

0903273 [2009] RRTA 701 (4 August 2009)

DECISION RECORD

RRT CASE NUMBER: 0903273

COUNTRY OF REFERENCE: Indonesia

TRIBUNAL MEMBER: Rodney Inder

DATE: 4 August 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Indonesia, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
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 applicant has 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. 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'

9. 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.

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

17. 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.
18. 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

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources. The Tribunal also has before it her application for review.
20. The applicant appeared before the Tribunal to give evidence and present arguments. At the conclusion of the hearing, it was adjourned at the applicant's request in order to enable applicant to further respond to the information that had been put to her during the hearing by the Tribunal. The Tribunal also received oral evidence from the applicant's partner, Mr A. The applicant was represented in relation to the review by her registered migration agent. Her adviser attended the hearing.

Claims made in her protection visa application

21. The applicant came to Australia for a holiday but claims she then learnt that an arranged marriage was being made for her in Indonesia, so she did not wish to return. She claims that if she returns to Indonesia, her family will force her to marry, as there is a tradition of arranged marriages in the family, and no consideration is given to her feelings in the matter. She claimed she does not want to marry the man chosen by her parents. The applicant also claims that she fears for her safety in marrying this man, and has genuine concerns about it. She claims that she loves her fiancé in Australia, and she doesn't want her human rights to be taken away from her by being forced to return to Indonesia where she will not have any dignity or be able to make any of her own decisions. She claimed she genuinely fears for her health and safety if she is forced to return to Indonesia.
22. The applicant claims that her family in Indonesia may harm or mistreat her as they are extremely disappointed in her and will force her to comply with their wishes, including the arranged marriage. She claims that her family are very resentful, hurt, and embarrassed about her "freedom" in Australia and that, if she returns to Indonesia, they will take all steps possible to prevent her from turning to Australia. She claims if she is forced into an arranged marriage in Indonesia, she will have no right or human dignity as a female there. She claims the authorities will not be able to assist her in any way as arranged marriages are common there, and women's rights are generally diminished. She claimed she will have no rights whatsoever as a female in Indonesia and it would be an abuse of her basic rights as a human being to be forced back to Indonesia into an arranged marriage, where her health and safety will be at risk.

Claims made to the Department

23. The applicant was interviewed by the department. In the interview, the applicant claimed that she had divorced her husband in Australia. She stated she is now engaged to Mr A. She claimed that, prior to coming to Australia, she lived alone in City A for several years, and her mother lived City B. She has had little contact with her mother since her marriage in Australia. She claims her mother was not happy with the fact that she was married in Australia but does not know about the divorce or her decision to remarry. She claimed inter alia that she did not want to be hassled by her mother to marry someone in Indonesia, and she was told she had to marry a Muslim named Mr B shortly before she came to Australia. Asked how her mother could force her to marry someone, she claims that her family would track her down and she could not go anywhere and she cannot work if her mother had confiscated her papers, and would deny her any freedom and she would be without the protection of the State. The adviser undertook to provide a further submission in regard to the applicant's claims.

Subsequent submission

24. Later the department received a fax from the applicant's adviser which attached a submission about the applicant. In this, he submitted that the applicant has a genuine fear and significant concern about her personal safety if she was forced to return to Indonesia, due to the fact she has wholly embraced the Australian attitude and philosophy to life, particularly in regard to women being treated as equal. It is submitted that physical intimidation and contract are allowed in Muslim culture and she fears for her physical safety and feels she should not be forced into an arranged marriage or should live with the man purely due to monetary or unjust family or other pressures. He submits that, if she returned to Indonesia, she would face a long life of persecution with a lack of safety and no enforcement of any rights, either as an individual or as a woman.
25. It is further submitted that the applicant is a committed Christian who was raised by her father, who was a Christian, but her mother is a Muslim: a faith which she has not followed as she believes it "devalues" women generally. It is submitted she does not wish to convert to the Muslim religion or have an inferior capacity in her life, but wants to share her future with her fiancé. After outlining the position of Muslim men in marriages, the adviser submits that the applicant's fiancé suffers from an illness requiring the applicant to care for him and they were living in a genuine and loving relationship. He also submits that the State would not enforce any rights for the applicant as she is a woman.
26. The adviser submits that the applicant is not getting on well with her mother; the only reason her mother allowed her to remain in City A was because the applicant supported her mother financially; if she had to return home, she would not have freedom or money; the applicant used to regularly visit her mother and support her emotionally and financially; she wants to have own personal life with a person she loves and not spend her life in a restricted society; and she does not wish her mother to decide her personal matters such as marriage.

Claims made in her application for review

27. No claims were made in the application for review.

Claims made at the hearing

28. In reply to questions put to the applicant by the Tribunal, the applicant claimed that everything she had stated in her protection visa application, application for review, and all other statements was true and correct; she completed the protection visa application form herself; and there were no changes she wished to make. The applicant stated that her passport had been legally issued to her in her name with her photograph and other details in it. She claimed she had never been to any other country; she spoke, read and wrote Indonesian and English; was born in City B, where her mother still lives, which is several hours drive from City A; and she lived in City A for about several years, prior to coming to Australia.
29. The applicant claimed that she was formerly engaged for the first time in Indonesia; she then became engaged to Mr C in Indonesia a year later, who she subsequently married; and she was now engaged for a third time to Mr A (although, in response to further questioning about when she actually divorced Mr C, she stated that the divorce was still being finalised so she was still married to Mr C and was not yet formally engaged to Mr A).
30. The applicant claims she completed high school in Indonesia and then completed diplomas. She claimed that, after finishing her education, she worked and was employed until she came to Australia.
31. The Tribunal put to the applicant that, at the beginning of the hearing, it had read to her the UN Refugee Convention definition and its criteria. Accordingly, it asked her to tell it why she believed she was a refugee. In reply, the applicant claimed she could not go home as her family will force her to marry someone. She claimed that even if she stayed in City A, she will still have to care for her mother and support her family. She claims that, if she goes home, she will be forced to marry a Muslim man and her mother and grandfather want her to marry a Muslim. Before discussing these claims, the Tribunal asked the applicant if there were any other reasons why she believed she was a refugee, and she replied that, if she returned home, she will be forced to marry a Muslim and then she could not do anything and would be under the control of her husband and have to live in accordance with his rules.
32. The Tribunal put to the applicant that she claimed her mother will force her to marry. However, she had already been married once and was planning to be engaged again; she was no longer a dependent, she was well-educated, and had a good work background; and the Tribunal could find no legal or other basis indicating that her mother had the power to force her to marry someone in Indonesia without her agreement. She replied her mother could. Asked how, she replied her family's rule is that the parents and grandparents can arrange marriages and she received a call from the mother about this, and previously, when she wanted to go to school and to study, her family had told her she could not study but rather she had to look after her husband. She claims that, if she returned Indonesia, she will again be in this situation.
33. The Tribunal also put to her that she had not lived with her mother for several years, and she claimed to be somewhat separated from her now, and so it did not understand how her mother could pressure her to get married to someone she did not wish to marry

In reply, the applicant claimed that, if she stayed in City A, she will still have to look after her mother. The Tribunal said that this had not happened since she had been in Australia, and the applicant acknowledged this, and added she had not been in contact with the mother for several months.

34. The Tribunal put to the applicant that she claimed she was a committed Christian, but her mother is a Muslim, a religion she thinks devalues women generally. She also claimed that if she returned Indonesia, she will have to convert to become a Muslim in order to marry a Muslim man. The Tribunal put to her that it did not understand this claim: indeed, it appeared contradictory to her own situation where her mother was a Muslim but her father was a Christian and she was brought up as a Christian in Indonesia. The applicant replied that the father can no longer support her, and her mother says she has to do as she is told. The Tribunal asked the applicant why she thinks she would be persecuted if she returned to Indonesia because she was a Christian, and she replied because she will be forced to marry a Muslim and follow his rules, so she will feel she would not be free to do anything any more.
35. The Tribunal put to the applicant that Indonesia's population is now over 240 million people and, while Muslims comprise 86.1% of the population, Christians nevertheless comprise 8.7%, so are a very large minority. The Tribunal put to her that the US State Department report on Religious Freedom in Indonesia in 2008 states that "The Ministry of Religious Affairs estimates that 19 million Protestants (referred to locally as Christians) and 8 million Catholics live in the country" -- which means that there are some 27 million Christians in Indonesia. It also states that "The Government generally respected religious freedom". It also states that "The Constitution provides for freedom of religion" and "all persons have the right to worship according to their own religion or belief." The Constitution states that "the nation is based upon belief in one supreme God." Further, the Tribunal put to her that it could find no evidence that Christians are persecuted in Indonesia. In view of this, the Tribunal again asked the applicant why she claimed she was a refugee because she was a Christian, and she to because her mother lives in City B and is Muslim.
36. The Tribunal referred to her claims that women are discriminated against in Indonesia; as a woman, she lacked personal freedom; women are not treated as equals; she will be forced into an arranged marriage by her mother; she will have no rights or human dignity as a female in Indonesia; and that the government would not enforce her rights as a woman. However, the US State Department Human Rights report dated 25 February 2009 states that "The law prohibits domestic abuse and other forms of violence against women. Although not explicitly mentioned, sexual harassment is against the law and actionable under the criminal code. The law states that women have the same rights, obligations, and opportunities as men". The Tribunal put to her that, while accepting the Indonesian culture is in some ways different to that of Australia, the above-mentioned country information indicates that women are not in fact discriminated against in Indonesia, let alone persecuted. Accordingly, it asked her on what basis she claimed to have a well founded fear of serious harm amounting to persecution for these reasons. In reply, the applicant claimed that the place she was born in Indonesia has arranged marriages, and she would have to respect the family. She claimed she could not work anymore as, once you are over a certain age, it was very hard to get a job, and she will be "put down" if she is not married.

37. The Tribunal referred to her claim that she had been denied freedom in Indonesia and she feared for her personal safety there, but again put to her that it could find no evidence to support this claim. The Tribunal asked the applicant to elaborate on this claim and to say what she feared. The applicant replied that she feared that she was now older and, as she is not married, she would not be respected due to her age and, as an unmarried woman, so would be put down. She claims if she went home, she will have to enter into an arranged marriage and have to change her religion, and she feels it unsafe and does not want to be told what to do.
38. The Tribunal put to the applicant that she arrived in Australia but did not apply for a protection visa until a year later. It put to her that, if she had a well-founded fear of persecution because of her gender; fear of being forced into an arranged marriage, because of her religious beliefs; or for any other reason; then she would have applied for a protection visa on or immediately after her arrival in Australia. It asked her why she did not do so. In reply, the applicant claimed that, at the time, she was in a relationship with Mr C and came to Australia without her mother's knowledge in order to meet his family, so there was no need to stay or to marry. However, when her mother found out she was in Australia, she became angry, so Mr C said they should get married. Asked why her mother was upset because she came to Australia, the applicant replied because she was attached to her and depended on her for her financial support. She claimed the mother also does not like westerners. She claims in Indonesia it is the custom that children should support their family. Asked if she had sent any money back to her family since she had been in Australia, the applicant replied in the affirmative -- but has not done so for the last 12 months.
39. The Tribunal asked the applicant why it would not be reasonable for her to return to Indonesia and again live in City A, or indeed somewhere else in Indonesia, if she did not want to return to City B where she had not lived for several years. The applicant replied that she couldn't return and she doesn't have anything there; does not have any money to support you or to pay rent; and claimed it would be hard to find a job as it is difficult for women who are her age and single to do so.
40. The Tribunal asked the applicant what she thought would happen to her if she went back to Indonesia. The applicant replied that she would be forced to marry and change her religion, and she would not feel safe and so would not be happy. Asked again why she could not live elsewhere in Indonesia, the applicant replied that she lived in Australia and had lost contact with her friends and family in Indonesia. Asked if there were any other claims or other matters she wished to put before the Tribunal before the hearing closed, the applicant replied in the negative.
41. The witness, who appeared on behalf of the applicant, stated he had never been to Indonesia. Asked, therefore, on what basis he could comment on what would happen to the applicant if she returned to Indonesia, the witness replied he was not aware of the situation in Indonesia, other than from what he read on the Internet and in newspapers. However, he was aware that they still have child brides there and some men have several wives. Asked if there was anything else he wanted to say in support of the applicant's refugee claims, the witness stated he believed the applicant was sincere and telling the truth, so should not be sent into an arranged marriage where she was not comfortable. Asked if he had anything else to add, the witness said that they were in love and he didn't want to see her forced into another relationship. He also has medical problems, which she assists him with.

42. Prior to the commencement of the hearing, the adviser had stated that he had misunderstood the purpose of the hearing, and thought it was purely convened to schedule the hearing, not to conduct the hearing itself, and requested time to arrange for a barrister to be present. The adviser also requested more time in order to be able to submit details of the witness's medical condition. The Tribunal explained that the purpose of the hearing was to explore the applicant's refugee claims directly with her, and commented it was rare for barristers to attend Tribunal hearings. However, it mentioned that, after going through the formalities of both the purpose and what was involved in hearing, and then putting some questions to the applicant in order to explore her claims, it would then provide the opportunity for either the hearing to be adjourned to enable the applicant to further respond to the information that had been put to her at the hearing, or to receive a further written submission from her on this matter.
43. Asked if he had any questions to put the applicant, or if he wanted to put any further points to the Tribunal on top of those he had already made in his submission, the adviser said he had nothing to say other than repeat he had not expected the hearing to be the actual hearing, but rather understood its purpose as being to set the date for the hearing. After some discussion between the applicant and her adviser, the applicant requested that the hearing be adjourned, which was agreed to by the Tribunal.

Resumed hearing

44. After reminding the applicant and the witness that this was a resumption of the hearing that commenced the month before, and that they were still both under oath, the Tribunal explained that the purpose of the adjourned hearing was to enable the applicant to have an opportunity to respond to or comment on any information that it had put to her at the hearing. The Tribunal said that it was not going to go through all its questions again, but rather asked her if she wanted to respond to the information it had put to her. The applicant's adviser intervened and said that the applicant had indicated that she wanted to address the Tribunal herself, without the presence of both the witness and her adviser, and the Tribunal agreed to this.
45. Asked again if there was anything she wanted to say by way of response or comment on information that had been put to her, the applicant replied that she had been looking for proof to support claims, but had not been able to get any evidence to say what had happened to her life. She wanted to say she had been looking for proof but could not find any and she did not have any plans for what happened for her life. She was not [happy] crying or being angry, and showing how she felt to everybody, but it was too much and she could not say how she will respond if she has to go back to Indonesia as she cannot eat or sleep. She claimed she did not have anyone, and everything was with her family, but her situation is very hard and she is not used to crying in front of everyone, especially after a family tragedy, which changed her life, and she tried to be strong and support her family.
46. The Tribunal reminded the applicant that the hearing was an opportunity to be able to respond to the information that had been put to her, and the objective was to explore why she thought she had a well-founded fear of persecution and was a refugee. She replied that she did not know how to get the evidence, so the Tribunal asked her how she had been persecuted in Indonesia.

47. In reply, the applicant claimed that every time she went there, they spoke about her being alone without a husband so said she had to get married, and they did not like her response. She claims they always said they would choose husband for her as it would be good for both her and the family, but she kept on saying that she did want them to choose a husband for her or to do what they wanted her to do.
48. The Tribunal said that, as it had mentioned at the hearing, she had already been married once; she was now older and was well educated; and it could find no legal or other bases to indicate that her mother had power to force her to marry someone in Indonesia without her agreement. Moreover, she had not lived with her mother for several years and the Tribunal put to her it was having difficulty in understanding how her mother could possibly force her to marry against her will. Asked if there was anything further she wanted to say in response to this, she replied that, when she had married Mr C, she thought this would be good but she became afraid, so she left him. Asked if she was still married to Mr C, she initially claimed the divorce had come through, then said it was still being processed, but they have been separated for more than a year.
49. The Tribunal put to the applicant that she claimed she was a committed Christian but her mother was a Muslim, and she thought that that religion devalues women generally. She also claimed that, if she returns to Indonesia, she will have to convert to become a Muslim in order to marry a Muslim man. The Tribunal put to the applicant that, as it had mentioned before, it did not understand this claim as it appeared to be contradictory to her own family situation where her mother was a Muslim but her father was a Christian and she was brought up as a Christian in Indonesia. The Tribunal therefore asked her why she thought she would be persecuted if she returned to Indonesia because she was a Christian, and she replied that she had to live with her mother before, and all her papers were with the family, so she didn't have anything.
50. The Tribunal put to the applicant that she claimed women are discriminated against in Indonesia and, as a woman, she would lack personal freedom, women are not treated as equals, she will be forced into an arranged marriage, she would have no rights, and the government would not enforce any rights in her favour because she was a woman. The Tribunal again put to her that independent country information states that "The law prohibits domestic abuse and other forms of violence against women. Although not explicitly mentioned, sexual harassment is against the law and actionable under the criminal code. The law states that women have the same rights, obligations, and opportunities as men" (US State Department human rights report dated 25 February 2009). The Tribunal put her that, while accepting that Indonesian culture is somewhat different to that of Australia, this information indicates that women are not in fact discriminated against in Indonesia. It therefore asked her on what basis she claimed to have a well-founded fear of serious harm amounting to persecution for these reasons, and she replied she was brought up under the Indonesian culture where there are lots of arranged marriages and women get beaten by their husband and had to keep quiet.
51. The Tribunal put to her that she claimed she had been denied freedom in Indonesia and feared for her personal safety, but again it could find no evidence to support this claim. On the contrary, the Tribunal put to her that she was well educated and had had a good and successful job in Indonesia for a number of years. Asked if she had anything she wished to say, the applicant replied that she previously had to work in Indonesia to support her mother and her family, who relied on her, and they had to live day by day and put aside their personal lives to make the family happy and survive.

52. The Tribunal put to the applicant that she arrived in Australia, but did not apply for a protection visa until a year later. The Tribunal said it had put to her that if she had a well-founded fear of persecution because of her gender, fear of being forced into an arranged marriage, because a Christian religion, or for any other reason, then she would have applied for a protection visa immediately on or shortly after her arrival in Australia. However, she did not do so. Asked if she wanted to comment or to add to anything to what she had said, the applicant replied she did not have any intention of applying for a protection visa but, once her mother found out she was married, this made her family angry and they want her to come back as they did not know she was married. Asked when she last spoke to her mother, she replied a few months ago, and her mother had told her to come home as it would be good for her, but she questioned how it could be good for her.
53. The Tribunal again asked the applicant why it would not be reasonable for her to return to Indonesia, and again live in City A or indeed elsewhere in Indonesia, if she did not wish to return to City B, recognising that she had in fact not lived in City B for several years. She claims that they would come to know about this straight away. Asked how, she replied that her ID documents are still with her family. The Tribunal put to the applicant that she could apply for new documents and it had difficulty in accepting that, after not living with her mother for several years, her family would be able to find her in a country of 240 million people. The applicant replied that she was still in contact with them and they had her ID documentation, so she would have to go back to City B to get a letter if she wanted to live elsewhere in Indonesia. The Tribunal repeated its question, and she replied that she would need to get new papers and this would need the approval of the family.
54. The Tribunal asked the applicant if there were any other claims or other matters she wished to put before the Tribunal before inviting the witness and the adviser to return to the hearing, and she replied that she had nothing else to add.
55. The Tribunal put to the witness that it understood he wanted to raise some medical and special circumstance issues. It emphasised once again it was examining the applicant's claim to be a refugee, and therefore asked him what he wished to say that related to the applicant's refugee claims. In reply, the witness said that the applicant was helping him medically as he had an illness and there was no one else who was able to do this. The adviser said that the importance of this was that the applicant was in a true and caring relationship with the witness and, for his part, the witness financially supported the applicant. Asked if he had anything further to add, the witness replied in the negative.
56. Invited to comment, the adviser said that where Mr A lives is a regional city which meant that it did not have the medical support services available elsewhere, and the witness is not able to receive medical support, so the applicant was not just a spouse but also a carer. The adviser said he would be faxing several pages to the Tribunal today on women in Indonesia and also the applicant's own notes.
57. In concluding, the advisers said that he appreciated the Tribunal's position but maintained it was hard to comprehend the extent of religious differences between Australia and Indonesia, but he felt her fears are well founded. He submitted that, if she is forced to return to Indonesia, she would have to submit to the requests of her mother and be forced into an arranged marriage. He recognized that she had been independent and worked for herself in City A, but he submitted she has no choice other

than to report back to her mother and submit to her mother's requests. He submitted that this is a different situation from an independent woman in Australia as she would be forced into a marriage with a man, who she does not know, and there will be multiple spouses as this is very common in Indonesia, given that there is a dowry situation which has been arranged and they are only awaiting the applicant's return, so for the applicant it was a genuine case of safety with health issues.

58. The Tribunal received by fax the information that had been promised by the adviser during the hearing. This included a closing submission by the applicant's adviser summarising her claims and stating inter alia that a dowry had already be arranged with the applicant's mother for her marriage to a Muslim and who she does not know; two pages of notes by the applicant; an article on domestic violence in Indonesia from "The Berkley Electronic Press"; and an article titled "Criminalising marital rape in Indonesia" by Leah Riggins

FINDINGS AND REASONS

59. Based on the photocopy of her passport provided with a protection visa application, certified to be a true and correct copy of an original document, the Tribunal accepts that for the purposes of Article 1 of the Convention, the applicant is a citizen of the Republic of Indonesia.
60. The applicant's claims in her protection visa application are very general and vague. Importantly, the applicant does not claim that she has ever been subject to serious harm or persecution in Indonesia for any reason whatsoever, including her claimed religious belief as a Christian and her situation as a young unmarried female in Indonesia. Rather, she claims that, if she returns to Indonesia, her family (and particularly her mother) will force her to marry a Muslim male against her will, as there is a tradition of arranged marriages in the family, and no consideration is given to her feelings in the matter. She also claims that she fears for her safety in marrying this man, and has genuine concerns about it and does not want her human rights to be taken away from her by being forced to return to Indonesia, where she will not have any dignity or be able to make any of her own decisions. She claims she genuinely fears for her health and safety if she is forced to return to Indonesia. She also claims that her family in Indonesia may harm or mistreat her as they are extremely disappointed in her and will force her to comply with their wishes, including the arranged marriage; her family are very resentful, hurt, and embarrassed about her "freedom" in Australia; and that she will have no rights whatsoever as a female in Indonesia; and it would be an abuse of her basic rights as a human being to be forced back to Indonesia into an arranged marriage, where her health and safety will be at risk. She claims the authorities will not be able to assist her in any way as arranged marriages are common there, and women's rights are generally diminished.
61. In the statement provided by her adviser, he elaborates on her claims and states that the applicant has a genuine fear and significant concern about her personal safety if she was forced to return to Indonesia, due to the fact she has wholly embraced the Australian attitude and philosophy to life, particularly in regard to women being treated as equal; that physical intimidation and contract are allowed in Muslim culture and she fears for her physical safety and feels she should not be forced into an arranged marriage or should live with the man purely due to monetary or unjust family or other pressures; if she returned to Indonesia, she would face a long life of persecution with a

lack of safety and no enforcement of any rights as either an individual or as a woman; the applicant is a committed Christian who was raised by her father, who was a Christian, but her mother is a Muslim: a faith which she has not followed as she believes it “devalues” women generally and she does not wish to convert to the Muslim religion or have an inferior capacity in her life but wants to share her future with her fiancé. The adviser submits that the applicant's fiancé (Mr A) suffers from an illness requiring the applicant to care for him and they were living in a genuine and loving relationship and she was his carer. He also submits that the State would not enforce any rights for the applicant, as she is a woman, and she wants to have her own personal life with a person she loves, and not spend her life in a restricted society; and she does not wish mother to decide her personal matters such as marriage. And at the end of the resumed hearing, the adviser submitted that, if the applicant was forced to return to Indonesia, she would have to submit to the requests of her mother and be forced into an arranged marriage. He recognized that she had been independent and worked for herself in City A, but he submitted she has no choice other than to report back to her mother and submit to her mother's requests. He submitted that this is a different situation from an independent woman in Australia as she would be forced into a marriage with a man, who she does not know, and there will be multiple spouses as this is very common in Indonesia, given that there is a dowry situation (which he repeats in his post hearing submission) which has been arranged and they are only awaiting the applicant's return, so for the applicant it was a genuine case of safety with health issues. However, notwithstanding these claims, the applicant provided absolutely no third-party evidence whatsoever to support them. For example, she provided no evidence of her claimed engagement to Mr B or pressure from her mother to marry him, such as a letter from a family member or friend about this matter. Nor does she claimed that she has been persecuted in the past for any reason whatsoever but rather attributes her potential persecution as coming from her mother and grandfather who live in City B, several hours drive from City A where the applicant lived prior to coming to Australia.

62. The Tribunal accepts that the applicant is an adult and is still married to Mr C, although proceedings for a divorce are under way. It also accepts that the applicant intends to become engaged to Mr A once her divorce is finalised. However, and as was put to the applicant at the hearing, the Tribunal does not accept that as a well educated English and Bahasa speaking person, who has had a good career working in City A and for several years had lived several hours drive from her mother's village, that there is a real chance that she could be forced to marry a person of her mother's choosing. Nor does the Tribunal accept the applicant's claim that flow from this including that she would be forced to give up her religion and comply with Islamic rules which would impinge on her safety and freedom. In revisiting these questions at the adjourned hearing, the applicant claimed that she was brought up under the Indonesian culture where there are lots of arranged marriages; women get beaten by their husband and had to keep quiet; she previously had to work in Indonesia to support her mother and her family, who relied on her, and they had to live day by day and put aside their personal lives to make the family happy and survive. The Tribunal accepts that the applicant's mother may like her to marry a Muslim man and to continue to be supported by her. It also accepts, however, that the applicant has not been regularly supporting her mother financially since her arrival in Australia. And while the adviser stated at the resumed hearing that a dowry had been paid, and he repeated this in his post hearing submission, the Tribunal is satisfied that the applicant is an adult and an independent female who has

spent several years living apart from her mother and could not be forced to marry someone against her will.

63. And while the applicant has provided in the adviser's post hearing submission some information about domestic violence in Indonesia, as well as about marital rape and sexual abuse, as the Tribunal has not been able to satisfy itself that the applicant would be forced into an arranged marriage to a Muslim man in Indonesia (polygamous or otherwise) by her mother and grandfather if she returned to Indonesia, and the Tribunal does not accept these claims, it follows that the Tribunal is further satisfied that the applicant would therefore not be in a position where she would be subject to domestic violence or rape, or a polygamous relationship, for a Convention related reason. It also follows that the Tribunal does not accept the claims that flow from this including that she has a well founded fear of persecution on this basis or that, as she believes the Muslim religion "devalues" women generally, her security, lifestyle, and liberty would be put at risk, she will be forced to change her religion, she would lose her rights, and she will be exposed to grievous bodily harm. Nor does the Tribunal accept that, just because some Muslim men have several wives, that, in the event that at some stage in the future she freely chose to marry a Muslim man, the fact he may or may not have another wife does not mean that the applicant has a well founded fear of serious harm amounting to persecution for a Convention reason on this basis
64. Further, the Tribunal has already accepted that the applicant has lived for several years away from her mother prior to coming to Australia, which raises the matter of whether it would be reasonable for her to return to City A or elsewhere in Indonesia without there being a real chance that she would be subject to serious harm amounting to persecution for a Convention reason. When the Tribunal asked the applicant why it would not be reasonable for her to return to Indonesia and again live in City A, or indeed somewhere else in Indonesia, if she did not want to return to City B where she had not lived for several years, the applicant replied that she couldn't return and she doesn't have anything there; does not have any money to support her or to pay rent; and claimed it would be hard to find a job as it is difficult for women who are her age and single to do so. However, the Tribunal does not accept that the essential and significant reason for any difficulties the applicant may have on returning to live in Indonesia (if any) would be Convention related. And when again asked about this at the resumed hearing, she claimed that her mother and family would come to know about her return straight away. Asked how this would be possible, she replied that her ID documents are still with her family. The Tribunal put to the applicant that she could apply for new documents and had difficulty in accepting that, after not living with her mother for several years, her family would be able to find her in a country of 240 million people. The applicant replied that she was still in contact with them and they still had her old ID documentation, so she would have to go back to City B to get a letter if she wanted to live elsewhere in Indonesia. The Tribunal repeated its question and she replied that she would need to get new papers and this would need the approval of the family. In regard to these claims, and while accepting that the applicant may need to obtain new ID documentation, the Tribunal does not accept her unsupported claim that there is a real chance that she would be subject to serious harm from her mother or other family members if she sought new documentation, or to obtain her old ID from them. Indeed, and having already accepted that the applicant has lived for several years away from

her mother prior to coming to Australia, and while accepting she would like to again receive financial support from the applicant, something the applicant has not been providing for the last several months in Australia, the Tribunal is satisfied that, if for any reason she did not wish to return to stay with or near her mother in City B, then it would be reasonable for her to return to City A or elsewhere in Indonesia without there being a real chance that she would be subject to serious harm amounting to persecution for a Convention reason.

65. The applicant claims that she is a Christian. While providing no evidence to support this claim, it is accepted by the Tribunal. However, and as was put to her at the hearing, the Tribunal accepts that there are some 27 million Christians in Indonesia and there is no evidence to suggest that they are being subject to serious harm amounting to persecution from the Indonesian authorities or any other group or agency. Importantly, the applicant does not claim that she has experienced any difficulties in the past because of the Christian religion, notwithstanding having lived in Indonesia for several years prior to coming to Australia. For example, she does not claim that she was not allowed to go to church or participate in her Christian religion or that she ever experienced any harm from any other elements in the Indonesian community because she was a Christian, such as being in a church that was burnt down or attacked. On the contrary, the applicant claimed that her father, was a Christian and that she has been a Christian all her life and was raised in the Christian faith. While accepting that her mother may not like westerners and would prefer her daughter to marry a Muslim, the Tribunal also accepts the fact that her mother was herself willing to marry a Christian and allowed their daughter (the applicant) to be brought up as a Christian. Nor has the Tribunal been able to find any independent country information that indicates that there is a real chance that the applicant may be subject to serious harm amounting to persecution for a Convention reason on this basis. Accordingly, and based on the claims made by the applicant, the Tribunal does not accept that the applicant has a well-founded fear of serious harm amounting to persecution for a Convention reason because she is a Christian.
66. The applicant makes a number of wider assertions and claims, including that women are discriminated against in Indonesia; as a woman in Indonesia, she would lack personal freedom; women are not treated as equals in Indonesia; she will have no rights or human dignity as a female there; the government would not enforce any rights in favour of her because she is a woman; she would have no freedom or safety as a woman in Indonesia; and, as an older single woman, she would be put down and, she would not be able to find a job if she returned to Indonesia and so would have no money to support herself and her family. No evidence is provided to support these claims nor has the Tribunal be able to find any. On the contrary, independent country information put to the applicant at the hearing indicates that there is no discrimination against women of any age in Indonesia. Accordingly, the Tribunal does not accept these claims, and is satisfied that the essential and significant reason for any difficulties the applicant may have in returning to Indonesia (if any), including any possible difficulty in finding a job, would not be Convention relate.
67. Further, the Tribunal accepts that the applicant arrived in Australia but did not apply for a protection visa until a year later. The Tribunal put to her at the hearing that, if she had a well-founded fear of persecution for a Convention reason (including because of her gender, fear of being forced into arranged marriage, because of her Christian faith,

or for any other reason), then she would have applied for a protection visa immediately or shortly after her arrival here. In response, the applicant claimed that at the time she was engaged to Mr C (who she later married), so there was no need for her to apply for a protection visa at that time. The Tribunal is sympathetic to the applicant's argument, and indeed can understand that having married Mr C she may have gained a general sense of security about her being able to remain in Australia, even though she did not have an appropriate long-term visa to be able to remain here.

68. That said, however, the Tribunal is nevertheless satisfied that, if the applicant had genuine concerns about her safety and well-being in Indonesia for Convention related reasons she claims, including because of her family's attitude and demands, then she would have immediately taken the necessary steps early on to explore the possibility of remaining here so she would not be forced to return to the country from which she claimed she feared serious harm amounting to persecution. In short, as the applicant did not apply for a protection visa until a year after her arrival in Australia, the Tribunal is satisfied that the reason for this is because she did not have a well-founded fear of serious harm amounting to persecution for any reason whatsoever, and the Tribunal does not accept these claims.
69. The applicant claims on a number of occasions and in a number of different ways that she has adopted the Australian attitude and philosophy to life, particularly about women being treated as equals, and would not have freedom and independence in her decision-making in the Indonesia, but rather would be subject to her mother's influence and demands. While the Tribunal has already found that the applicant is not a refugee for these or any other Convention related reason, and it does not accept the claims that flow from these claims, it is of course possible to take a wider interpretation of this claim to be that she is objecting to the more generalised cultural, political and religious freedom in Indonesia that she may believe currently limits human rights, political freedom, and free speech. However, other than such very general and unsubstantiated assertions, the applicant does not make any more specific claims that have not already been dealt with by the Tribunal and of a kind that one would expect of a person who had a genuine belief in, and commitment to, political and religious freedom. Nor does she claim that she has ever experienced any form of discrimination or even difficulties in Indonesia for these reasons, let alone serious harm amounting to persecution, because of her political beliefs or for any other Convention related reason not already dealt with by the Tribunal. Nor does the applicant claim any other reason why she has a well-founded fear of persecution on this basis (for example, she does not claim to have been involved in any protests or demonstrations for freedom of speech, workers' rights, or political or religious freedom, either in Indonesia or during her time in Australia). Nor does the applicant provide any evidence whatsoever that she holds genuine anti-Indonesian government beliefs or is an active supporter of greater political or religious freedom in Indonesia, or has in any way at all expressed such beliefs either privately or in public in Australia, let alone in Indonesia. Accordingly, and while accepting that the freedom to express political and religious views and the approach to human rights are somewhat different in Australia to Indonesia, the Tribunal has not been able to satisfy itself that the applicant has a well-founded fear of serious harm amounting to persecution for a Convention reason on this basis, or that there is a real chance that she would experience serious harm amounting to persecution for a Convention reason on this or any other basis, if she were to return to Indonesia, now or in the foreseeable future.

70. The applicant has also claimed she is in a true and caring relationship with Mr A, and acts as his carer. This was supported by Mr A who attended the hearing. However, from both the claims made by the applicant and the evidence provided by the witness, the Tribunal has not been able to satisfy itself that because of this relationship there is a Convention nexus, or that the applicant has a well founded fear on this basis, including for example because the applicant's mother did not know that she had divorced her first husband or intended to remarry Mr A in Australia, and the Tribunal does not accept these claims.
71. The Tribunal then considered her claims cumulatively. However, even when put together, the Tribunal has not been able to satisfy itself that she has a well founded fear of persecution for a Convention reason because of her claims considered on a cumulative basis.
72. Accordingly, and given all the above, and having considered all the claims made by the applicant, both individually and collectively, the Tribunal is satisfied that there is not a real chance that she would be subjected to serious harm amounting to persecution for a Convention reason if she returns to Indonesia, either now or in the foreseeable future, and finds that she is not a refugee.

CONCLUSIONS

73. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

74. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act</i> 1958. Sealing Officers ID: PMRT01</p>
