charged, detained and tried. Here the applicants indicated to the Tribunal that [Person A] and his gang seek revenge for something their family is perceived to have done and/or not done.

89. It was observed in the case of *Rajaratnam v MIMA* (2000) 62 ALD 73 that "extortion can be a multi-faceted phenomenon exhibiting elements both of personal interest and of Convention-related persecutory conduct". Therefore, the Tribunal acknowledges, it would be erroneous to apply a simple dichotomy as to whether the perpetrator's interest in extortion is personal *or* Convention related; in some cases it may be both. With this in mind, the Tribunal is wary of making too much of the very broad distinction provided in one of the reports cited above where it is said: "Those kidnapped in order to raise revenues are primarily from the middle and upper classes as they are the ones best situated to pay ransoms. *Unlike political kidnapping*, this revenue-raising strategy has proven successful from a tactical perspective."

90. Also, in *SHKB v MIMIA* [2004] FCA 545 (Selway J, 5 May 2004) at [12] it was held that the Tribunal, at the very least, was required to determine whether or not it was satisfied that those seeking retribution against the applicant were doing so as an aspect of a broader political or racial campaign against the applicant, or were doing so for reasons unrelated to that campaign.

91. The applicants suggested there might have been some socio-economic profiling that went into the targeting of their family in the matter of the 1994 kidnapping: they suggested the kidnappers might have assumed their family had money to a ransom because [Applicant 2a]'s ex-husband operated a [business]. However, the Tribunal does not accept on the evidence

before it that the kidnap and ransom demand were to any significant and essential degree motivated by the perception that the applicants' family were members of any particular social group. Notwithstanding that extortion in some cases might be both personal and Convention-related, the Tribunal finds in this case that the kidnapping of [Ms A], and the extortion that went with it, was not Convention-related.

92. In any event, significant factors have since intervened. The family did not pay the ransom and [Ms A] was not returned. The extortion evidently played out to its threatened conclusion. The implication of [Person A] in the crime is a new factor and this alone, on the evidence, is what gives rise to the applicants' fear of persecution now. They do not suggest that anyone is still demanding the unpaid ransom. No serious harm came to any other member [of Ms A]'s family until after [Person A] was released and was, evidently, on the scene again. The Tribunal, as noted is required to determine whether or not it was satisfied that those seeking retribution against the applicants are doing so as an aspect of a broader political or racial (or otherwise Convention-related) campaign against the applicants, or are doing so for reasons unrelated to such a campaign. The applicants' evidence indicates to the Tribunal only that personal criminal interests are the motivation for the harm they continue to face in Colombia.

93. The applicants may be implicitly claiming that they face persecution in Colombia for reasons of being members of a particular social group defined as "the family of [Ms A]."

94. Relevant to this, section 91S of the Act requires:

> For the purposes of the application of this Act and the regulations to a particular person (the first person), in determining whether the first person has a well-founded fear of being persecuted for the reason of membership of a particular social group that consists of the first person's family:
>
> (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol; and
>
> (b) disregard any fear of persecution, or any persecution, that:
>
> (i) the first person has ever experienced; or
>
> (ii) any other member or former member (whether alive or dead) of the family has ever experienced;
>
> where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

95. The Tribunal does not accept on the evidence before it that [Ms A] or her family, including the two main applicants and [Applicant 2b], were targeted for a Convention-related reason. The Tribunal finds on the evidence before it that the essential and significant reason for the harm the applicants now fear is entirely personal retribution for their family's perceived role in the implication of [Person A] in the crime of kidnapping [Ms A]

96. The Tribunal has considered if for any other potentially Convention-related reason the state would deny, or fail to provide, protection to the main applicants and their family members and is not satisfied that it would.

97. In this matter, [Applicant 1b], who is identified as the *de facto* spouse of [Applicant 1a], does not claim to be a refugee in her own right. In view of findings made in relation to the main applicants, it is not necessary for the Tribunal to test whether she is really a part of [Applicant 1a]'s family unit. As a person included in the primary decision in [Applicant 1a]'s case, she is included in this decision.

98. The Tribunal is not satisfied on the evidence before it that the applicants face a real chance of *Convention-related* persecution in Colombia. They are not refugees.

CONCLUSIONS

99. The Tribunal is not satisfied that any of the applicants is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

REFERRAL OF HUMANITARIAN CLAIMS TO THE MINISTER

100. The applicants have requested that the Tribunal refer their cases to the Department for consideration by the Minister pursuant to s.417 of Act which gives the Minister discretion to substitute for a decision of the Tribunal another decision that is more favourable to the applicant, if the Minister thinks that it is in the public interest to do so.

101. The applicants fear harm from a criminal gang with evident links to FARC. Although the state is making efforts to protect individuals from extortion and from violence related to extortion, there is a real chance, as demonstrated by a quite recent shooting, that the state will be unable to protect the applicants. The particular circumstances and personal characteristics of the applicants provide a basis for believing that there is a significant threat to their personal security, human rights or human dignity should they return to Colombia. The applicants have been and may be individually subjected to a systematic program of harassment or denial of basic rights available to others in their country, mistreatment that which could amount to persecution but which has not occurred or is not likely to occur for a reason provided in the Refugees Convention.

102. The Tribunal has considered the applicants' case and the Ministerial guidelines relating to the discretionary power set out in PAM3 'Minister's guidelines on ministerial powers (s345, s351, s391, s417, s454 and s501J)' and will refer the matter to the Department.

DECISION

103. The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.

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

Sealing Officer: PRMHSE