

0908450 [2010] RRTA 135 (3 March 2010)

DECISION RECORD

RRT CASE NUMBER: 0908450

DIAC REFERENCE(S): CLF2009/13716

COUNTRY OF REFERENCE: Indonesia

TRIBUNAL MEMBER: Irene O'Connell

DATE: 3 March 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. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the Applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who are mother and three children respectively and who claim to be citizens of Indonesia, arrived in Australia (the fourth-named applicant was born in Australia). They applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the Applicants of the decision and their review rights by letter dated the same day.
3. The applicants applied to the Tribunal for review of the delegate's decisions. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the Applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

4. 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.
5. 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).
6. 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.
7. 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'

8. 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.

9. 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.
10. 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.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. 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.
13. 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.
14. 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.
15. 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.

16. 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.
17. 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

18. The Tribunal has before it the Departmental and Tribunal files relating to the applicants. Only the first named applicant has made specific claims under the Refugees Convention, her children relying on their membership of her family. For convenience the first named applicant will be referred to as the applicant.

Claims as set out in the protection visa application

19. In her protection visa application the applicant states that she was born in Jakarta 30 years ago. She claims to have lived at one address in Jakarta for 10 years and at another address, also in Jakarta, for the following 8 years. She indicates that she attended primary school then secondary school until she was 16. She lists her employment history as 'home duties.' She gives her marital status as 'married' and together with her children, lists her husband, parents and siblings as living in Indonesia.
20. The applicant's substantive claims may be summarised as follows:
 - Her parents were strict Muslims.
 - Her father arranged a marriage for her in the early 2000s and had met her husband on only two previous occasions and did not wish to marry. Her husband subjected her to severe violence from the beginning, beating her at least once a week. Sometimes these beatings were very severe, leaving her with multiple bruising. He frequently forced her to have sex with him. She told her mother about these beatings but she insisted that her marriage would improve over time.
 - He entered into a second marriage and his second wife lived with them for a short time before she suddenly went missing.
 - Whenever she threatened to report him he would threaten to have other people witness that she was a prostitute.
 - Her husband was a pimp and would frequently bring prostitutes to the house, including at times when the applicant was pregnant. When they were in the house she would be locked in her room. She believes he would sometimes marry and then later divorce these women as a means of bringing them into his business. He would become very angry and beat her when she tried to enquire about these matters.

- She received no support from her parents or other family members. Her father blamed her for her predicament and accused her of not being a good Muslim. Her mother advised her to be patient and never to refuse her husband sex.
- She ran away to her parents' home but they tried to send her back to her husband. She ran away from her parents to her relative but was eventually taken to see a religious leader (the Sheikh) who returned her to her husband. She was savagely beaten and locked in her room for a week where she was fed only once a day. She spent many years as a prisoner in her husband's shop or at home
- Her sister secretly reported the situation to the police but they said the applicant's husband was the boss and that she should listen to him. In early 2006 she saw a police officer in the shop talking to her husband and recognised him as someone who was frequently there, or in her house, in plain-clothes. When she asked her husband about the policeman he became angry and hit her. She threatened to call the police. Her husband left, taking the children, and shortly afterwards the policeman came into the house and sexually molested her.
- Following this event her husband let a man into her room. This person raped her at knife-point and returned the next day to do so again.
- She became pregnant with her third child and told her husband that, if the policeman was the father, he and her husband would be in trouble. Eventually her husband agreed to let her leave with her children because he was afraid she would cause a problem with DNA testing.
- She does not wish to return to Indonesia because she has suffered violence from her husband and has been forced into prostitution.

Claims as Stated at the Hearing

21. The first named applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Indonesian and English languages. The applicant's migration agent was present at the hearing
22. The Tribunal asked the applicant about her family circumstances and her education history. The applicant stated that she started school at the age of 7 and she had 9 years of education. She stated that she did 3 years of high school and that the remaining years were primary school education. She stated that she finished school and after she completed school she remained at home and was involved in home duties and assisting her mother.
23. In respect to her family the applicant stated that she has a sister and an brother. She stated when her sister was born and when her brother was born. She stated that her sister was married some years after her in Jakarta and lives with her husband. She stated that her brother lives with her mother also in Jakarta and he is unmarried. She stated that her father passed away in 2005. She stated that her mother and brother run a small business selling food. She stated that this was the business of her father before he passed away. She stated that her sister has two children and that her sister's husband works in manufacturing.

24. The Tribunal asked the applicant about contact with her family since her arrival in Australia. The applicant stated that she has no contact with the family. The Tribunal noted that in her protection visa application she indicated that she does have contact with her family. The applicant stated that she had contact with her family when she arrived in Australia. She stated that she had contact with her mother but she does not have any contact with her husband.
25. When asked about contact with her mother she stated that it was brief and she merely informed her mother that she was safe and well and that her children were also safe and well. She also stated that her husband has found out her whereabouts in Australia. The Tribunal asked the applicant what her husband thought about her being in Australia and how he came to know that she was in Australia. The applicant stated that she once told him some time back that she was going to come to Australia. The Tribunal again asked the applicant how he would know that she was in Australia now. She stated that she had told him earlier that she would come to Australia but also that he has made contact with Indonesian people here in Australia and they have informed him about her whereabouts and the children.
26. The Tribunal asked the applicant how these Indonesian people in Australia know her and know him. The applicant stated that she has friends here from Indonesia in Australia and that they also know her husband and that her husband has spoken with these people and was informed of her whereabouts. She stated that she does not want to go back to Indonesia or have contact with her husband because he will make trouble for her again. She stated that she left him because he was abusive to her.
27. The Tribunal asked the applicant whether her husband wants her to return and to be with her. She stated that he does want her to go back to him. She stated that when she told him that she was leaving he promised to reform and improve his behaviour and asked her to stay. She stated that she has daughters and a son and that one daughter was born here in Australia. She stated that he still wants her to return.
28. The Tribunal asked the applicant how her mother felt about her coming to Australia and leaving her husband. She stated that her mother supports her decision. The Tribunal asked the applicant what her decision was that her mother supports and why she decided to come to Australia. She stated that she decided to come to Australia and leave her husband.
29. The Tribunal asked the applicant if she considers that in coming to Australia she was also leaving her husband. The applicant stated that yes; that she considers that she had left her husband. The Tribunal asked the applicant whether she has undertaken any enquiries or started any divorce proceedings. The applicant stated that she has not because she does not understand how to instigate any divorce proceedings by herself.
30. The Tribunal asked the applicant how she had decided to come to Australia and how she worked this out for herself. She stated that she did not work it out and did not know how to come to Australia. She stated that she has a relative who assisted her to come to Australia.
31. The Tribunal asked the applicant for details of how her relative arranged for her to come to Australia or why her relative arranged for her to come to Australia. She stated that her relative has a friend in Australia and that this friend invited her to come to Australia. She stated that this happened in the months before she left for Australia. She stated that her relative through a friend in Australia, organised the visa for her to come to Australia and to stay. She stated that her relative is female and married. The Tribunal asked the applicant why her relative organised for her to come to Australia. The applicant stated that her relative

knew that she was depressed and felt if she came to Australia this would help her. The Tribunal asked the applicant about payment of the airfare. The applicant stated that her relative paid for her airfares and arranged the visa and went with her to the passport office to organise the passports.

32. The Tribunal asked the applicant about her husband's knowledge of these arrangements. The applicant stated that he didn't know and she didn't tell him anything until she knew for certain that she would be coming to Australia and then she told him. The Tribunal asked when she knew for certain that she would be coming to Australia. She stated that after her relative told her everything had been organised and the visa was organised then she told her husband. Asked how the husband reacted to this, she said that he asked why she was leaving and asked her to stay and promised that he wouldn't be abusive any more.
33. The Tribunal asked the applicant if she told her mother. The applicant stated that she did and her mother had told her it was her decision and she would support her. Asked about her brother's reaction she also stated that her brother supported her decision to come to Australia. The Tribunal asked the applicant if they understood why she was coming to Australia. The applicant stated that they did. She stated that although her husband has promised to behave better she decided to go ahead and leave. She stated that she hadn't told her husband of her intention to leave the country until she got her visa and then she told him and that he insisted that she not leave. She stated that he now has contacts through friends here in Australia and asks about her. Asked what would happen if she was to go back to Indonesia she stated that she is scared of him and concerned that he will be abusive again and that she is not safe and secure in Indonesia.
34. The Tribunal put to the applicant that, given that she saw her move coming to Australia as leaving her husband why she hadn't taken any steps towards divorcing him. The applicant stated that she doesn't know anything about such things and that she doesn't have enough money to go through divorce proceedings. The applicant was asked if her relative knew of all her circumstances. The applicant stated that her relative did know what she had gone through in her marriage and for this reason organised for her to come to Australia. She stated in Australia she feels she has a safe and secure life.
35. When asked how her relative reacted to her accounting of incidents and abuse by her husband in her marriage she stated that her relative told her to be patient and had pity for her and then eventually organised the visas for her to come to Australia. She stated that her relative thought that this was the best way for her to deal with her situation. The Tribunal asked the applicant whether she told her relative everything that had happened to her in her marriage. She stated that she did. In regards to her mother she stated that she only told her mother some of the things at the beginning and her mother told her to be patient but she didn't continue to tell her mother about the abuses in her marriage because her mother was elderly and concerned. She stated that she did tell her sister about events and her sister told her to be patient.
36. The Tribunal noted that she had provided a marriage book in respect to her marriage to her husband and asked whether she had the original. The applicant stated that she did. The Tribunal asked her how her husband felt about her taking the marriage book. She stated that 2 marriage books are issued, one for the husband and one for the wife. The Tribunal asked the applicant about her passport. She stated that her relative assisted her to acquire the passport for herself and for her two children. The Tribunal asked her if this was her first passport. The applicant stated that no, she had a passport issued earlier. The Tribunal noted

the passport indicated that her first passport was issued to her several years before she came to Australia. The Tribunal asked the applicant why she had this passport at that point in time. The applicant stated that she had organised a passport at that time just in case she needed it badly. The Tribunal asked the applicant if she could be more specific about this. The applicant stated that she just had it organised in case she needed it. Asked about the organisation of the passport for her children she stated that her relative assisted her with this and also that her relative assisted her with the visas to come to Australia and the airfare.

37. The Tribunal put to the applicant that it seemed unusual that her first step in regards to the abuses in her marriage was simply to leave the country and to come to Australia and bring the children with her. She didn't seem to have engaged in intermediate steps and she had made no effort to for instance leave her husband and divorce him. The applicant stated that she had once escaped from her husband and her family had returned her to him. The Tribunal asked the applicant when this had happened. She stated that in the early days of her marriage. Asked if she meant by this that some time in 2001 the applicant stated yes, that in the early stages of her marriage she had gone to her parents' home but her parents had returned her to her husband. Asked if she had attempted any other measures in regards to escaping the abuses of her marriage she stated that she didn't do anything else. She stated that people told her that her husband would change his behaviour but he didn't change.
38. The Tribunal asked the applicant if she ever sought any help. The applicant stated that she did not. She stated that she wasn't allowed to go out and that her husband kept her inside the house so that she wasn't able to seek any help. The Tribunal noted that however she had told everything to her relative and wondered whether her relative had attempted any measures other than arranging for her to come to Australia over the years of her marriage. The applicant stated that at the beginning her relative just felt pity for her and it was only that when her circumstances didn't improve her relative organised for her to come to Australia.
39. The Tribunal put to the applicant it still seemed somewhat incongruent that if she was in an abuse marriage for so many years that her relative only told her to be patient and then organised a visa to Australia. The Tribunal put to the applicant in her account of events she does not seem to refer to any intermediate steps or attempts to remedy her circumstances other than coming to Australia. The applicant stated that she needed to escape. She stated that she also felt that her husband would change and when she realised he wasn't going to change but would continue to be abusive she had no option but to leave. She stated that he would bring women to the house and he would beat her regularly.
40. She stated that when she told her mother about this her mother only comforted her but did not offer her any solutions. The Tribunal noted that in her protection visa application she stated that she had left her husband on a second occasion and had gone to stay with her relative but the relative's husband had returned her. The Tribunal noted that in her account to the Tribunal she claimed that only on one occasion had she left the marriage and that was to go to her mother's house. The applicant stated that she had forgotten this detail. She stated that when she did go to her relative's house the husband took her to the local Sheikh who returned her to her husband.
41. The Tribunal noted that the applicant has been in Australia now for over a year and noted that she had given birth to a baby here in Australia. The Tribunal asked the applicant whether she received any medical attention over and above that of giving birth. The applicant stated that she had seen a doctor in the later stages of the pregnancy and at the birth of the child but that she has not received any other attention. The applicant was asked whether it was true to say

she was in good health. The applicant stated that yes she is in good health. She stated that she found living in Australia safe and happy. The Tribunal asked whether she had any psychological difficulties or had seen anybody in respect to psychological condition. She stated that she felt happy in Australia.

42. The Tribunal asked the applicant how she managed financially. She stated that she receives financial assistance from Organisation B. The Tribunal put to the applicant that on reading her claims in her application for a protection visa it seemed that she had gone through very traumatic experiences and wondered whether she had sought any help or needed any medical attention in regards to these experiences. The applicant stated that she had not gone to a doctor yet or seen anybody about these.
43. The Tribunal asked the applicant whether there were things that she wanted to tell the Tribunal about, that the Tribunal hadn't asked her questions about or was there anything she wished to elaborate on. The applicant stated that no, there was nothing further she wanted to elaborate upon. She stated that her husband had traded her to other men and that her husband wasn't sure about the father of the third child. The Tribunal noted that in the birth certificate she has given her third child the same surname as her other two children and her husband as the father. She stated that she did this because she wanted things to be different and more secure in Australia but that she was not sure that he was the father of her third child.
44. The Tribunal put to the applicant that it seemed unusual that he was ready to let her go. The Tribunal noted that in her application she referred to being kept prisoner and earlier in the hearing stated that he didn't let her out of the house. Given this the Tribunal wondered why her husband let her leave the country with their two children. She stated that she had told the husband when she had all her papers and documents ready to come to Australia that if you don't let me go I will tell everybody about your bad behaviour. She stated in this way she threatened him and he let her go.
45. The Tribunal asked the applicant what she meant by "tell everyone". She stated that she would tell the neighbours, the local residents, the people in the village and also the police. The Tribunal asked the applicant what it would mean if she were to tell everyone about his bad behaviour and why would this act as a threat to him. She stated that he would certainly be in trouble he would be reported to the police and that he would be jailed for what he did.
46. The Tribunal asked the applicant whether this threat worked. She stated that yes, when she threatened him that she would tell everyone and he would be in trouble he let her come to Australia with the children.
47. The Tribunal put to the applicant if she thought the police would arrest him and he would be in trouble why then did she not go to the police about what he had done to her. She stated that she was threatening him but she didn't really understand how the law works. She also stated that the law in Indonesia is on the side of the rich people not on the side of the poor people. She stated that it is only the rich people who are able to secure that the law would operate for them not for the poor people.
48. The Tribunal put to the applicant that the threat seemed to work on the husband in that she threatened he would be in trouble with the police and he therefore allowed her to come to Australia with their two children, therefore it did seem that he at least believed that she could gain protection from the authorities. She stated that she didn't threaten her husband until the point when she was about to depart.

49. The Tribunal asked the applicant whether she made the threat to her husband before or after she obtained the visas. The Tribunal noted that in fact the information indicates that where a sole parent was travelling with the children the other parent had to consent before visas would be issued. The applicant agreed that her husband had consented to the children being issued with visas.
50. The adviser was asked whether she wished to comment. The agent put to the Tribunal that the Tribunal's concern that the applicant hadn't undertaken any divorce proceedings needed to be put into cultural context and that it is very difficult for a female to initiate divorce. She stated that in Islamic countries males can proceed with divorce it is very difficult for a female.
51. The Tribunal noted that country information on divorce in Indonesia indicated that grounds for divorce in cases of religious marriage such as the applicant's included the husband committing torture against his wife, the husband vanishing and the husband not being able to obtain basic necessities of life. Given that these grounds refer to the husband's failures it would seem that there were reasons and ability for women to secure a divorce.
52. The advisor repeated her belief that culturally it was very difficult for a female in a Muslim country to initiate divorce proceedings against her husband and that this would account particularly in the lower class as opposed to upper middle class and this would be why the applicant had not proceeded with any divorce.
53. The Tribunal put to the applicant that the Tribunal had concerns about her claims at two levels. The first related to whether or not she had experiences in her marriage she so claimed. The Tribunal noted that in her protection visa application she refers to traumatic experiences she claims to have been subject to in her marriage including raped at knifepoint and prostitution she did not seem to exhibit any signs of trauma and has not needed any medical attention here in Australia.
54. The Tribunal also has concerns about the fact that she had not, on her own account, taken any steps to avail herself of state protection, in fact she used the threat of police to get her husband to let her come to Australia with the children but did not seem to have over so many years initiated any other measures to gain protection or help from her husband.
55. The Tribunal put to the applicant that these points and the inconsistencies in some of her evidence already discussed in the hearing could lead the Tribunal not to accept that she was in a violent marriage as she so claimed.
56. The Tribunal also put to the applicant even if the Tribunal accepted that these events had happened she had not, on her own evidence, taken any measures to avail herself of state protection, but in fact believed that state protection was available to her by using this as a threat against her husband to come to Australia. The Tribunal put to the applicant that this could indicate that in fact she was able to avail herself of state protection but had made no attempt to do so.
57. The Tribunal also put to the applicant the Tribunal found her account unrealistic or unbelievable in that she is able to threaten her husband to come to Australia but takes no other intermediate steps in the years of what she claims to be a very abusive relationship and that the husband readily consents to her coming to Australia with the two children despite the fact that up until that point in time he had kept her prisoner and severely abused her.

58. The Tribunal indicated that it would carefully consider her claims for protection but had concerns about her claim to be in need of protection in Australia.
59. The adviser indicated that she would made a further submission to the Tribunal on the points discussed. The Tribunal indicated that it would also look carefully at divorce laws in Indonesia. The applicant indicated that she would provide to the Tribunal the original documents, photocopies of which were provided from the Department file. The adviser gave an undertaking to make a submission within two weeks.
60. The applicant through her adviser provided the original marriage book but made no further submissions.

Country Information

Domestic Violence

61. Acts of domestic violence against women in Indonesia are criminalized under the *Law on Domestic Violence of 2004 (Law No. 23/2004)*.
62. A range of women's legal support groups are operating in Indonesia, with readily available contact details, and which are frequently engaged in awareness campaigns alerting women in Indonesia to the availability of aid in matters relating to domestic violence.
63. In December 2003 the UN Development Fund for Women (UNIFEM) reported on the number of government and non-government services available to female victims of domestic violence as follows:
 - Women's Help Desks (Ruang Pelayanan Khusus, or RPK) in police offices. As of May 2001, there were 163 Women's Help Desks in police offices in 19 provinces.
 - Crisis centers in hospitals in Jakarta, Yogyakarta, and 30 other cities.
 - Shelters for survivors provided by Rifka Anissa and SIKAP, two women's NGOs.
 - Legal aid assistance provided by LBH APIK, a women's NGO.
64. The UNIFEM website also lists the contact details of a network known as Mitra Perempuan (MP; Women's Crisis Centre) which provides: "a telephone hotline, counseling, temporary shelter, advocacy and support". Contact numbers for MP's hotline, were recently reported on in *The Jakarta Post* on 23 December 2009.
65. This news report provides information on the procedures for accessing state protection in matters of domestic violence and comment, from the head of Mitra Perempuan, Rita Serena Kolibonso:

Under prevailing laws, a woman claiming to have been physically abused must first report the case to the police.

The police will then give the victim a letter to request physical or medical examination at a hospital.

The hospital may only send the exam results to the police, who will then use it as evidence to follow up on the victim's report.

A victim, however, must have the examination as soon as possible, because injuries more than three days old are not legally considered evidence.

66. [Country information and sources relating to Organisation A deleted in accordance with s431 of the Migration Act].

Divorce

67. Women are able to initiate divorce in Indonesia Among Muslims divorce is governed by Muslim law and may be settled in Muslim courts or, as with non-Muslims, in government civil courts. Where the marriage involves a Muslim couple the woman would be expected to initiate a process known as *cerai gugat*. A husband initiated divorce is known as *cerai talak* It would appear that women are initiating divorce in Indonesia in significant numbers and without complication. On 5 February 2009 the *Indo-Asian News Service* reported that: “In Indonesia’s second-largest city, Surabaya, 80 percent of 48,374 recorded divorces were initiated by women while in the capital, Jakarta, women filed 60 percent of the 5,193 divorces”.

Visitor Visa requirements for children

68. In order to obtain an Australia Tourist Visa (subclass 676) a sole parent travelling with a child would be required to obtain the consent of the other parent. Such permission can be obtained either by completion of “1229 or on a Statutory Declaration or equivalent under the relevant law of the child’s home country”. The regulations are as follows:

Children under 18 years of age

Consent to travel:

Applications for children under 18 years of age must provide consent from the non-accompanying parent/s or legal guardian/s if the child is travelling:

- alone
- with only one parent or legal guardian.

Consent can be provided on Form 1229 or on a Statutory Declaration or equivalent under the relevant law of the child’s home country. Tourist Visa (Subclass 676)’ (undated), Department of Immigration and Citizenship website
<http://www.immi.gov.au/visitors/tourist/676/eligibility.htm> – Accessed 9 February 2010.

FINDINGS AND REASONS

69. The applicant’s claims may be summarised as follows. The applicant claims that she was forced into an arranged marriage in 2000. She claims that her husband abused her, frequently physically assaulted her and forced her into sex with other men. She claims that she fled to Australia to get away from this abuse and that if she returns to Indonesia she fears further abuse from her husband. She claims that she cannot avail herself of protection from the authorities of Indonesia.
70. The Tribunal finds as follows. The Tribunal finds that the applicant and her children are citizens of Indonesia and that they arrived in Australia and remain in Australia as non-citizens. The Tribunal makes this finding on the basis of the applicants’ passport presented to the Tribunal at the hearing.

71. The Tribunal also finds that the applicant is married and entered into this marriage in 2000. The Tribunal makes this finding on the basis of the applicant's marriage book. The Tribunal notes and accepts the applicant's oral evidence that she remains married to her husband.
72. The Tribunal does not accept that the applicant was in an abusive marriage and that it was because of the abusive nature of her marriage that she sought to come to Australia to seek protection. The Tribunal makes this finding for the following reasons.
73. The applicant claims to have come to Australia to escape her abusive husband. However when asked whether she had instigated any proceedings to divorce her husband either back in Indonesia or since her arrival in Australia the applicant stated she had not. When asked why not the applicant provided a range of reasons. She claimed that she did not know how to go about it, did not have the money and it is hard for women in Indonesia to instigate divorce proceedings. As discussed with the applicant at the hearing the country information in respect to the incidents and availability of divorce in Indonesia suggests that women (including women married under Muslim law) do and can readily instigate divorce, most particularly when subjected to domestic violence. Further, as also raised with the applicant at the hearing the Tribunal was struck by the applicant's ability (and that of her relative) to find the resources, assistance and means to leave Indonesia and come to Australia in contrast to her inability to find the resources, assistance or ability to separate herself from her husband and divorce him. More so, given that the country information set out above indicates that women have the ability to and do instigate divorce in Indonesia.
74. When asked about efforts to seek assistance in Indonesia in respect to the claimed domestic violence the applicant claimed not to know of any services to assist her. However, the Tribunal notes that the country information indicates that there are a number of services and avenues available to women in Indonesia who are the victims of domestic violence.
75. When the Tribunal asked for details of her attempts to leave her husband the applicant referred to only one attempt to return to her family whom then returned her to her husband. When it was put to her that her written statement referred to a further and more significant occasion (when her relative's husband sent her back to her husband) the applicant claimed to have forgotten this.
76. The applicant claimed that there were no avenues known to her in Indonesia to escape the abuse she was experiencing from her husband and she claimed that she does not know about the law and that the police would not assist her. Against this background however, the applicant claims that her husband consented to her bringing the children to Australia because she threatened him that she would go to the police and report his conduct towards her if he did not consent. She claimed that if she did report her husband to neighbours or the police he would be put in prison and that this threat to report him was viewed seriously by the husband such that he gave his consent.
77. As discussed with the applicant at the hearing, if the applicant was able to effectively use the threat of reporting her husband to the police to get his consent for her and the children to leave Indonesia, because he believed, and she also, that he would face prison it does not make sense that she did not, at an earlier point in time, report his claimed abuses and avail herself of the protection of the state. The applicant did not provide an explanation as to why she would threaten to go to the police as opposed to go to the police and seek protection from the harm she claims to be fleeing.

78. The applicant claims that she endured so many years of an abusive marriage. The Tribunal notes that the applicant has detailed in her written statement a level of abuse which she did not make out at the hearing. At the hearing the Tribunal noted that the applicant had given birth to her third child here in Australia and had received medical care in respect to the birth. When asked about her general health and general psychological state the applicant indicated that she was in good health and had not sought or required any medical or other care over and above that relating to the birth of her third child. She indicated that the only assistance she had sought in Australia was financial assistance from Organisation B. The applicant's general state of well-being does not seem to be in keeping with what one might expect from a person claiming to have undergone the experiences the applicant has claimed in her written statement of sustained and extensive physical abuse and sexual abuse over the period of so many years.
79. The points set out above, when considered collectively, lead the Tribunal to reject the applicant's claim that she was in a violent marriage in Indonesia and that she fled to Australia to escape this marriage. No claims have been made out in respect to the children; that is the second named applicants.
80. The Tribunal notes that the applicant claims that there is uncertainty about the paternity of her third child. However, the Tribunal notes that the birth certificate indicates that her husband is the father of her third child and that he is named accordingly. In these circumstances the Tribunal does not accept that the paternity of her third child is a point of dispute.
81. As the Tribunal does not accept the applicant's claim of past harm at the hands of her husband or others the Tribunal does not accept that the applicant does face harm from her husband or other members of her family on her return to Indonesia for a Convention reason.
82. In any event, even if the Tribunal was wrong about her marital circumstances, or even if her marital situation was to change in the future, the country information indicates that the authorities do provide protection to victims of domestic violence and that women are able to divorce husbands who are violent to them.
83. Accordingly, the Tribunal is not satisfied that the applicants have a well founded fear of persecution for a Convention reason on their return to Indonesia.

CONCLUSION

84. 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.

DECISION

85. 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*. PRRRNM