1001683 [2010] RRTA 506 (23 June 2010)

DECISION RECORD

RRT CASE NUMBER:	1001683
DIAC REFERENCE(S):	CLF2009/119999 CLF2009/149502
COUNTRY OF REFERENCE:	Israel
TRIBUNAL MEMBER:	Nicole Burns
DATE:	23 June 2010
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration 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 Israel, arrived in Australia [in] August 2003 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] November 2009. The delegate decided to refuse to grant the visa [in] February 2010 and notified the applicant of the decision and his review rights by letter [on the same date].

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 [in] March 2010 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.

20. According to his protection visa application the applicant was born in Israel in [year deleted: s.431(2)]. He is Jewish. He speaks, reads and writes English and Hebrew. His parents live in Israel, as do his sister and brother. He lives in Australia with his de facto partner, her daughter, and their son, born in [year deleted: s.431(2)].

21. The applicant was conscripted into the Israeli Army at 18 years of age, for three years. He claims to have deserted a number of times, resulting in gaol sentences totalling one and a half months. He worked as a security guard and at 'odd jobs' after leaving the army.

22. It is stated that the applicant fears imprisonment if he has to return to Israel due to his record as a 'conscientious objector' regarding Israel's policies on the Occupied Territories. He also claims that the government is unable to protect him from the risk of 'terrorism and bombings' from Palestinians. He fears that there is a real chance that he will be called up to serve if war breaks out between Israel and its neighbours, which he considers is "only a matter of time" He claims that a friend of his was murdered by Palestinians. He claims also that his psychological state is fragile and he fears for his mental health if he has to return to Israel and/or serve with the Israeli army again. He also claims that he will be exposed to "a differential impact of the Defence Service Law" by being forced to serve against his conscience or face persecution for refusing to serve.

23. The applicant provided the following documents in support of his visa application:

    - a copy of his military service record dated [date deleted: s.431(2)] showing a conscription date [date deleted: s.431(2)] and a discharge date [date deleted: s.431(2)]. His rank was 'private';

    - a copy of a certificate indicating that the applicant completed a course in 'tanks' during military service;

    - a copy of the applicant's motor mechanic course certificate from September 1983 to July 1984;

    - a psychological assessment and report from [agency deleted: s.431(2)] counselling dated [in] November 2009 based on a two hour interview with the

applicant and a phone call with his partner. In it the author states that the applicant suffers from post traumatic stress disorder (PTSD) for the following reasons: he was exposed to bombs and street fighting between Jews and Arabs in his formative years; he was drafted for three years in the Israeli Army; his friend was murdered by Palestinians; he suffered victimisation in the army because of his conscientious objection; and he was detained in a military prison. The author also discussed how these events affected the applicant's mental well-being and how returning to Israel would lead to re-traumatisation;

- a translated copy of a newspaper article (the source and date is unclear) about the murder of a soldier called, '[Mr A]';

- a typed letter from the applicant's physician in Israel who states that the applicant suffered from "emotional difficulties due to traumatic experiences, such as the death of his friends...while he served in the Israeli army'". The doctor also states that the applicant has had episodes of post traumatic stress;

- a typed letter from the applicant's father who states that his son left Israel because of traumatic experiences whilst serving in the Israeli army and due to problems finding work. He states that his son has lost his rights to health insurance and pension benefits and would have to pay large sums of money to get them back;

- various web-based articles about 'terrorist' attacks in Israel; and

- a letter from his partner in which she outlines the potential negative impact on their family if the applicant had to return to Israel.

24. [In] February 2010 the delegate refused to grant the applicant a protection visa on the basis that she was not satisfied that the applicant was a person to whom Australia had protection obligations. The delegate found that the law of conscription in Israel is a law of general application, and that fear of 'terrorism' is shared by the general population and is not Convention-related.

25. [In] March 2010 the applicant applied to the Tribunal for a review of the delegate's decision. The applicant's partner submitted a letter which outlined the inception and development of their relationship; ramifications on herself and her children if the applicant had to return to Israel; and concerns about living in Israel if her family is forced to go there.

26. In a detailed and substantive written submission to the Tribunal dated [in] March 2010 the applicant's partner provided further detail about the applicant's background and the inception and development of their relationship, and her concerns about moving to Israel if his visa is not granted. She also outlines the applicant's history with the Israeli army, including repeated efforts to avoid military service and consequent punishment. The key points in her submission are summarised as follows: the applicant left Israel because he feared being forced to perform military service as a reservist and/or if war broke out (as it had in Lebanon in 2006); he feared that with his past 'AWOL' record he would face imprisonment for refusing to serve and additional incarceration for absconding; the applicant would have been imprisoned for more than seven years due to his demonstrated refusal to serve on conscientious grounds, which was not a legally

recognised right in the Israeli Defense Force (IDF); an exception was acceptable on grounds of religion only and did not permit exemption on conscientious grounds; he would be persecuted on return by the Palestinians because of 'being Jewish' and be subjected to targeted assassinations (fearing he could become a similar target as his friend who was tortured and murdered); Israel cannot protect its citizens from terrorism and bombings; Israel clearly breaches human rights and international humanitarian law (a UN report was enclosed); civilians are subject to the use of weapons and dangerous substances (such as white phosphorus munitions and flechette shells) against international law; and the applicant would be at risk if another war breaks out with Lebanon because his town is located 20 km from the border (which came under heavy fighting during 2006 and a large amount of unexploded cluster bombs were left behind).

27. It was also submitted that the applicant would face economic hardship on return to Israel because he has no formal education or savings and his brother and sister are unable to provide him with ongoing financial assistance. She submits that unemployment rates are high and the applicant will not be able to register for health insurance, which is required by law, if unable to find a job.

28. As evidence that the Israeli government do not tolerate objection to military service, it was submitted that in April 2002 the Israeli government mobilised 20,000 troops who at that time were not actively deployed. This led to the imprisonment of all who conscientiously objected. The applicant's record, including falsifying information (i.e. regarding taking drugs), would place him at greater risk of being subject to imprisonment and harsh treatment at the hands of the IDF.

29. The applicant's partner also submits that the applicant believes he was a genuine 'conscientious objector' against the military and therefore the government's views on violence and oppression, and he still holds these beliefs. Many times he raised his moral and philosophical beliefs to the military. As such there is a real chance this would lead to persecution (punishment and imprisonment) because the applicant is expected to conform. It is submitted that these punishments are more severe in the applicant's case because he has a record of deserting and an obvious disdain for authority.

30. In summary, it is submitted that the applicant's main reason for leaving Israel is to avoid the fear that his close friend's death had instilled in him. He felt particularly vulnerable by being mandated to a further nine years of IDF service. He feared the continual violence in Israel and knew there would be a war sooner or later and he would be called up to serve. He feared personal violence if he had to fight and being punished if he did not fight. Living close to the Lebanon border, he felt he was an easy target. He also fears reprisals from Israeli government because he obtained a visa to Australia under false pretences and lied about taking drugs to avoid military service. The following documents were lodged with the submission:

    - results of a random health assessment showing the applicant had high blood pressure in September 2009 (which may reflect stress and anxiety, known components of PTSD);

    - a letter from the applicant's Australian doctor dated [in] March 2010 recommending that the applicant's family not be split;

- results from Health Services Australia indicating that the applicant's blood pressure was high [in] November 2009;

- various newspaper and internet articles about 'prison six', conscientious objectors in Israel, the Geneva conventions, unemployment in Israel and national health insurance requirements;

- a translated letter from the IDF to the applicant dated [in] March 2000 entitled "Declaration of AWOL due to non reporting to active reserve service" The letter's author encourages the applicant to report to duty to minimise penalties; and

- information about PTSD.

Tribunal hearing

31. The applicant appeared before the Tribunal [in] April 2010 to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant's partner.

32. The applicant said he was born in [location deleted: s.431(2)] in Israel, but grew up in [Town A], near the border with Lebanon. He confirmed that he was born in [year deleted: s.431(2)] and is now [in his 40s]. He worked as a removalist before he left Israel in 2003. He came to Australia on a tourist visa, hoping his relatives here would be able to sponsor him to stay in Australia; however that did not eventuate.

33. The applicant's parents are divorced. His father works in Africa (currently Uganda) and his mother has remarried and recently moved to America. His younger sister and brother live in [Town A]. He keeps in touch with them. When asked, the applicant said his siblings undertook compulsory military service in Israel, and his brother continues to undertake reservist training each year (his sister has been able to avoid this because she has had children).

34. The applicant said he started compulsory military service at the age of 18 in [year deleted: s.431(2)]. He was discharged in [year deleted: s.431(2)]. He ended up serving more than three years as required because he escaped a number of times and therefore had to make up time. When asked why he escaped, the applicant said because he did not want to serve in the Israeli army. Initially he joined because it was mandatory and he had no choice. However his best friend, [Mr A], who he served with, was killed by Arabs six months into their training whilst taking home leave. He showed the original newspaper article about his friend, [Mr A]'s murder which ran in a national paper at the time. He was scared the same thing would happen to him. His friend was big and strong but it did not help. After that, the applicant did not want to continue with military service. He said he does not like violence; he likes peace and quiet. He never wanted to go and fight. But the army would not let him refuse; he belonged to them.

35. The applicant was asked if he objected to military service prior to his friend being killed i.e. before starting compulsory military service. He said he did not because it is mandatory. However it became harder as time went on; because of what happened to his friend and also the army sent him to remote places (for example a base on the Egyptian border near Elat) which made it difficult to go home for leave. His repeated requests to transfer to a base closer to home were refused. Eventually they found him a

place closer to home; he figured they thought it was the easiest thing to do, given he had given them so many problems.

36. The applicant said he ran away from the army during this period too many times to remember. The first time he ran away was around two weeks after his friend died. When asked why, he said it was because he was scared to serve anywhere; it was very dangerous. Once he ran away and hid at a friend's apartment in [Town A] for three and a half months. Military police came looking for him at his parents' house. He turned himself in however, because he realised he could not hide forever. Plus he knew the longer he stayed away, the longer he would have to make up time. Because he returned to the army of his own accord his gaol time was only a month instead of between six and 15 months. He was imprisoned in a place called '[name]' near Haifa. He shared a cell with about 20 others. He said it was 'not nice'.

37. After his release the applicant returned to the army base near the Egyptian border. He did not stay there for long however, running away numerous times. Once he was away for 45 days and as a consequence spent two weeks in prison on return. Often he ran away for less than 14 days, so as to avoid going to '[name]' (he was imprisoned at the army base instead). The applicant was asked why his army service record only indicates that he served for three years if he had to serve extra time as claimed. He said that his record does not show the extra eight months he served, only an extra three months. Recently his brother found a letter (previously submitted to the Tribunal) sent to him from the IDF, dated March 2000, after he had not replied to their request to undertake reserve service in Gaza. He managed to avoid being sent to Gaza by claiming that he was on drugs. That was the last time he was called up, before leaving Israel.

38. The applicant said males are required to undertake around two months reserve training per year. The actual number of days changes, depending on the situation, but he remembers this was the requirement when he was in Israel. He thought it was reduced to about 40 days a year. When asked, the applicant said he undertook reserve training every year after he was discharged from the army in [year deleted: s.431(2)]. He tried to avoid service by saying he was sick, but was not successful. That is, not until he told the army he was taking drugs in 2000 after someone had told him that was an effective way of avoiding service. After he was sent the letter from the IDF he appeared in front of an officer at a military court and told them he was using drugs. That was his only option for avoiding going to Gaza or gaol. As a consequence the military reported him to the civilian authorities and he lost his driver's license. Three or so months later he had to undertake a psychological test. He told the 'shrink' that he was not a drug user and had lied in order to avoid military service in Gaza. He was given his driving license back and the army wanted to call him up again. When asked if they actually did, the applicant said he could not remember. He remembers it was quiet for a while after that. He said maybe they gave up on him.

39. The applicant was asked why the Israeli army would want to send him somewhere like Gaza when he had proved 'difficult' and unreliable in the past. He said he was not sure but noted that the army is a macho culture, which was something he was never in to. He wants to live his life in peace. He said he can be a 'strong guy' but there is always something that can happen. It does not matter how strong one is, the fear is there and such areas are very dangerous. His brother served in Gaza and his experience was 'horrific'.

40. When asked, the applicant said he is against war in general. He does not want to undertake military service. He thinks there is no need for all the violence.

41. The applicant was asked at what age would he no longer required to undertake reserve duty. He said when he left Israel it was up to 42 years of age, but he thought that may have been reduced. If they call him up to serve now it will be if there is a war, as there was between Israel and Lebanon in 2006. He added that the situation is also very tense between Israel and Syria.

42. The applicant said there are also a lot of bombings, rockets and 'other things' happen behind the scenes in Israel that are not reported. The applicant was asked if he considers himself more at risk than the majority of Israelis from such attacks. He said everyone is different and he has his own fears. He said if his friend had not been killed and he did not start to think the same thing could happen to him, he would have stayed.

43. The applicant was asked what he is most afraid of if he has to return to Israel now. He said he is afraid of the army calling him to serve again in the event of war (given he is still young, healthy and fit). If so, he fears he will suffer persecution.

44. The applicant was asked if he has any specific concerns related to the fact that he has been outside Israel for seven years and not undertaken reserve duty during that time if he were to return to Israel. He said he does not know and would only find out if the army called him on return. When asked if the army had tried to locate him through his family, he replied that he does not think so.

45. The applicant said there is always the chance of bombings. In 2006, 600 bombs were dropped in his hometown and his family had to flee. The applicant was asked if he could avoid such risks by relocating elsewhere in Israel. He agreed that when the bombs came from Lebanon it was less risky moving to Tel Aviv (which many people, including his family, did at the time) however there are still 'Arabs' around (which is how his friend was killed) and bomb attacks in restaurants and malls can occur anywhere. In the Gulf War (1989) a bomb dropped near the applicant's place in [Town A]. He said there were always rockets when he was growing up.

46. The applicant was asked his main reason for leaving Israel in 2003. He said that in his heart he wanted to get away from military service and not be persecuted again. To do so he planned on his relatives in Australia to sponsor him, but that fell through. When asked why he did not apply for a protection visa when he first arrived in Australia, the applicant said that in 2003 he arrived on a tourist visa which he extended, then he thought his relatives would help him out. He was naïve, new to the country, knew few people and did not know what to do next. He did not want to return to Israel, because of all the fighting there. He was also fearful that what happened to his friend ('a strong guy') would also happen to him.

47. The applicant was asked if he thought he could be exempt from reserve duty on return to Israel on medical grounds, given the findings of Australian psychologist's report. He said the army would have to assess him nonetheless. He added that he thinks he has improved in the last six months, and his blood pressure had returned to normal.

48. When asked, the applicant said he worked in various jobs in Israel and sometimes did not work because of the recession.

49. When asked, the applicant said he was not politically active in Israel. He never voted. He has not returned to visit because it is too risky.

50. The applicant was asked what he meant in his protection visa application that there would be a differential impact of the *Israeli Defence Law* in his case. He replied because he would refuse military service, as he did in the past (whereas most others go along with it) he will be punished, including imprisoned.

51. The applicant was asked why he obtained a passport in 2001. He said it was in his mind that he wanted to get out, not long after he was asked to go to Gaza. He did not have a plan, but it was in his mind.

52. The applicant was asked to elaborate on his concerns contained in the written submission to the Tribunal, that it would be difficult to find employment (and therefore access health insurance) on return to Israel. He said if he has to return, he will return with his family and it will be a disaster. That is difficult to find work because unemployment in Israel is increasing. His brother was recently retrenched.

53. His partner said although the applicant is humble and says little, he has over the years, told her stories about growing up in Israel (such as seeing rockets and bombings), about kidnappings, his time in prison, running away from the army, his friend who was killed, and his fear that the same thing could happen to him.

54. When asked why her partner repeatedly ran away from military service in the past, she said although her partner looks tough he does not like violence. He does not want to kill people. If he did not run away regularly he would have been forced to deal with that head on. She said his fear and conviction must have been strong to keep running away knowing the penalties in doing so; prisons in Israel are harsh. Growing up in Israel the applicant was taught about 'us' (i.e. Jewish) and 'them' (i.e. non Jewish).

55. The applicant was asked how strict he is in following Judaism. He said he used to go to the synagogue a lot in Melbourne and befriended the Rabbi. However less so now. He was asked if his reasons for not wanting to serve in the military were related to his religion. He said they are not; they are for the reasons he has already explained.

Country information

Military service and conscientious objection

56. The sources consulted indicate that all Israeli citizens and permanent residents (both men and women) are liable to perform compulsory military service from 18 years of age for periods of up to three years, and to be on call for reserve duties for varying numbers of years after that. No provision is made for alternatives to military service for conscientious objectors, but there are a number of categories of persons who are exempt from service. Andreas Speck for *War Resistors International* made the following observations about the system in a 2003 paper (also submitted to the Tribunal by the applicant):

> Conscription exists since the establishment of the State of Israel in 1948. The present legal basis of conscription is the 1986 National Defense Service Law. All Israeli citizens and permanent residents are liable to military service. However, the Ministry of Defence has used its discretion under Art 36 of this law to automatically exempt all non-Jewish women and all

Palestinian men except for the Druze from military service ever since Israel was established. Palestinian Israelis may still volunteer to perform military service, but very few (especially among the Bedouin population of Israel) do so. Military service lasts for three years in the case of men, and for 20-21 months in the case of women. It lasts longer for officers and certain specialists, such as doctors and nurses. New immigrants are given a two-year 'absorption period', but can be called up for military service during this period. They are conscripted for similar or shorter periods, according to their age, gender, and status as 'potential immigrants' or 'immigrants' Reserve service is required up till the age of 51 in the case of men (54 for officers) and up till 24 in the case of women. Reservist duty involves one month training annually. Traditionally the reserve service has been considered a very important aspect of Israel's defence policy, indeed an important aspect of building a national identity. Since the 1980s attitudes seem to have changed somewhat. Men of over 35 are often not called up for reserve training, as they are considered medically unfit. Usually men are finally discharged at the age of 41 or 45. Women are as a rule not called up for reserve training at all. (Speck, Andreas 2003, 'Conscientious objection to military service in Israel: an unrecognised human right', War Resisters' International website, 3 February, p.3 http://wri-irg.org/pdf/co-isr-03.pdf).

57. A 2005 document entitled '*Conscientious Objection'* from the website of the Israel Ministry of Foreign Affairs provides the government's legal position:

3. The IDF will respect the views of a conscience objector, provided that it is satisfied that these views are genuine. To this end, a special military committee, headed by the IDF's Chief Recruitment Officer, or his deputy, hears the application of those who wish to be exempted from the army on the basis of conscience objection. Among the members of this committee are an officer with psychological training, a member of the IDF attorney's office and a civilian expert on conscience objection.

4. The willingness to grant an exemption from the army due to conscience objection stems from the fact that the State sees the freedom of conscience as a fundamental human right and this attitude is integral to a tolerant society, regarding objection as a human phenomenon.

5. The High Court of Justice has addressed the issue of conscience objection in H.C.J. 7622/02, David Zonsien v. Judge-Advocate General. The Court here held that the difficulty lies in balancing between conflicting considerations: the duty to pay appropriate respect to the individual conscience of the objector, stemming from the right of individual dignity, and the consideration that it is neither proper nor just to exempt individuals from a general duty imposed on all other members of society.

6. A very fine line divides between the two main fundamental values of society: the freedom and protection of the individual and the value of equality and order in society. The duty of army service is a civil duty of every citizen that is explicitly stated in the Law. It is extremely difficult to decipher where an objection is a conscience objection, and therefore acceptable, and when to deny the exemption.

7. In a recent decision of the High Court of Justice, (H.C.J. 2383/04 Liora Milo v. Minister of Defence et al.) the Court emphasized that once it is clear that the objection stems from genuine motives, there is a need to distinguish whether the case is a conscience objection case or non-fulfilment of a civil duty. The latter has a "protest nature" to it and is perpetuated by ideological and political opinions with the intention of influencing change in State policy, usually performed in public by numerous people trying to get a message across to the authorities. The individual's needs and consciousness are not the reasons standing behind this phenomenon.

8. The Court here affirmed that exemption from army service, in the case where conscience objection is proven, is granted to men and women alike in the context of the abovementioned Section 36, according to the balances set in H.C.J David Zonsien, mentioned above.

9. The conscience objection is compelled by personal and specific motives. The purpose behind the objection is not to change state policy, it stands on its own as a completely individual decision with personal reasons. The individual has no interest in influencing others to join him.

10. Furthermore, the Court here distinguishes between a general objection and a selective objection. The general objection that is acceptable has no relation to the circumstances of time and place or to the army's policy, but rather stems from the lack of correlation between the individual and the nature of the army service. The selective objection is the result of ideological and political beliefs and is directly linked to the time and place where duties need to be performed by the army (objection to fulfil duties at a specific place, time or manner). Inherent in the army system is the fact that individuals do not choose what commands to fulfil or not. The selective objection alerts discrimination and dismantles the unity existent in the defence forces inherent in its nature.

11. The IDF is non-political. Soldiers are not permitted to engage in partisan politics while in uniform. Nevertheless, as citizens of a democracy, soldiers are permitted to be members of political parties and to advocate change in government policies. IDF Soldiers, just as all Israeli citizens, are encouraged to vote in national elections. By voting and exercising their individual right to party membership, soldiers are able to participate in the democratic process with the intention of achieving change.

12. Nevertheless, it is absolutely imperative to differentiate between the duty of fulfilling a command and political debate. Incorporating political values and opinions in the IDF drafting policy, will damage the basic values of the security service. Acceptance of selective objections will discriminate between individuals and in effect harm the democratic system based on equality.

13. Note that the disciplinary measures that Israel takes against objectors who are illegally refusing to fulfil their duties are lenient in nature. This, despite the imminent security threat, which places a higher value on the preparedness of each individual soldier in its comparatively small army ('Conscience Objection' 2005, Israel Ministry of Foreign Affairs website, 13 July (http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Conscience%20Objection%2013-Jul-2005)

58. Information on the Israel Defense Force (IDF) found on the Jewish Virtual Library website states: "The majority of [the IDF] are reservists, who are called up regularly for training and service and who, in time of war or crisis, are quickly mobilized into their units from all parts of the country." The virtual library also states that "Upon completion of compulsory service each soldier is assigned to a reserve unit. Men up [to] age 51 serve [up to] 39 days year [a] period [of] time which can be extended in times [of] emergency. Recent policy has been to reduce the burden whenever possible and reservists who have served [in] combat units may now [be] discharged at 45".

59. An Economist Intelligence Unit risk briefing on Israel dated 25 September 2008 indicates that:

To counter the threat that it believes it faces from its neighbours, Israel has built up a strong military capability, based on conscription and a system of annual reserve duty. Of the IDF's [Israel Defense Force] estimated serving strength of 168,000 in 2005, 107,500 were conscripts. Terms of service are 48 months for officers, 36 months for servicemen and 21 months for unmarried women and those without children (longer for officers and those with specialist skills). After military service is completed, male conscripts are required to serve up to 39 days a year until they reach 40, although certain specialists serve longer. Although military service is compulsory for women, and all units and functions are open to them,

reserve duty rarely extends beyond the age of 24 ('Israel risk: Political stability risk' 2008, Economist Intelligence Unit – Risk Briefing , 25 September).

60. According to an article in The Christian Science Monitor dated 27 August 2008, "[m]ilitary service is mandatory in Israel – two years for females, three for males, and more if one volunteers for certain elite units or stays on as an officer. Afterwards, most Israeli men, and some women, are required to report for reserve duty every year until age 40, and sometimes beyond." The article also notes that:

> The IDF spokesman's office confirmed that 28 percent of 18-year-old men and 43 percent of the women did not join the army this year. The vast majority of those who are not drafted are ultra-Orthodox Jews – a large population that is legally exempt. Others are exempted on medical grounds, because they have low test scores, criminal records, or are living abroad. Israeli Arabs are also exempt from service, although they can volunteer (Harman, Danna 2008, 'A summer camp for political dissenters in Israel', The Christian Science Monitor , 27 August).

61. An Immigration and Refugee Board of Canada response to an information request dated 7 June 2007 includes the following comments by "[a] postdoctoral instructor at the Buchmann Faculty of Law at Tel Aviv University… with respect to military service law and conscientious objectors" in Israel:

> The policy regarding conscientious objectors has remained more or less the same in the last decades, despite being challenged before the Israel Supreme Court by different petitioners. The way it works is as follows: The army distinguishes between "total" objection to service, stemming from pacifism, and what it calls "selective" objection, stemming from political objection to specific policies and duties of the army. In the former cases, people will be granted exemption from service, and in the latter case, they won't (and should selective objectors refuse to enlist, they can be tried and jailed for Refusal to Obey Orders, an offense according to article 122 of the Military Justice Act, 1955). When someone states, before being drafted, that he or she is a conscientious objector, they are invited to a hearing before a special committee, popularly known as "the conscience committee", whose role is to establish whether the person can be exempted as a "total" objector, or drafted as a "selective" objector (15 May 2007).

62. This is corroborated in an another Canadian report as follows:

> In March 2007, Amnesty International (AI) conveyed its concern regarding the imprisonment of Israeli conscripts and reservists objecting to military service based on conscientious grounds (AI 30 Mar. 2007; see also ibid. 2006). Media sources reported in July and August 2006 that an Israeli military captain was jailed for refusing to fight in the conflict in Lebanon (AFP 30 July 2006; ABC 2 Aug. 2006). The Refuser Solidarity Network corroborates the imprisonment of conscientious objectors and states that "Israel maintains an extremely narrow definition of 'conscience,' equating conscientious objection only with some forms of pacifism" (Jan. 2006). The Refuser Solidarity Network also states that Israel does not have a definition of conscientious objection articulated in any official document (Jan. 2006) (Immigration and Refugee Board of Canada 2007, ISR102548.E - Israel: Whether there has been an amendment to the military service law; if yes, whether the law is more open/flexible with respect to conscientious objectors; what the law states with respect to conscientious objectors , 7 June http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec& gotorec=451292 – Accessed 20 August 2007).

Penalties for avoiding military service

63. The 2003 War Resisters article states of the penalties for avoiding military service:

> According to the National Defence Service Law, art 35 (a) (2), failure to fulfil a duty imposed by the National Defence Service Law is punishable by up to two years' imprisonment.
>
> Attempting to evade military service is punishable by up to five years' imprisonment.
>
> Refusal to perform reserve duties is punishable by up to 56 days' imprisonment, the sentence being renewable if the objector refuses repeatedly.
>
> Helping someone to avoid military service is punishable by a fine or up to two years' imprisonment.
>
> Those who disobey call-up orders are regarded as refusing to perform military service and can thus be sentenced to up to five years' imprisonment. In practice sentences do not exceed more than a year's imprisonment. In practice, conscientious objectors are sentenced on one of the following charges: refusing to obey an order, absence without leave, desertion, or refusal to be mobilised.
>
> If an application for exemption from military service is rejected, the individual is ordered to perform military or reserve service. Continued refusal may lead to being disciplined or court-martialled. As stated above, there is no clearly discernible pattern to decision making in cases of people refusing to serve. Military courts have sentenced objectors to up to one-and-a-half years' imprisonment. Sentences are frequently much shorter, but may be imposed repeatedly. They may be from seven to 35 days' imprisonment, and they may be renewed as much as five times. After they leave prison people may either be 'forgotten' or exempted. Usually COs get exempted after serving a total of more than 90 days in prison. However, this practice is changing, and recently conscientious objectors were sentenced again and again after having spent more than 150 days in prison.
>
> It has been reported in the past that Druze objectors are apt to receive exceptionally severe sentences for draft evasion and desertion.
>
> Since October 2000, more than 181 conscientious objectors spent time in prison – the majority (151) refusing reserve duty in the Occupied Territories (selective conscientious objection).
>
> While the sentences for refusing to perform reserve duty in the Occupied Territories mainly remained constant – normally 28 days, with some cases of 14 or 21 days, and some cases of 35 days – the sentences for draft evasion increased. It can be seen that the average was below 90 days for draft resisters who were called up in 2001, those who were called up in 2002 received sentences of more than 100 days on average, with average sentences climbing to more than 140 days for those called up from August 2002 onwards (the figures for December 2002 and January 2003 are misleading, as these draft resisters haven't received their last prison sentence yet).
>
> The increase of sentences is the result of repeated imprisonment. Before 2002, draft resisters were usually sentenced 4 or at maximum 5 times, until they had spent at least 90 days in prison. Eventually they are sent to the "Unsuitability Committee" that usually exempts them on grounds of 'unsuitability for military service'. The decision to refer a draft resister to this committee is with the 'Classification Officer'.
>
> In some cases a classification officer referred a draft resister to the Unsuitability Committee even before 90 days in prison were reached. For those draft resisters who were called up in 2002 the situation changed. Victor Sabranski, who was called up in May 2002, spent 126 days in prison. Those who were called up from August 2002 on spent even more days in prison, being sentenced five, six, seven, or even more times, with no end in sight. In the case of Jonathan Ben-Artzi, who is presently serving a seventh prison term, the decision was transferred to the Head of the Manpower Department of the IDF, an indication that the increase in sentencing is a change of policy. (Speck, Andreas 2003, 'Conscientious objection

to military service in Israel: an unrecognised human right', War Resisters' International website, 3 February, p.8 http://wri-irg.org/pdf/co-isr-03.pdf).

64. More recent reports on conscientious objection in Israel include an article dated 31 August 2008 in the *Palestine Chronicle* stating that 18-year-old Sahar Vardi had been sent to an Israeli military prison after "refusing to be conscripted into the Israeli military." Vardi "is part of a broader movement of Shministim, high-school seniors who refuse to be conscripted due to the military's oppression of the Palestinians. Two other conscientious objectors, Udi Nir and Avichai Vaknin, were imprisoned earlier this month and a few others are likely to follow suit." Vardi was "in prison because the military conscientious committee did not accept her appeal", because in the committee's opinion, her appeal "was based on political convictions rather than a sincere conscientious belief" (Gordon, Neve 'Sahar Vardi: An Israeli Refusing to Oppress', *The Palestine Chronicle* , 31 August 2008).

65. Similarly, an article in *The Christian Science Monitor* dated 27 August 2008 refers to 18-year-old Sahar Vardi being jailed until 1 September 2008 after refusing to undertake mandatory military service in Israel. According to the article:

> ..Vardi will remain in jail until Sept. 1, when she'll be asked again to serve her term in the IDF. If she refuses, the state is expected to give her another weeklong sentence. If she continues to defy the state, Verdi could remain behind bars anywhere from 42 days to two years

Israel's Defense Force law

66. In relation to military reserve service, an article dated 2 May 2008 in the Global Legal Monitor, an online publication from the Law Library of Congress, indicates that on 2 April 2008, Israel's Parliament "passed a law that defines the structure of the Israel Defence Forces (IDF) reserve force and its capability and objectives", and includes details of "the duration of service in the reserves." It is stated in the article that:

> On April 2, 2008, the Knesset (Israel's Parliament) passed a law that defines the structure of the Israel Defense Forces (IDF) reserve force and its capability and objectives. The law provides the framework for a call for reserve service and the rights and duties of reserve soldiers. The law declares that the reserves are an inseparable part of IDF and constitute a central pillar on which IDF relies for purposes of State security. According to the law, a soldier may be called to reserve service for specific objectives, including training for a state of emergency, organization of manpower and discipline, operational tasks, and, in the absence of an alternative, for service in jobs and professions determined by a decree. The law further regulates the duration of service in the reserves. Accordingly, in a period of three consecutive years, officers may serve up to 84 days; non-officers who serve in supervisory roles, up to 70 days; and others, up to 54 days. These periods may be extended in a period of emergency or in other special situations, as determined by a government decision. The law further authorizes the Minister of Defense, in consultation with the Minister of Foreign Affairs, to determine a list of countries into which the entry of reserve soldiers is prohibited, limited, or conditional.
>
> According to the explanatory notes of the bill, the law constitutes a major change in the constitution of the reserve force and reserve service. It reflects the situation in which only part of formerly drafted soldiers serve in the reserves, while guaranteeing them adequate pay and limiting the tasks for which they can be called up for service to situations that are absolutely necessary." (Reserve Service Law and Bill, 5768-2008, the Knesset Website) (Levush, Ruth

2008, 'Israel: Military – Regulation of Military Reserve Service', Global Legal Monitor, 2 May http://www.loc.gov/lawweb/servlet/lloc_news?disp2_455_Military).

67. Another article dated 2 April 2008 refers to the Knesset approving "the 'Military Reserve Law' which, for the first time, regulates benefits for reserve soldiers in the Israel Defense Forces." The law "allows for affirmative action in favor of reservists in such areas as tax benefits, university scholarships and university dormitories." The bill also "stipulates that the IDF may release those it does not need - the same as today." According to MK Avshalom Vilan (Meretz), the bill "heralds the end of the people's army… because the more benefits are granted to more reservists, the more expensive it will become to call them for duty, so the army will call up fewer men. 'Only the good regiments will be called up. This is already happening,' Vilan said." It is also stated in the article that:

> One of the proposal's goals is to limit the number of reserve duty days each man must put in per year - 54 days per soldier in three years (an average of 18 days a year); 70 for a non-commissioned officer (23 a year) and 84 per officer (24 a year). Some of this time must be spent in training.
>
> This appears at first like a great improvement. But Itay Landsberg, of the forum of regiment and brigade commanders and pilots, says that holes in the law make it possible to call for a 36-day service a year - which would leave today's situation unchanged.
>
> [Deputy Defence Minister Matan] Vilnai's people said this would only apply to special professions such as pilots and doctors (Ilan, Shahar 2008, 'After 5 years of debate, reserve soldiers get regulated benefits', Haaretz , 2 April http://www.haaretz.com/hasen/spages/971106.html - Accessed 18 November 2008).

68. An article dated 1 April 2008 on the Israel Ministry of Foreign Affairs website provides further information on the terms of service in the Israel Defence Forces:

> Compulsory Service: All eligible men and women are drafted at age 18. Men serve for three years, women for two years. Deferments may be granted to qualified students at institutions of higher education. New immigrants may be deferred or serve for shorter periods of time, depending on their age and personal status on entering the country.
>
> Reserve Duty: Upon completion of compulsory service, each soldier is assigned to a reserve unit and may serve up to the age of 51. ('The State: Israel Defense Forces (IDF)' 2008, Israel Ministry of Foreign Affairs website, 1 April http://www.mfa.gov.il/MFA/Facts+About+Israel/State/THE+STATE-+Israel+Defense+Forces+-IDF-.htm).

FINDINGS AND REASONS

69. Based on a copy of his passport on file, the Tribunal accepts that the applicant is a citizen of Israel.

70. The applicant fears persecution if he has to return to Israel in two key respects: i) because he refuses to undertake compulsory military service and ii) fear of harm from organisations, or members of those organisations hostile to Israel (such as Palestinians). For reasons below the Tribunal finds that the applicant has a well-founded fear of persecution on conscientious objector grounds, and therefore has not considered his fear from Palestinians.

Conscientious objection grounds

71. The applicant claims to fear returning to Israel because he refuses to undertake military service on conscientious objector grounds. He seeks protection for the Convention reasons of his membership of a particular social group (i.e. 'conscientious objectors') and his political opinion (i.e. 'conscientious objection'). He fears that he will be forced to undertake military service as a reservist each year, or in the event of war, which he considers highly likely. He claims that his record of deserting and lying to the military to avoid military service places him at greater risk of punishment, including prolonged imprisonment, because he is expected to conform. He claims that punishment would be more severe in his case because of his record and obvious disdain for authority

72. The Tribunal found the applicant to be a credible witness at the hearing. He gave a consistent and plausible explanation of the reasons he does not wish to perform any further military service if he has to return to Israel, and the consequences of his refusal to do so in the past. The murder of his friend by Palestinians shortly after he began compulsory military service in [year deleted: s.431(2)] compounded his fears. In a submission to the Tribunal his partner argues that the applicant was a genuine conscientious objector against the military and therefore the Israeli government's views on violence and oppression. Further, he still holds these beliefs.

73. Based on the newspaper report of the applicant's friend's murder, and letters from the IDF, as well as the applicant's written and oral evidence, the Tribunal accepts that the applicant is a conscientious objector, both in ideology and in practice. It accepts that he ran away from compulsory military service on numerous occasions from [years deleted: s431(2)], which resulted in one and a half months total imprisonment and a lengthening of his compulsory military service by eight months. It accepts that six months into his compulsory military service a close friend was kidnapped, tortured and killed. It accepts that he lied about taking drugs in 2000 to avoid having to fight as a reservist in Gaza. It accepts that he did so because he genuinely feared for his life and objected to what was required of military service.

74. The Tribunal has considered whether the applicant's fear of persecution stemming from his objection to military service is Convention-related and well-founded.

75. The Tribunal has first considered whether there is a real chance that the applicant, who is [in his 40s] and has a record of going 'AWOL', would be called up for military service if he were to return to Israel. The country information cited above indicates that reserve military service is mandatory for men such as the applicant until the age of 51, for a period of 39 days a year. The information reports that there has been a change in policy so that reservists who have served in combat can be discharged at age 45. There is also some evidence (see the *War Resisters* article cited above) that men over 35 are often not called up for reserve training as they are considered medically unfit, and usually men are discharged at the age of 41 or 45. However, whilst there has been a change in policy there is no clear indication that the applicant would not be called up if he returned to Israel until the age of 51, which is [number deleted: s.431(2)] years away. The Tribunal also accepts the applicant's assertion that he may be called up for duty if a war breaks out, given that he is still healthy and fit. For these reasons the Tribunal finds that there is a real chance of this occurring in the reasonably foreseeable future.

76. The Tribunal must now consider whether the applicant's fear of persecution on conscientious objection grounds i) enlivens the Convention; and ii) is well-founded, taking into account, among other considerations, the impact of the enforcement of Israel's *Defense Service Law*.

The Convention nexus

77. The Tribunal has considered whether the applicant's opposition to military service had a political or religious basis, or whether conscientious objectors, or a particular class of them, could constitute a particular social group. In *Erduran v Minister for Immigration & Multicultural Affairs* (2002)122 FCR 150 at [28] Gray J concluded that conscientious objection might be relevant if it arises from a political opinion or from a religious conviction, and also that it might itself be regarded as a form of political opinion. His honour expressed the view that conscientious objectors, or some particular class of them, might constitute a particular social group for the purposes of the Convention.

78. In this case the applicant was clear at the hearing that his objection to military service was because he does not condone violence, does not want to kill, and fears for his own life. He did not argue that the reasons for his objection to military service were political, although his partner did so in written submissions to the Tribunal. Nonetheless, the way the IDF and Israeli government characterise conscientious objection (as indicated in the reports from Israel's Ministry of Foreign Affairs and the court case reported in *The Palestine Chronicle* cited above*)* indicates that they view conscientious objection as inherently 'political' and having a 'protest nature' to it. Taking into account the views which the applicant has himself expressed about his opposition to the Arab-Israeli conflict and his history of deserting and avoiding military service, the Tribunal is of the view that the applicant's objection to military service could be considered political in this context. The Tribunal is therefore satisfied that the applicant was and is a conscientious objector, for reasons that could be easily imputed as being political.

79. For these reasons, the Tribunal finds that if the applicant returns to Israel in the reasonably foreseeable future, there is a real chance that he will be called to perform military service (as a reservist or in the case of an outbreak of war), and would not be relieved of such obligations on grounds of conscientious objection. Further, based on country information, the Tribunal finds that if the applicant refused to undertake military service for political reasons (imputed or otherwise) he would be imprisoned pursuant to the Article 235(a)(2) of the *Defense Service Law* for refusing military service, which is a form of serious harm.

Israel's Defense Service Law

80. Enforcement of a generally applicable law does not ordinarily constitute persecution for the purposes of the Convention, because enforcement of such a law does not ordinarily involve discrimination. However, in *Erduran*, Merkel J at [28], referring to *Wang v MIMA* (2000) 105 FCR 548 at [65], stated that "even if a law is a law of general application, its impact on a person who possesses a Convention-related attribute can result in a real chance of persecution for a Convention reason." The judgement in *Erduran* was subsequently set aside on appeal. However, in allowing the Minister's appeal, the Full Federal Court did not directly deal with his Honour's discussion of Convention nexus: *MIMA v VFAI of 2002* [2002] FCAFC 374 (Black CJ, North &

Merkel JJ, 25 November 2002). The 'test' in Erduran has been followed in many cases involving conscription laws, including a recent case in 2009 (*SZMFJ v MIAC* [2009] FCA 95).

81. For example, in *VCAD v MIMA* [2004] FCA 1005, Gray J's analysis in *Erduran* was accepted by both parties as correct, and accepted by the Court in the absence of argument to the contrary. The Court held that the Tribunal had proceeded on the mistaken basis that a law of general application, which did not expressly discriminate or inflict disproportionate punishment, could not support a well-founded fear of persecution for a Convention reason. Justice Kenny held that this was "plainly erroneous", adding that here may well be a well-founded fear of persecution because a law, neutral on its face, has an indirect discriminatory effect or indirectly inflicts disproportionate injury, for a Convention-related reason (at [31] – [35]). This decision was upheld on appeal in *VCAD v MIMIA* [2005] FCAFC 1. Furthermore, where such a law as that applying in this case does expressly discriminate against persons whose objection to military service is in fact, or is perceived to reflect, their political opinion, it follows that the enforcement of the law can be persecutory, because where laws of general application are selectively enforced, in that the motivation for prosecution or punishment for an ordinary offence can be found in a Convention ground, then Convention protection may be attracted. Thus in *"Z" v MIMA* (1988) 90 FCR 51, Katz J pointed to selective prosecutions for a Convention reason, or the imposition of greater punishments for a Convention reason, as features which would render enforcement by a country of one of its generally applicable criminal laws as persecution for a Convention reason.

82. The country information before the Tribunal indicates that there are a number of categories of person who are automatically exempt from the obligation to perform military service in Israel, including, for example, newly arrived migrants, Arab Israelis and orthodox Jews. The Israeli government also makes some legal provision for conscientious objection to the performance of military service. In doing so, however, it draws a distinction between absolute pacifists and those opposed to serving on 'political' grounds, and the conscientious objection provisions expressly discriminate against the latter, as can be seen from the *Conscientious Objection* document published by the Israeli Ministry of Foreign Affairs cited above.

83. In this case, where the applicant has a history of deserting and avoiding military service, and held views against fighting that could be construed as political, the Tribunal finds that the punishment which the applicant risks if he returns to Israel goes beyond the mere enforcement of a law of general application and amounts to persecution for the purposes of s.91R(1)(b) of the Act. That is, citizens who object to military service on the basis that it does not accord with their political views receive greater penalties than those who object because they are pacifists or belong to particular religious groups. The Tribunal finds therefore that the law has a discriminatory element in its application.

84. For these reasons the Tribunal is satisfied that there is a real chance that the applicant will experience serious harm, as per s.91R(2) of the Act, capable of amounting to persecution in the reasonably foreseeable future if he returns to Israel. It also finds that the persecution he fears involves systematic and discriminatory conduct as per s.91R(1)(c) of the Act. Further, on the basis of country information setting out the Israel Defence Forces' characterisation of conscientious objection, that for the purposes

of s.91R(1)(a) of the Act, the essential and significant reason for the persecution faced by the applicant is the Convention reason of his political opinion.

85. As the risk the applicant fears comes from the state itself, the Tribunal finds that state protection is not available to the applicant. Nor would he be able to avoid the harm he fears by relocating elsewhere in Israel.

86. The Tribunal also finds that the applicant does not have a right to enter and reside in a safe third country.

87. Accordingly, the Tribunal finds that there is a real chance that the applicant would face persecution within the meaning of the Convention because of his refusal to serve in the Israeli army due to his (imputed) political opinion if he were to return to Israel now or in the reasonably foreseeable future.

CONCLUSIONS

88. The Tribunal is satisfied 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

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