

**060793741 [2007] RRTA 3 (11 January 2007)**

**DECISION RECORD**

**RRT CASE NUMBER:** 060793741

**DIMA REFERENCE(S):** CLF2006/63508

**COUNTRY OF REFERENCE:** Indonesia

**TRIBUNAL MEMBER:** Richard Derewlany

**DATE DECISION SIGNED:** 11 January 2007

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

This is an application for review of a decision made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Indonesia, arrived in Australia and applied to the Department of Immigration and Multicultural Affairs 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.

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.

The applicant applied to the Tribunal for review of the delegate's decision.

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**

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.

Section 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) 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 Refugees Convention as amended by the Refugees Protocol. 'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

#### **Definition of 'refugee'**

Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention 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.

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.

Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

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

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.

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.

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.

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.

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.

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**

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.

### *Protection visa application*

The applicant stated that he had entered Australia on a false passport. He provided documents relating to his education, his marriage, and his Indonesian ID card in his stated true name. He also submitted a letter from the Australian Aceh Society confirming that he was Acehese.

The applicant stated in his protection visa application that he was married with children, and that he had completed a number of years of education. He stated that he had worked and was self employed.

In a statutory declaration submitted with the protection visa application, the applicant stated that he opened a business. The business prospered and he had a number of employees with a high turnover a month. The applicant joined SIRA (Aceh Referendum Information Centre), which was working for a referendum on independence for Aceh. He became a sponsor of SIRA, and gave donations of money and goods. A celebration of the anniversary of the founding of SIRA was organised in Banda Aceh. People from all levels of the community joined in. The applicant stated that after this there were a number of killings and kidnappings. One of his relatives, a member of GAM, was taken from his home and was shot dead in front of his house by the military.

The applicant gave money to local GAM members. One of his relatives was among them. He donated money through civilian members of GAM. The area where his relative was stationed was attacked. His relative and several other GAM members were shot dead by the Indonesian military. When he was working at his business several members of the Indonesian military came. They took up their weapons and pointed them to his head. They struck him and one of his employees and used abusive language. They took him to the district military headquarters for interrogation and he was detained for one week. The military had found evidence that he was a supporter of GAM. After a week they demanded that he give them a large amount of money and he was required to report to their headquarters every two days for the next two months.

After he was released, the applicant continued to work in his business, and also to give donations to GAM. Business was suffering, however, because the situation was deteriorating, and there was often fighting between the military and GAM. The applicant often had to close his business. The military searched for the applicant at his home and his business, as they were suspicious that he was still supporting GAM. They did not find him, but they found a GAM flag at his business, and they burnt the premises down. At the time, the applicant and his family were outside Aceh. A friend telephoned him to tell him that his business had been burnt down, and that one of his employees had been shot dead. He also told the applicant that he was on the list of the military's wanted persons. The applicant telephoned another friend, who confirmed what the first friend had told him. The applicant

and his wife decided not to return home to Aceh, but to stay where he was, because they believed that if he returned he would be killed. He stayed there for several weeks and then at the beginning he and his wife decided to go to Bandung. Throughout the time that he stayed in Bandung, he was in hiding and moved from place to place to ensure that the Indonesian military and intelligence agents did not find him. After the tsunami occurred in late December 2004, he wanted to return to Aceh but was too frightened to do so.

The applicant no longer felt safe in Indonesia, so he found an agent who was willing to arrange a passport for him. He arranged for the applicant to go to the immigration office and have his photo taken. He obtained a passport in a false name, and false date and place of birth. The applicant paid a large bribe for the passport. After several weeks the applicant found an agent who was able to arrange a visa for Australia and travelled to Australia. The applicant had to pay a large amount of money for the ticket and the visa. The applicant decided that it would be safe for his wife, as a woman, to return to Aceh. She and his children returned. The applicant then made arrangements to leave Indonesia.

The applicant stated that he would be arrested, tortured and possibly killed if he returned to Indonesia. He stated that he did not accept the conditions agreed to by those who signed the Memorandum of Understanding (MoU) on behalf of GAM, particularly that Aceh would forego the right to independence. The applicant's conviction was that there could be no future for Aceh as long as it remained a part of Indonesia. Because of this conviction, the applicant would have to continue to advocate independence for Aceh. He therefore could not support the Helsinki agreement and the new laws, and would be regarded as an enemy by the Indonesian authorities.

The applicant feared serious harm from the Indonesian military, the intelligence forces, the police and the militia.

The applicant also submitted a number of reports from external sources regarding the political situation in Aceh, and a submission summarising the reports relating in particular to human rights violations in Aceh, the peace plans, the reintegration of GAM members into civilian society, the role of the militia and intelligence forces, and the absence of provisions in the MoU for the expression of aims for an independent Aceh.

#### *Departmental interview*

At the Departmental interview the applicant provided details about his family and his employment. He also gave details about the places where he lived, including where he lived outside Aceh prior to his departure for Australia. The applicant told the Department that he was seeking protection because he did not think there were any guarantees for his safety if he remained in Indonesia. He stated that he was a member of GAM and also a sponsor of SIRA. He explained to the Department how he passed information to GAM leaders and between GAM members. He gave examples about how he passed information to one of the leaders in his area.

The applicant provided details of how one of his relatives, a member of GAM, was shot by the military. He also gave details about how he was detained, and interrogated, because the military had found evidence that he had contributed money to GAM. The applicant provided information about the circumstances of his relative being killed by the military, which led to the evidence being discovered. He provided an account of how he discovered that his

business had been burnt down by the military, and that one staff member had been killed, apparently because the military had found a GAM flag on the premises.

The applicant gave details to the Department of the period of time that he spent in Bandung. He stated that he decided to leave Indonesia because he did not feel safe, as the police and military were looking for him. He told the Department about how he arranged to obtain a passport in a false name, and how he eventually obtained his visa. The applicant also stated that he did not believe he could relocate to another part of Indonesia because when he was in Bandung he did not stay in one place. The Department indicated to him that he had only given one address in Bandung. The applicant stated that he moved around if he felt insecure; he was worried about being targeted by the military and intelligence services. He hardly left the houses where he was staying, and he was scared about going out.

The applicant provided some information about his contacts with the Aceh society in Australia. The Department also discussed with the applicant the country information which indicated that a peace agreement had been reached in August 2005, and the recent information from July 2006 that the Aceh Governance bill had been passed into law. The Department indicated that the country information indicated that the applicant would not face problems amounting to persecution if he returned to Indonesia. The applicant stated that the laws which were passed in July 2006 did not reflect what was drafted as a result of the peace agreement.

After the departmental interview the applicant submitted further country information to the Department. The applicant also submitted a statutory declaration stating that when he rang his wife recently, she told him that men had recently been acting suspiciously near their home. One of the men knocked on the door of the home and asked where the applicant was. His wife told the man that he had left Indonesia and had gone overseas. His wife told the applicant that she knew that the man was not from Aceh because of his accent. The applicant phoned his wife, and she told him that she was anxious because some persons had driven past her house three times recently and had behaved suspiciously. The persons who did this always slow down significantly as they passed the house to look at it.

### *Tribunal hearing*

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Indonesian and English languages.

The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.

Prior to the hearing further submissions and country information were also received from the applicant's representative. In a statutory declaration the applicant provided further details of his involvement with SIRA. He made financial donations and sometimes assisted with arrangements such as helping to hire trucks to take people to attend meetings. He gave details of the assistance he provided to a coordinator, and also details of her arrest and imprisonment. He stated that she perished in the tsunami of December 2004 because she could not escape from her prison cell.

The applicant referred to information that SIRA had been banned in July 2006. His view was that the organisation was banned because the authorities were afraid of the centre's influence

and the fact that it had advocated full expression of wishes for independence. The applicant provided further details of his association with GAM, including his financial support. He gave further details of being detained, and the incidents resulting in his business being burnt down. He outlined how he remained in Bandung for several months after moving there. He stated that he feared he would be at risk of detention or serious physical harm if he returned to Indonesia because of his past association with GAM and because he continued to advocate for independence for Aceh.

At the hearing the applicant told the Tribunal that his involvement in SIRA included arranging transport for people to get to meetings. He also assisted one of the coordinators in places where she undertook work in support of the referendum issues. His work with SIRA was undertaken in secret so that the intelligence services would not find out about it. The Tribunal raised with the applicant the issue that at the time he described his assistance for SIRA the organisation was legal, and there should therefore have not been any need for him to provide assistance in secret. The applicant stated that the government authorities regarded the organisation with suspicion because it was supporting the objective of independence, and there were therefore risks in being involved in the organisation.

The applicant gave further evidence of his support for GAM, and of how relatives of his had been supporters of GAM. The applicant stated that he was detained when the authorities found some papers on his relative who was killed. The Tribunal discussed with the applicant that there appeared to be some inconsistent evidence about who the papers were found on. The applicant explained that his relative had been at the GAM headquarters and this is where the papers had been found. He stated that GAM did not usually keep such evidence, but perhaps had not had a chance to destroy it before it was found.

The applicant explained to the Tribunal that he kept GAM flags in his premises for safekeeping; he was going to hand them over to GAM after his return but the military raided his business in the meantime. He did not know for certain whether the business was burnt down because the military had found the flags. He understood from talking with his contacts that the army became very angry when they raided the business. He deduced that one of the reasons for burning down the business was that the flags were found, because they were prohibited. He stated that it also appeared that the military had obtained some information about his assistance to GAM.

The applicant gave the Tribunal further details of the circumstances of his business being burnt and an employee being killed. He also explained how he moved around when he went to Bandung in order to avoid detection by the authorities. He also stated that he used a false ID in Bandung, which was in the same name as he used to obtain a false passport. The Tribunal discussed with the applicant its concerns that the false ID he used in Bandung was in the same name as the false passport, when it appeared from previous statements that the false name for the passport was arranged when he saw an agent about getting a passport, and it appeared that the person who arranged the passport had not asked for any ID documents. The applicant explained that he just used the false ID card and paid money to the agent; no other documentation was used.

The applicant told the Tribunal that it took him a while to get a false ID card in Bandung. He got information from a friend about the possibilities of getting to Australia but it took a while for him to arrange a visa for Australia.

The applicant stated that he did not think he could relocate to another part of Indonesia because he would be targeted by the authorities as someone who was clearly Acehnese. He told the Tribunal that just recently a relative who had travelled to Indonesia from another country had been taken aside on entry and had not been seen since. The Tribunal discussed with the applicant the country information which indicated that the new governance laws for Aceh would bring economic benefits to the province and a large degree of autonomy. The applicant stated that he believed the new laws did not reflect the agreements reached in 2005, and that in any case his view was that the only option for Aceh was to continue to seek independence from Indonesia. He would advocate for this and would therefore be at risk of apprehension and mistreatment by the authorities. He also stated that many people did not agree with those in GAM who accepted autonomy rather than independence, and referred to a split in GAM arising from the fact that there were leaders who did not agree with the developments since the Helsinki agreement of 2005. He could not live in Indonesia because he would not be able to express his views that the people of Aceh should continue to pursue independence.

The applicant's representative clarified to the Tribunal the issue which the Tribunal raised about inconsistent evidence relating to the person who was killed, and the circumstances in which evidence of the applicant's financial support for GAM was found. She stated that she discussed this matter with the applicant when preparing his statutory declaration. She recalled that he spoke about his relative being the person who was killed, and that the documents were found either on him or at the place where he was staying. She confirmed that the applicant had made the connection between his relative and the person who he stated was killed in the statutory declaration. She advised the Tribunal that the statutory declaration may have inadvertently missed a reference to the relative so that it appeared the applicant was referring to another person. She confirmed her understanding that the applicant was always referring to his relative as the person who was killed, and that the circumstances surrounding this incident led to the military finding evidence of the applicant's financial support of GAM.

#### *External information*

There is a considerable body of information from external sources regarding the conflict in Aceh, and in particular the founding of Gerakan Aceh Merdeka (GAM, or the Free Aceh Movement) in the late 70s and that movement's campaign, including an armed struggle, for independence from Indonesia.

The US State Department has reported on human rights abuses in Aceh, but also on the positive developments of the August 2005 peace accord:

Security forces continued to commit unlawful killings of rebels, suspected rebels, and civilians in areas of separatist activity, where most politically motivated extrajudicial killings also occurred. There was evidence that the Indonesian Armed Forces (TNI) considered anyone killed by its forces in conflict areas to be an armed rebel. The government largely failed to hold soldiers and police accountable for such killings and other serious human rights abuses in Aceh and Papua.

Following the December 2004 earthquake and tsunami that hit Aceh Province, the government and GAM rebels pursued negotiations that resulted in an August 15 peace accord in the form of a Memorandum of Understanding (MOU). Implementation of the MOU ended an almost three decades-long



conflict and resulted in a substantial decrease in human rights violations by the TNI, police, and GAM rebels.

The Human Rights Nongovernmental Organization (NGO) Coalition in Aceh reported that during the year the TNI killed 42 GAM insurgents and arrested 1; 44 civilians were killed. The same organization reported that 40 civilians and 37 GAM members were killed before the MOU and 4 civilians and 5 GAM members were killed after the MOU.

On January 3, in Bireuen, Aceh, six members of the TNI special forces (Kopassus) reportedly killed two men and injured another when the men tried to intervene in the alleged apprehension of the son of a GAM member.

Humanitarian volunteers reported that TNI and Police Mobile Brigade (Brimob) personnel killed three suspected rebels after capturing them during a joint operation in Serba Jaya village in Aceh Jaya District.

The NGO Commission for Disappearances and Victims of Violence Aceh reported that GAM killed seven civilians; the Human Rights NGO Coalition reported that GAM killed 17 soldiers during the year.

On May 4, GAM rebels allegedly shot and killed a seven-year-old boy in North Aceh Regency during a rebel ambush of a vehicle carrying the boy. The incident left 10 others, including three soldiers, injured.

The TNI and the police rarely investigated extrajudicial killings and almost never publicized such investigations.

There was no known progress in the following cases from 2004: the four civilians found dead in a jungle near Peureulak, East Aceh; the killing of civilian Cut Musdaifah in Wakheuh village; the alleged GAM killing of local legislature candidate Muhammad Amin; and the shooting death of a paramedic in South Aceh. There were no developments in the May 2003 killing of local legislature member Jamaluddin Hasany; in the July 2003 killing of former GAM member Cut Aca Budi; in the July 2003 killing of schoolteachers Muslim Sulaiman and his wife Darmawati; or in December 2003 bombing that killed 9 persons at an outdoor concert in Peureulak. (US State Department Country Reports on Human Rights Practices 2005: Indonesia, March 2006)

There developments relating to the signing of the Law on Aceh Governance in July 2006 have been widely reported, though reports also indicate a number of uncertainties in relation to how the new laws will operate and be received:

The chances of lasting peace in Indonesia's unhappy northern province of Aceh brightened on July 11th. A law was passed granting it generous autonomy, as promised last August in a pact between the government and the separatist Free Aceh Movement (GAM), which formally ended a 29-year armed struggle. According to the new law, the Acehnese will receive tens of millions of additional dollars from the government; they will keep 70% of the revenue from their large oil and gas reserves; and they will have a bigger say in the running of their province. For the first time in Indonesia, local political parties will be allowed in Aceh. Since these will not be formed in time to

contest provincial elections expected in November, individual candidates will be allowed to stand as independents, another first for Indonesia.

Many Acehese politicians reckon all this has satisfied about 90% of their demands. Others are less content. GAM has lingering concerns over whether the government will honour its agreement. And many Acehese are furious that a promised human-rights tribunal will have no powers to investigate crimes committed during the long conflict. Some Acehese fears are more personal. Many women, for instance, predict that the formal adoption of Islamic law, another fruit of the peace agreement, will erode their already meagre rights. But these objections are most unlikely to scupper the agreement. A provincial strike, called by some dissidents on July 11th, was scantily observed, reflecting broad support for the peace process. Moreover, ministers in the central government have also promised to amend the law if it is seen to have failed to satisfy the demands of most Acehese.

A more pressing threat to Aceh's prospective stability has been posed by a spate of crime, including five murders, this month. Analysts say this may indicate disgruntlement among many low-level ex-GAM members, in particular over the failure of government peace-making incentives to reach them. The government sent half the sum earmarked for ex-militants to GAM's district leaders. But it has withheld the rest until those leaders submit lists of recipients' names. These lists have yet to be sent; some former fighters are turning to crime to survive. Compounding the dissatisfaction with the scheme is more general unhappiness with the pace of rebuilding the ruins left by the December 2004 tsunami, which devastated most of Aceh's coastal communities. Still, without the disaster, it is unlikely that the government and militants would have made peace.

There are also fears over what may happen after a European Union-led peace monitoring mission leaves Aceh in September. The EU group has done well to maintain relative tranquillity, and has moderated various local disputes competently. But it has failed to establish a local successor ahead of its departure. Unless it finds an appropriate body soon, there is a real danger that all its good work will start to unravel towards the end of the year. ('Brightening Skies over Aceh', *The Economist*, 13 July 2006)

Of particular relevance to this review are reports that relate to claimed factional splits within GAM. Dr Sidney Jones of the International Crisis Group (ICG) reported in September 2006 to the press about the recent splits in GAM, and the ICG examined the issue of factional splits in greater detail in its briefing notes on the December 2006 elections:

That rift, which GAM spokesmen call "differences of opinion", pits the old guard leadership that was based in Sweden throughout the conflict against younger figures who stayed in Aceh and fought. It erupted into the open in mid-2006 as the organisation sought to set political strategy and decide on candidates for the elections. In Aceh, unlike other parts of Indonesia, candidates without party affiliation are allowed, enabling GAM members to stand as independents. The old guard supported one party-backed slate for governor and deputy governor, the younger leaders an independent ticket. One of the candidates was physically attacked by his rival's supporters on 22

November in Bireuen, Aceh. On 27 November, in what initially seemed an effort at reconciliation, GAM announced at a press conference that it would stay neutral as an organisation. In fact, the division remains deep and could affect not only these elections but GAM's plans to build its own political party. The split is significant because so much hangs on the December poll. For GAM itself, the elections are a test of political strength and an indication of how much work it will have to do to win the much more important 2009 elections, when seats in the provincial parliament will be at stake. Senior GAM strategists believe that if they can control that parliament, they can set the political agenda for Aceh's future. In this sense, the December elections are a dry run, and it will not be disastrous if they lose most races, as long as they can get a respectable percentage of the vote.

For the armed forces and many Jakarta-based officials, the polls are a test of GAM's good faith. Will GAM candidates refrain from using the separatist flag or suggesting that independence is just around the corner? Senior military officers make little effort to disguise their suspicions that GAM is exploiting the peace to rebuild and regroup and is only paying lip-service to Indonesian sovereignty. (The regional military commander wanted all GAM candidates to swear an oath of loyalty to the Indonesian state but was persuaded to drop the idea.) For many Acehnese in former conflict areas, the elections are a gauge of whether the peace will hold. An IFES survey conducted in September-October 2006 suggested 93 per cent of Acehnese believe the elections will help secure the peace but 55 per cent are concerned about violence, whether by ex-GAM, ex-militias, government security forces or political party supporters.

Before the incident in Bireuen, there were fears that the military or intelligence service would prevent a GAM victory; that GAM would use intimidation and threats; and that long-dormant militias would reemerge as goon squads for non-GAM candidates. Now there are fears of intra-GAM violence as well, although both sides insist there will be no repeat of the 22 November attack, and the first days of the formal campaign, which began on 24 November, have gone smoothly. ('Aceh's Local elections: The Role of the Free Aceh Movement (GAM)', International Crisis Group, Asia Briefing 57, Jakarta/Brussels, 29 November 2006).

Dr Edward Aspinall, a leading expert on GAM from the Australian National University, has commented to the Tribunal on the split within GAM, and on the risks of a GAM supporter who continued to advocate independence suffering harm:

There is indeed a split among former supporters of Free Aceh Movement (GAM) outside the country about the Helsinki Peace Agreement, with one (relatively small) group continuing to support independence for Aceh. This split partly continues an early and very bitter division in the movement which developed some years ago between a group called MP-GAM and the mainstream GAM (the mainstream was led from Sweden by individuals like Malik Mahmud and Zaini Abdullah). This split led to bitter acrimony and at least one murder in Malaysia. Many (though not all) of the group who now criticize the Helsinki peace agreement and condemn the mainstream GAM leadership for supporting it, were formerly supporters of MP-GAM. For your information, I paste below a declaration made earlier this year by supporters of

this group. From my own associations with members of the Acehese community in Sydney, I am aware that several members of the Acehese community in Australia are affiliated with this group (or at least share its views) and continue to support Acehese independence.

This split is separate from the one which Sidney Jones refers to. That split has occurred in the mainstream GAM ranks – ie among those who support the Aceh peace process. There is considerable bitterness here, too, and I have read some reports about intimidation and minor violence resulting from it, but not of very serious violence (e.g. killings). This does not mean that such violence has not occurred, just that I haven't heard about it.

I do not know if the history of tensions within GAM referred to in point 1 above would put someone who was affiliated with the minority position (ie support for continued independence) at risk of violence from other GAM members if he/she returned to Aceh. I certainly could not rule that out: certainly at the height of the conflict, there were many rumours of such violence taking place and I have heard GAM members themselves say at that time that they would kill members of MP-GAM they found in Aceh. I do not know to what extent that rancour and hostility continues into the post-peace agreement climate. Discussions among Acehese on various email lists I am party to do reveal that there is much continuing bitterness; it may be possible that this would lead to violence, though I cannot say for sure.

I believe that any person who returned to Aceh and campaigned for the independence of Aceh would be at serious risk of arrest. The peace agreement has been possible only because GAM gave up its support for independence. In other parts of Indonesia, advocates of independence for various regions continue to be arrested for violating makar (treason) provisions of the criminal code. Government security force leaders in Aceh have stated at various times that they are suspicious of, and would like to take action against, former independence supporters who now endorse the peace process, but they have been constrained by the fact that all such persons have carefully avoided stating their support for independence. It is thus very likely that if a person was to openly advocate independence, that security forces would find it politically expedient to make an example of such a person. (Aspinall, E., 'Factional splits in GAM', 9 November 2006).

Dr Aspinall's comments are echoed to some extent by comments made by another GAM expert, Deakin University's Associate Professor Damien Kingsbury. He has advised that he does not 'believe that anyone has anything to fear from either faction of GAM', though 'if Acehese do advocate independence, they might be persecuted by police or soldiers' (Kingsbury, D., 'Factional splits in GAM', 30 October 2006).

## **FINDINGS AND REASONS**

The Tribunal is satisfied that the applicant is a citizen of Indonesia and that he is Acehese.

The Tribunal finds that the applicant has generally presented consistent claims throughout the processing of the application. The Tribunal is satisfied that the applicant has been a supporter of GAM and was also actively involved in the activities of SIRA in Aceh. The Tribunal

accepts that relatives of the applicant have been active members of GAM and have held senior positions in the movement. The Tribunal accepts the evidence that one of the applicant's relatives was killed. The Tribunal also accepts that another of the applicant's relatives held a senior position in the movement and that he was killed in an attack on GAM.

The Tribunal accepts the applicant's evidence that he provided financial donations to GAM, and that he is likely to have provided support in other ways such as passing information to various members when asked. The Tribunal also accepts that the applicant was involved in the activities of SIRA, and that he assisted the organization in arranging transport and in helping coordinators to arrange meetings. On his own evidence he was not, however, a high profile member of the organization. The Tribunal finds that some of the applicant's evidence to the Department about his activities in supporting GAM was vague. The Tribunal accepts however in the context of the overall evidence he has given that he did support the movement in a number of ways.

The Tribunal raised with the applicant some issues where it appeared that his claims were inconsistent. For example the Tribunal raised with him the issue of information in different statements about the circumstances which led the military to discover that he had provided financial support to GAM. The issue was important as the applicant claimed that he was detained and interrogated as a result. The Tribunal accepts the applicant's responses to the Tribunal's concerns, and also his representative's explanation that part of his statement may have inadvertently missed a reference to his relative. The Tribunal is satisfied that the applicant has given credible evidence about the circumstances which resulted in him being detained. The Tribunal accepts that he was detained and interrogated at this time as a result of evidence which the authorities found indicating he was a supporter of GAM, during an operation in which his relative was killed by the Indonesian military forces.

The Tribunal accepts the applicant's evidence that his business was burnt down by the military while he and his family were away, and that a member of his staff was killed. The Tribunal accepts that at the time he had kept GAM separatist flags in his premises. The Tribunal is unable to establish whether this was the sole reason why his business was burnt down, or whether the military had other information they had about the applicant's association with GAM, or even whether their actions were influenced by the fact that he had relatives who were senior members of the movement, or a combination of these factors. The Tribunal accepts however that the actions of the military had a political motivation arising from a perception by the military that he supported and was involved in GAM.

The Tribunal accepts that this incident (including the death of an employee), combined with the applicant's previous detention and interrogation by the Indonesian military and the death of relatives at the hands of the military, led the applicant to fear for his safety if he returned to Aceh. The Tribunal is satisfied that this was why he remained initially where he was and then moved to Bandung, where he stayed for a number of months before he left for Australia.

The Tribunal accepts the applicant's evidence that he used a false identity in Bandung and that he essentially went out as little as possible, and moved addresses in order to avoid detection by the authorities. The Tribunal is satisfied with the applicant's explanation about moving to different addresses in Bandung. The applicant had indicated this in his application form, and the Tribunal is satisfied that he has reasonably explained that he gave one main address for Bandung in the form, but moved to different locations because felt insecure about his personal situation.

The Tribunal is satisfied that the applicant's previous detention and interrogation by the Indonesian military, and the destruction of his business by the military constitute serious harm that amounts to persecution. The Tribunal is satisfied that the essential and significant reason for the serious harm was the applicant's political opinion, as a supporter of GAM.

The Tribunal accepts the applicant's evidence that he does not agree with the position of those members of GAM who accepted that Aceh should give up its struggle for independence and should accept autonomy within Indonesia. The Tribunal accepts that the applicant continues to believe that the only long term option for Aceh is independence from Indonesia. The Tribunal accepts that the applicant would continue to advocate independence if he returned to Indonesia, and that he would do so in a manner that would attract the attention of the authorities. The Tribunal also accepts that by advocating independence for Aceh the applicant may also come to the attention of those members of GAM who oppose persons affiliated with the minority position of continued support for independence.

The Tribunal has considered whether there is a real chance that the applicant would suffer serious harm amounting to persecution if he returned to Indonesia, particularly in the context of recent positive political developments in Aceh. Although the country information indicates that the progress made since the 2005 Helsinki agreement has been significant, reports do highlight the uncertainties relating to the position of GAM leaders in the future, particularly in the context of factional divisions in GAM. The ICG report indicates that some senior military leaders in Indonesia are suspicious that GAM may exploit the peace to rebuild and regroup. The report also refers to a survey conducted in September-October 2006 in which 55% of respondents were concerned about violence in the future. Dr Aspinall's comments indicate that there is a real chance that someone who continued to advocate independence would be targeted by the authorities, and possibly by other GAM members. Given this, the Tribunal finds that there is a real chance that the applicant would suffer serious harm in the form of intimidation, detention and physical abuse, if he returns to Indonesia, on account of continuing to advocate for an independent Aceh. The Tribunal finds that there is a real chance that the serious harm would be at the hands of the authorities such as the Indonesian military, but could also possible be at the hands of other GAM members who have accepted that GAM should give up its support for independence.

The Tribunal is satisfied that there is a real chance that the applicant would suffer serious harm amounting to persecution because of his political opinion if he returns to Indonesia. The Tribunal is satisfied that the essential and significant reason for the persecution would be his political opinion, as a person who would continue to advocate for the independence of Aceh, as required by paragraph 91R(1)(a) of the Act. The Tribunal is satisfied that the persecution involves systematic and discriminatory conduct. The Tribunal is also satisfied, given the real chance that the applicant would be targeted by the Indonesian military, that there is no place within Indonesia to which the applicant could reasonably relocate where he would not have a well founded fear of persecution on account of his political opinion.

The Tribunal had some concerns about the applicant's evidence of how he obtained a passport in a false name, and how he obtained a false ID card in the same false name and used it to obtain the passport. The concerns about the manner in which the applicant's passport was obtained, and the circumstances surrounding the false ID card, have not been fully resolved in the Tribunal's mind. In other circumstances this might raise questions about the applicant's credibility. Nevertheless, as indicated above, the Tribunal is satisfied that the applicant has given credible evidence about his involvement in SIRA and GAM, and his circumstances in Indonesia which led him to fear persecution if he returned. The Tribunal's

concerns about the evidence regarding the applicant's passport and ID card do not outweigh the positive findings in respect of his claims.

The Tribunal received from the applicant's representative a further submission, including additional information from external sources, in relation to his claims. The submission and additional information support the conclusions reached by the Tribunal.

The Tribunal finds that the applicant is outside his country of nationality, Indonesia. For the reasons given above, the Tribunal finds that he has a well-founded fear of being persecuted for reasons of his political opinion if he returns to Indonesia. The Tribunal finds that the applicant is unwilling, owing to his fear of persecution, to avail himself of the protection of the Government of Indonesia. There is nothing in the evidence before the Tribunal to suggest that the applicant has a legally enforceable right to enter and reside in any country apart from his country of nationality. The Tribunal therefore finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act.

## **CONCLUSIONS**

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

## **DECISION**

The Tribunal remits the matter for reconsideration with the direction that the applicant is 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*.

Sealing Officer's I.D. prrt44