

0804864 [2008] RRTA 535 (31 December 2008)

DECISION RECORD

RRT CASE NUMBER: 0804864

COUNTRY OF REFERENCE: Indonesia

TRIBUNAL MEMBER: David Young

DATE: 31 December 2008

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2) of the Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 his 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 a 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.
20. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from witnesses. The Tribunal hearing was conducted with the assistance of an interpreter in the Indonesian and English languages.
21. The applicant was represented in relation to the review by a registered migration agent, who attended the Tribunal hearing.
22. **The applicant** claimed that his first involvement with Organisation 1 occurred in the late nineties when he attended a flag-raising ceremony at Town A. He said that he was young and had no understanding of the struggle, although he had heard stories and discussions, and was broadly aware of the independence movement and the political status of the district. He said that the security forces arrived, pulled the flag down, and began shooting randomly, whereupon the crowd ran away. The applicant was not harmed, and suffered no repercussions.
23. The applicant had no further association with any member of Organisation 1 until he arrived in Melbourne as the holder of a student visa to undertake a course. He met Person 1, a well-known independence activist who had been granted asylum in Australia, and who was distantly related to the applicant's parent. The Tribunal asked the applicant what, if anything, he knew of Person 1 prior to leaving for Australia. He said that his parent told him "...that there was someone called Person 1 here and I should meet him." The Tribunal expressed surprise that in a supposedly politically aware family, the applicant should never have heard of Person 1 previously. The applicant said that there were many people with this name in the district. The Tribunal agreed, but pointed out that Person 1 enjoyed a certain notoriety as an independence activist, and moreover was allegedly a relative of the applicant, albeit a distant one. How was it that in an allegedly politically aware family, with allegedly strong (if subterranean) sympathies with the independence movement, no-one ever told the applicant that he was related to one of the movement's founders and leaders, who had suffered imprisonment and ill-treatment at the hands of the Indonesian oppressors? The applicant shifted ground, claiming that his parent had mentioned Person 1 but that the applicant thought they were just stories.
24. The Tribunal asked the applicant why, if indeed his family were of any concern to the Indonesian authorities, his parent would have suggested that he meet Person 1 in Australia, given his notoriety; surely this association would endanger the applicant and/or his family. He said that even though Person 1 was a distant family member, it was a matter of etiquette to meet him when in Australia. He agreed that, despite his alleged association with Person 1 during that stay in Australia and despite the alleged interest of Indonesian intelligence

operatives in the activities of Person 1 and his associates, neither he nor his family suffered any form of persecution or harm from Indonesian authorities. His father retained his position at Company A, and the applicant completed his studies in Australia..

25. The Tribunal asked the applicant about the nature of his association with Organisation 1 and Person1 during the early 2000's. He said that he "...went to events and met people he knew." He became vague when asked about the nature and frequency of these "events". Pressed to be more specific, the applicant said that he was making young people, including the applicant, aware of the struggle. He said that he lived at Person1's home when he first arrived in Australia, until he established himself in his own accommodation.
26. The Tribunal put it to the applicant that his initial contact and association with Person 1 in 2000 had nothing to do with any alleged Organisation 1 leanings or sympathies, but was simply a matter of finding somewhere to live in a strange country; Person1 was a distant relative and the applicant had nowhere else to stay. He agreed.
27. The applicant said that after moving out of Person1's home, he remained in contact with him. Asked what that involved, the applicant said that it was "...not much more than maintaining contact and learning about the struggle and wanting some involvement." He agreed that his involvement was very limited and low-key.
28. The applicant returned to live with his family in Town A in the district. He said that he had no problems with the local authorities, and lived an uneventful life, apparently supported financially by his family. He did not claim to have engaged in any political or similar activities during that period, despite tensions after the killing of people in incidents assumed to be associated with Company A. He remained in Town A, and then lived in Indonesia, after which he went to Malaysia to pursue further studies.
29. The applicant claimed to have returned clandestinely from Malaysia to the district to form the Organisation 2. He claimed that the group comprised some of his relatives and some students he knew through Person 1. Asked what led to the formation of the alleged group, the applicant said that Company A was not paying benefits to local people. He would sometimes speak at gatherings, using material supplied by Person1. Asked about his parent's response to these alleged activities, the applicant said that his parent was not aware of them. The Tribunal asked how the applicant's parent could not be aware of his alleged activities as a political agitator, engaged in publicising the independence cause. He claimed that his parent thought he was still in Malaysia, but unbeknown to him, he returned to the district clandestinely and lived near his family's home. He would only engage in political activities in villages that were situated 3-4 days' march from Town A, so that his parent would not become aware of his alleged presence in the district and his alleged exploits. The Tribunal asked whether anyone in his family knew of these alleged activities. He said they did not. The Tribunal asked how he supported himself while allegedly living in the area, and travelling 3 or 4 days to present the Organisation 1's message in remote villages. The applicant said that his parent sent money to his Malaysian bank account. Asked how that was of any use to him in the district, he claimed that he would enter Town A clandestinely and withdraw money from an ATM.
30. The Tribunal asked whether the applicant experienced any difficulties with the authorities while he was in the district during this period. He claimed that he was questioned by police on 10 or 15 occasions. Asked why, he claimed that when the police recognised him and his companions as students, they would stop and question them. On learning his name, the

police would pay the applicant close attention. He claimed that while in the district without his father's knowledge, he was once detained for two days and beaten up and kicked by the police. He said that he was then released without charge after he told his captors that his parent was employed at Company A.

31. The applicant stated that his next encounter with the authorities occurred when he claimed he was involved in violent demonstrations at Place A. He was not arrested or harmed, he said, claiming that he and others escaped into the bush to avoid apprehension.
32. The applicant was asked about any other incidents. He said that there were protests at Town A but that he was not "really involved" Asked what that meant, he claimed that he was not present at the demonstration, because he was concerned that his parent may learn of his activities, and so he confined himself to planning.
33. The Tribunal asked the applicant when he decided to come to Australia, and why. He said that he was informed by Person 5 that his name was on a "wanted list". The Tribunal pressed him to explain about this list, and how his informant allegedly became aware of its contents. The applicant said that there were large scale arrests after the Place A incident, and "...there was a possibility that people who were arrested would reveal information because they were tortured." The Tribunal observed that this all sounded very speculative. The applicant said that Person 5 would know, adding that he had not stated who had revealed the list to him. All the applicant knew was that Person 5 had read the list and told him that his name was there, next to that of Person 6. Shortly after Person 5 saw this list, Person 6 was arrested.
34. The Tribunal clarified with the applicant that the name is a family and clan name, and is extremely common in the district. It signifies only that the bearers of that name are related, however remotely. The Tribunal put it to the applicant that not all the names are independence activists or sympathisers. The applicant agreed. The Tribunal put it to the applicant that not all independence activists and sympathisers are these names. He agreed. The Tribunal put it to the applicant that possession of the name therefore would not be taken to point automatically to membership of Organisation 1 or any other independence group. He agreed.
35. **Person 2** said that he had read the delegate's decision record and related documents, and had four comments to make. First, whilst democratisation and political liberalisation may have occurred elsewhere in the Indonesian archipelago, it had made little impact in the district, which remained subject to repressive and corrupt rule. Flag raisings by independence groups continued to arouse the ire of the authorities, a matter that had recently drawn criticism by visiting US congressmen. Second, the widely publicised arrival in Australia of asylum seekers, all of whom were subsequently granted protection visas, led to increased levels of surveillance of the district living in Australia, and especially Person 1 and his associates, by Indonesian intelligence operatives and consular officials. Asked to explain on what evidence he based these claims, Person 2 said that under the auspices of AusAID, he had recently organised an HIV-AIDS program in Australia which had been attended by people from Place A, and had been cautioned by Indonesian consular officials against allowing the participants to associate with the district independence activists while in Australia. Thirdly, he disputed the delegate's comment that had the applicant been identified by Indonesian security and law enforcement agencies as involved in the demonstrations at Place A and named as a person of interest as he claims to have been told by Person 6 he would have been intercepted at Jakarta airport as he departed for Australia. Person 2 claimed that intelligence information gathered in the district would not necessarily reach officials at Jakarta airport. The Tribunal expressed

some surprise at Person 2's claimed understanding of the operational methods and *points faibles* of the Indonesian intelligence and security services, and asked how he acquired this knowledge. He explained that he had "a few friends and colleagues" who were wanted by Indonesian authorities, but who passed through immigration control without incident. Finally, Person 2 claimed that the delegate had been mistaken in assuming that the applicant's parent's continued employment in a position at Company A pointed to his being acceptable to the Indonesian regime and not a supporter of the district's independence. In support of this contention, he referred to what he described as "a security document" allegedly issued by the Department of Home Affairs which included a diagram which listed those known or believed to be involved with or sympathetic to the independence cause. Among them, he said, were several senior officials at Company A and a former vice-chancellor who subsequently became a director at Company A. He claimed that Person 7, whom he described as the second in charge of Organisation 1 still occupied a position of importance in the district. Person 2 added that since the early 2000's, one of the people identified in the document had been gaoled for his involvement in flag-raising, which he took to reflect a growing intolerance on the part of the authorities towards symbolic gestures. The Tribunal observed that it may also reflect a hardening attitude by the regime over the 8 years since the alleged "security document" came to light towards those believed to be supportive of independence. Person 2 concluded by opining that the applicant's alleged pro-independence activities in Australia may raise his profile in Indonesia, and that relocation was not an option for the applicant, because he would be subject to surveillance wherever he resided in Indonesia. The Tribunal reminded him that surveillance did not, *per se*, constitute persecution within the meaning of the Convention or the Act.

36. **Person 3** is a PhD candidate at university, the partner of Person 1, and has been involved in the districts independence movement since 1989. She had remained outside the hearing room while the applicant and Person 1 gave their evidence. She said that she met the applicant in early 2000's when he stayed with her and Person's 1 briefly before establishing himself in his own accommodation. Asked to describe the nature of her association with the applicant and his involvement, if any, in the activities of the organisation, she said that she assisted him in making the transition to life in Australia. He would come over for meals and help with his studies. As well, she was active in cultural and political events, and the applicant would help her; he was easy to work with. The Tribunal pressed her to be specific about the activities of her organisation and the nature and level of the applicant's alleged involvement, if any. She was strikingly vague and at points evasive, employing such expressions as "protesting through dialogue with Australian institutions", and only after some close questioning was the Tribunal able to conclude that the organisation conducts public meetings, provides speakers at church services and the like, promotes awareness of independence issues among young district groups in Australia, and assists them to adjust to life in this country (e.g. dealing with police and other authority figures).
37. The Tribunal asked the witness to explain how the applicant assisted during his stay in Australia. She was again vague, claiming that he acted as a "trainee" in organising seminars, of which there were three, she said, in a two month period. When asked whether this was representative of the organisation's activity level, she became evasive, eventually implying that it was an unusually busy period. The Tribunal persisted, asking her to describe and quantify the applicant's alleged involvement as a "trainee". She claimed that they would spend 4 or 5 hours together on Saturdays discussing the program. The Tribunal observed that that was a considerable amount of time, especially when the applicant was a young, single man, and enrolled in full-time tertiary study, and asked again whether this was a common

occurrence. Once again, Person 3 implied, rather than stated directly, that these discussions did not happen frequently. She added that they generally occurred when the applicant came over for a meal at her home. The Tribunal asked her to describe the applicant's activities. She said that he organised other district groups to be at locations when they were needed, translated into Indonesian, erected tents, and performed clerical and administrative tasks.

38. The Tribunal asked her to explain how the applicant had assisted since returning to Australia. She said that there had been an event at a local church which had involved dance, music and liturgy. This had required about 4 or 5 months' preparation and rehearsals. She said that the applicant assisted, but did not explain how, or his level of involvement. Given her evasiveness in dealing with its questions in relation to the applicant's involvement in the movement during his stay in Australia, the Tribunal resolved, in the interests of efficiency, not to pursue the matter with her, but to seek the information from Person 1.
39. Person 3 said that the organisation is "extremely aware" of surveillance by Indonesian authorities in Australia, and for that reason, avoids placing the district groups at the front of meetings or other events. The Tribunal asked on what evidence she based her belief that her organisation was subject to surveillance of this kind. She did not explain, merely stating that she reported about 20 incidents involving the district groups in a 20,000 word submission she made to the Foreign Affairs Committee of Parliament on the subject of surveillance by Indonesian operatives in Australia.
40. **Person 1** was present while Person 3, but had remained outside the hearing room while the applicant and Person 2 gave their evidence. Asked whether he had anything to add to Person 3's account of the applicant's involvement with the movement, he said that the applicant assisted with cooking at an event in Melbourne. He claimed that he "...kept him behind the scenes because he was studying." The witness added that at the time, the applicant was being followed by intelligence operatives, and that he told him to be careful, lest there be some repercussions for his family in the district. The Tribunal asked how he knew the applicant was being followed by intelligence officers. He said that they are often the same people, and he had seen some of them before. The Tribunal asked the applicant whether his family had ever been victimised or harmed by the Indonesian authorities. He said they had not. The Tribunal suggested to Person 1 that this was at odds with his claim that the applicant was being tailed by intelligence operatives, and indicated that he was of no interest whatever to the authorities. He claimed that this was because the applicant had avoided being photographed.
41. Turning to the applicant's activities in Australia since returning in the 2000's, Person 1 told the Tribunal that the applicant came to Australia because he had been targeted after becoming involved in a violent demonstration at a university in Place A. The applicant obtained a student visa and left for Australia. The Tribunal observed that to obtain a student visa was time consuming, and required that the applicant first apply for and gain admission to an educational institution. If the applicant was in such a hurry to leave, why did he not do so by some alternative route or method? The witness said that this was the only way to exit without arousing suspicion. He then went on to comment that others went directly to Malaysia after unsuccessfully attempting to cross the border.
42. The Tribunal asked the witness how the applicant knew that he had been 'targeted' After extended questioning to clarify the witness's disjointed answers, it emerged that a Person 8, who was a staff member at the university, was summoned and presented with a list of names in 2006. He was beaten up and asked about the people named in the document, which

allegedly included the applicant and Person 6. Shortly afterwards, Person 6 was arrested. The Tribunal asked when and from whom the applicant first became aware of his name being included in the alleged list. The witness said that he was told by Person 5 in 2006. The witness agreed that he had no direct knowledge of the alleged list, and had only learned of it through Person 8 and the applicant. The witness produced two photographs, one depicting a group of people standing around a raised district flag and the other depicting Person 9 and a man raising their fists in a salute or similar gesture, allegedly taken in 2007. He claimed that Person 9 had since been imprisoned by the Indonesian authorities for participating in the flag raising. By way of evidence for this claim, the witness produced an unsworn English translation of a purported excerpt from an Indonesian statute.

43. The Tribunal asked about the applicant's activities after he arrived in Australia. He said that he assisted by translating and participating in activities at church. He claimed that the applicant moved out to live on his own because it was "insecure" to continue living with the witness and Person 3. Asked why, he said that he was under surveillance by Indonesian officials. The Tribunal asked what basis he had for this belief. The witness said that he suspected them because he lost important documents, including his passport. He said he had no other evidence, but had reported the matter to the AFP, which suggested that he "stay at embassy places" when travelling overseas. Asked to explain, he said that he would report his presence and travel plans to Australian embassy officials when he went abroad. The Tribunal observed that this was recommended for all citizens travelling outside Australia.
44. The Tribunal again asked exactly how the applicant had assisted the movement since arriving in Australia. The witness said that he arranged chairs at the church and carried heavy things. He added that he "...stopped studying a few months ago."
45. The Tribunal asked whether the witness had contacted the applicant prior to his coming to Australia. He said he had not. Asked whether he had had any contact with him between his return to the district in the early 2000's and his arrival in Australia, the witness said that as far as he could recall, he had not spoken directly with the applicant in that period. The witness went on to claim that the applicant had asked a friend to contact him twice, and that the witness had spoken with the applicant's parent once or twice, but had not discussed the political situation at all.
46. **Person 4** is a member of the independence movement in Australia, and holds a Protection visa. He said he had met the applicant in Australia but had never known him previously, or in the district. He said that he talked about politics with the applicant, who assisted with activities for students at university, and helped out at church.

Post hearing inquiries

47. On 10 October 2008, the Tribunal wrote to the applicant, inviting him to comment and to submit additional information, in the following terms:

Section 424A

The Tribunal has identified a number of inconsistencies in the evidence provided by you at various stages, as well as information from other sources, which may lead it to question the veracity of your claims.

Particulars of Information

Despite claiming that your purpose in departing from Indonesia was to escape racial, political and religious persecution, even claiming that you were specifically identified as a wanted person by Indonesian authorities, you did not lodge a Protection visa application until several months after you arrived in Australia.

Why this information is relevant to the review

This delay is difficult to reconcile with your claimed motives for leaving Indonesia, and raise serious doubts in the Tribunal's mind in relation to the veracity of your claim to have a well-founded fear of persecution if returned there, and your credibility more generally.

Particulars of Information

In your application for your most recent student visa, you stated that you were in Malaysia in the mid 2000's. However, in your Protection visa application you claimed (at par.12) to have been in Malaysia from another period, travelling back to the district, allegedly clandestinely, for the first time at a different date in late January 2006 (par.13). After being confronted with this discrepancy by the delegate at interview, you reportedly became evasive and were unable to account satisfactorily for this very significant discrepancy. However, some time later, you filed a written statement in which you claimed that you went to Malaysia to study at university, but left after "a couple of weeks" because you "...did not have a good time..." (par.5). You claim to have then returned to the district unbeknown to any member of your family or the Indonesian authorities, and engaged in pro-independence activities, only returning to Malaysia to resume your studies (see par.5 at p.7 of the decision record).

Why this information is relevant to the review

These claims are manifestly inconsistent, and, taken in conjunction with your failure to explain the inconsistency at the interview with the delegate, raise serious doubts in the Tribunal's mind in relation to the veracity of your claims, and your credibility more generally.

Particulars of Information

At the hearing, it was claimed that you became aware of the inclusion of your name on a list of people wanted by the Indonesian security agencies over their involvement in the riots at Place A. Yet you did not apply for a visa to enter Australia until many months later, and, after being granted that visa did not depart for another month, arriving fortuitously at the beginning of the academic year. Yet elsewhere in your claims, you allege that you were able to travel clandestinely at will between Indonesia, the district and Country C on three occasions, specifically in order to avoid detection by the authorities. At the hearing, Person 1 also claimed that many participants who were unable to enter Papua New Guinea after the riots escaped to Country C.

Why this information is relevant to the review

This somewhat leisurely and officially visible exit is difficult to reconcile with your claim to have been fleeing imminent danger after being identified as a wanted person by the Indonesian security agencies, and raises serious doubts in the Tribunal's mind in relation to the veracity of your claims, and your credibility more generally.

Particulars of Information

In your Protection visa application you claimed at par. 9 that "...a lot of our information came from Person 1, who would contact me and I would pass on what he told me to the group." However, in sworn testimony at the hearing, Person 1 informed the Tribunal that following your return to the district between the early 2000's and your arrival in Australia, he had no direct contact with you, and that he only spoke to your parent on a few occasions, and never about political matters. Person 1 added that on two occasions, a friend contacted him on your behalf.

Why this information is relevant to the review

These claims are obviously inconsistent, and raise serious doubts in the Tribunal's mind in relation to the veracity of your claims, and your credibility more generally.

Particulars of Information

The accounts provided by you, Person 3 and Person 1 at the hearing of the nature and level of your alleged involvement in the independence movement since your return to Australia are strikingly inconsistent, with Mr Person 1 describing your role as quite peripheral and menial, and Person 3 describing you as a "trainee", and claiming that you undertook tasks that even you made no claim to have performed. In his statutory declaration, Person 1 claimed (at par.4) that "...when the asylum seekers arrived, the applicant interpreted for the group a great deal...". You did not arrive in Australia until later, and cannot possibly have performed this function at the time the declarant claims.

Why this information is relevant to the review

These inconsistent responses provided by these witnesses relate to matters which are central to your claims, and about which they are unlikely to be mistaken or confused. As such, they raise serious doubts in the Tribunal's mind in relation to the veracity of your claims, and your credibility more generally.

Particulars of Information

In your second statutory declaration, you claimed that your parent told you that he had been warned against continuing to send funds to you in Australia, or risk being seen to be supporting pro-independence activities and groups in Australia. You made no such claim in your original Protection visa application, nor at the hearing. Moreover, when the Tribunal asked you directly at the hearing whether your family had had any adverse dealings with the authorities on account of your alleged political activities, you clearly stated that they had not.

Why this information is relevant to the review

Your family's being confronted by the authorities in relation to your alleged pro-independence activities is hardly a matter that, had it actually occurred, would slip one's mind, especially since it would indicate, if true, that the authorities were aware of and concerned about, those alleged activities. Your failure to mention it on one occasion and your denial of it on another raise serious doubts in the Tribunal's mind in relation to the veracity of your claims, and your credibility more generally.

Section 424

The Tribunal invites you to provide additional information in support of your claims, in the form of:

- certified copies of your bank statements;
- certified copies of your attendance and academic records from a specified college ; and
- a certified copy of your application for admission to the Australian educational institution.

48. The Tribunal received a response to the above invitations, together with supplementary documentary evidence addressing a number of the issues raised by the Tribunal.
49. The Tribunal received further evidence from the applicant.
50. The Tribunal received a further letter from the applicant, enclosing one of the documents requested in its earlier invitation under s.424 of the Act.

FINDINGS AND REASONS

51. In order to be a refugee under the Convention, it is necessary for the applicant to be outside his country of nationality and for him to hold a well-founded fear of persecution for reasons of at least one of the five grounds enumerated in the Convention. The applicant has claimed

that he is in need of protection for reasons of his political opinion and membership of a particular social group (his family), which are Convention grounds. The applicant has claimed that he fears returning to the district because he may be arrested and imprisoned because of his political opinion and/or membership of a particular social group.

52. The Tribunal finds that the harm feared by the applicant involves serious harm and systematic and discriminatory conduct, and that the essential and significant reasons for the harm feared by the applicant are his political opinion and/or membership of a particular social group, either or both of which are Convention reasons.
53. In both his Protection visa application and his review application the applicant described himself as a national of Indonesia. He arrived in Australia carrying an Indonesian passport. For the purposes of the Convention, the Tribunal has assessed the applicant's claims against Indonesia as his country of nationality, and is satisfied that he is outside the country of his nationality. There is no evidence before the Tribunal that the applicant has a legal right to enter and to avail himself of the protection of a third country, and the Tribunal finds that the applicant does not have effective protection in a safe third country.
54. The Tribunal's task in the present case is to determine whether the specific applicant before it has a genuine fear founded upon a real chance of persecution for reason of his actual or imputed political opinion and/or membership of a particular social group (his family) if he returns to his country. This task entails systematically examining the claims that he has raised and the evidence that he has advanced, in addition to relevant independent country information.
55. Before doing so, the Tribunal notes that the mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded", or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70).
56. Having carefully examined and weighed the evidence submitted to the Department and to this Tribunal, the Tribunal finds that despite a number of procedural distractions on the part of the agent and some fanciful embellishments by the applicant and some of his witnesses, the application has substance.
57. The Tribunal finds on the evidence that the applicant is an Indonesian citizen of mixed ethnicity, some members of whose extended family have played an active and conspicuous role in the district's independence movement in the district, Indonesia and Australia. His own activities – or, more precisely, those claimed activities that the Tribunal is persuaded to accept as true - have been limited in scope and inarticulately rationalised. Nonetheless, the calculus of risk requires the Tribunal to take account, not merely of an applicant's Convention-related characteristics and past activities, but the probable response of the authorities to such activities.

58. Against that background, the Tribunal is of the view that given the strong and increasing presence of military and security forces in what the Indonesian authorities are pleased to term the district, their extreme sensitivity to any form of external scrutiny or criticism of Indonesian control of the district and the manifestly flawed electoral process that is claimed to have legitimised its annexation, and a history of brazenly repressive and rights-abusive conduct towards dissidents (especially where members of ethnic and religious minorities), the applicant faces a real chance of persecution for a Convention reason were he to return to his country of nationality.

CONCLUSION

59. The Tribunal is satisfied to the required degree that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a Protection visa.

DECISION

60. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2) of the Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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*

ID: R. Lampugnani