0801842 [2008] RRTA 312 (7 JULY 2008)

DECISION RECORD

RRT CASE NUMBER:	0801842
COUNTRY OF REFERENCE:	Israel
TRIBUNAL MEMBER:	David Thomas
DATE DECISION SIGNED:	7 July 2008
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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 Citizenship 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 Israel, arrived in Australia in the early 2000s and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.

The delegate refused the visa application as 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.

[Information deleted in accordance with s.431 of the Migration Act]

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.

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) 205 ALR 487 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.

Review by the Tribunal [information deleted s.431|.

An application for review was lodged with the Tribunal [information deleted s.431|. Evidence and submissions provided in support of the review application are set out and discussed below as recorded by the first Tribunal.

According to the protection visa application the applicant is a Jewish male born in Israel. The applicant lived all his life in City 1. He received a number of years of education and is fluent in English and Hebrew. [Information deleted in accordance with s.431 as it may identify the applicant.] He left Israel in the early 2000s legally on a valid visa for travel to Australia At the time of making his application, the applicant's parents and siblings were

living in Israel.

The applicant claimed he left Israel initially just to travel and explore Australia. Several months ago the situation in Israel became worse, attacks occurring in every single town, especially in the area where his house is located. As a result, even his parents changed their location and moved to a different place in Israel, hopefully far from the attacks. The applicant stated although now the situation in Israel was not as bad as it was several months ago, there was still attacks going on. Not so long ago a terrorist blew himself up in a street of the southeast city in Israel, El-qt, which was supposed to be the safest city. The applicant queried who could promise him that if he went back to Israel, a terrorist would not blow himself up and he would be there. He claimed this was what frightened him and made him scared of returning to Israel. He stated he had been in Australia already for some time and everything around him was really peaceful and quiet, and people were friendly. He feared that if he went back to Israel the situation would only get worse, because it was never quiet there. He was scared that, like the bomb that fell on the premises next to his house, it could also happen to his home the next time. He found it really traumatic to live in fear all the time, and that there was a possibility that the next bus he got on would have a terrorist on it who would decide to blow up the bus. He could not see a future living in fear all the time. He had seen the way that people live in Australia and believed that was the way life should be. He feared if he went back the army would probably call him to serve the country as all Israeli men had to perform military service for three years at the age of 18, and after that, 30 days in a year.

The applicant feared all the terror that was going on in Israel and the people that were responsible for the situation. Terror was a reality that all Israelis lived with every day. The Israeli authorities were doing their best, but could not protect people from terror in a Jewish country surrounded by Arabs. The Israeli government already tried to sign a peace agreement with these countries, but these countries wanted a big part of Israel, including the capital Jerusalem, which made it impossible to achieve peace.

After the delegate's decision to refuse to grant the visa was made, he applied for a review of the delegate's decision The Department received a letter from the applicant which was passed to the Tribunal.

In his letter, the applicant submitted points that supported his request for refugee status in Australia The applicant stated the war that occurred in the early 2000s was really hard for him and for his family because of the dangerous location of their house, which was at the heart of the wall. He was lucky to be here in Australia, but his thoughts were in Israel. The applicant submitted that there was talk in the Israeli media that there would be another war very soon. He submitted Israel had even bigger problems because of the fact that most of the

people in the government running the country were under investigation, including the President and Prime Minister. Not long ago there was a report of a council that investigated who was to blame for the war in the early 2000s, and this concluded that the Prime Minister of Israel was guilty because of failure and corrupted leadership. The applicant stated this may not be a good reason to be a refugee, but when people who are the head of the country failed, there was no-one else to trust to protect the country from their enemies and there was no future for the country. The applicant suggested the situation in Israel now was that there were 10 bombings on average every single day in Area Z. He stated that the situation had been going on for a very long time and the government could not do anything to solve the problems except to just bomb back. The applicant stated on reflection he remembers that this had been the situation for a long time and he could not see a change in the future. He was ashamed in the way that his country treated its "opposition" and did not agree with killing anyone. He was lucky that he was not in Israel because if he was there the government would make him fight in the army for something he did not believe in and did not agree with, because all Israeli men had a duty to serve in the Israeli army for a month every year until the age of 45 and if they resisted they would be imprisoned. The applicant could not understand how the delegate had found that he had not been persecuted because of his religion or race, as all the problems in Israel were because Israelis were Jewish and their Arab neighbours were determined to eliminate the very existence of the Israeli country. Even when he wanted to travel the world, he could not go to many places because of his race and religion. There were lots of examples of Israeli Jews being persecuted in different places in the world. His reluctance to return to Israel "it was at the start only because of fear now it's also because I'm ashamed in what's happening over there and I am determent (sic) never to live in that place again". This was the first mention by the applicant of objection to military service.

Hearing

The applicant appeared before the Tribunal to give evidence and present arguments.

The applicant stated that he was born in the late 1900s and he lived in City 1 except for less than a year when he went to College, just before he came to Australia. He received a number of years education, in addition to a period of time at College. He did not have any particular qualifications. Before he came to Australia he was studying. He worked a few months before he came to Australia. The applicant stated he departed Israel legally in the early 2000s. He came to Australia to travel and see the country. The purpose of his trip was to visit for a period of time and travel around and then go back but things changed over in Israel and here. The applicant stated his parents and siblings were all living in Israel. He was in contact with his family regularly. His family were residing in City 1.

The applicant confirmed the purpose of his trip was to travel and have a holiday. The

Tribunal asked the applicant why he feared returning to Israel. He stated when he arrived in Australia he travelled around and met the Australian people. In Israel people lived in a bubble. They were born to suffer. If there was a bomb on a bus or somebody killed nothing would happen. Life would continue as normal because this was the way people lived there. Here in Australia he understood this was not the way to live. He loved the importance of family in Australia and the fact there was no threat to life in this country. In contrast in Israel, people did not know what would happen the next day. There were soldiers and security guards on the buses and other places such as the shops, checking people. Despite this the people in Israel were not in panic but were leading a normal life. Everywhere in Israel there were soldiers with guns. The applicant stated he did not want to live this way. He did not want to serve in the army for a month each year. He felt ashamed by what was happening in his country and against the Palestinian people. Most people were innocent and wanted to live their lives but because of the terror over there they lived difficult lives as the Israeli army could shut off the electricity and other amenities and control their lives. The applicant stated that now Israel was a modern place. Tel Aviv was comparable to London Although Arabs would come and bomb themselves at nightclubs and other places resulting in a lot of people being killed, people continued to lead normal, happy lives. When a person was living there, in Israel, that sort of life was usual but over here it appeared weird to live in those circumstances. The applicant stated life in Australia was normal and the way it should be. It was the way he wanted to live, without fear. He wanted to bring up his kids in a good place. In the war last year a bomb fell in front of his sibling's house and his/her children now live in panic whenever they hear a siren letting people know something bad was happening. The applicant stated there was talk about another war or something serious with Syria as the Syrians wanted Golan Heights. The applicant stated he wanted to live in Australia. He did not want to go back to Israel Although he missed his family, he did not miss his country.

The applicant stated he completed military service from the late 1900s to the early 2000s The Tribunal asked the applicant which part of the Israeli Defence Force he served in. He stated he served in the North [information deleted: s. 431] and described his time in the service as fun. After a year of carrying a gun he asked the Commander to take it from him as he did not need it and it was useless as he did not know how to use it. The applicant stated he did not perform any further service after he completed his military service. The Tribunal asked the applicant if he had been called up for reserve duty since he performed his military service. He stated he went to the far east at the time of the Al Aqsa war and after returning to Israel he started College during which time he was called once but he was not required to serve because he was studying. He was still in contact with his Commander at that time and he fixed everything up for him. His Commander was able to help him because it was not long after he had completed his service but if he went back now there was no way he would be able to avoid service. The applicant confirmed since he completed military service in the

early 2000s he had only been called up the once and had never performed reservist duties. He would never do it. If he was in Israel and called up to serve and he refused he would be arrested and put in jail. The Tribunal asked the applicant, if he was called up to serve the 30 days he technically was required to do, what would be the reason for not performing this duty. The applicant stated everything changed for him since coming to Australia. When he was in Israel it was normal to serve in the army and fight the Palestinians, Lebanese and others but now that he had known something else he now believed it was wrong to go with a gun and kill others. The Tribunal asked the applicant why he now believed it was wrong. The applicant stated it was complicated as the Palestinians wanted Jerusalem, the Syrians wanted Golan Heights and Hezbollah from Lebanon were against Israel and this would not change. Similarly, there was no way Israel would give in to what the Arabs wanted so there was no chance of peace in the future. The government of Israel were found guilty for what happened during the war last year. Although a new government was due to be elected nothing would be different as this situation had persisted for many years and it would continue to be the same in the future as neither side would give up as they believed their position to be the truth. The applicant stated in Israel a person did not know what would happen in a day. When there was a bomb in a place where he knew people lived he would try to call to see if they were OK but there would be no reception because everyone was trying to call to find out about people they know and he would experience feelings of loss until given the chance to speak to the person. In the few years he had been in Australia he had not experienced these feelings or any fear. He could disconnect himself from what was happening in Israel here in Australia and do something with his life.

The Tribunal asked the applicant about information he had provided the Department about his parents moving from City 1. The applicant stated during the war, his parents, sibling and his/her children stayed with friends in Tel Aviv. They stayed in Tel Aviv for several weeks, until the war was over, and then they returned home to City 1.

The Tribunal asked the applicant if he feared returning to Israel because of the 34 day war in the early 2000s, why did he wait a period of time to apply for protection. The applicant stated he could stay in Australia until that time. Also it was not easy or simple to ask for refugee status because it was not something good or complimentary. He therefore looked for the best options for him and took the time he had available to think about what was the best thing to do.

The Tribunal explained to the applicant that as the delegate had detailed in their decision and as the Tribunal had also described at the beginning of the hearing, in order to be recognised as a refugee there had to be a real chance he would face persecution if he returned to Israel for one of the five reasons outlined earlier, that was, race, religion, nationality, membership

of a particular social group or political opinion. The reasons he had claimed to fear returning to Israel was because of the general conditions in the country as a result of the hostilities between Israel and its neighbours. However, these hostilities did not appear to fall within the Convention definition as the Convention did not encompass people fleeing generalised violence or internal turmoil. Similarly, his opposition to performing reservist duties did not appear to fall within the Convention as this was a law which applied to all Israelis and unless the law was applied discriminatorily for one of the five Convention reasons, the definition of a refugee was not attracted. The applicant stated he understood but it was complicated as the people in Israel were in danger everyday. In Israel there was a chance of being killed by terrorists going to the shops or on a bus.

The applicant stated when he received the decision from the delegate he was ashamed because of the things that were detailed in the decision that Israelis had done to the Palestinians. He did not want to go back to Israel because he did not want to be part of a community against the Palestinians. He did not want to go back and live a weird life, in a bubble. He deserved the opportunity to live a normal life and look to the future, which he could do in Australia.

[Information about the applicant's history deleted in accordance with s.431 as it may identify the applicant].

Review by the Tribunal [information deleted s.431]

[Information about the applicant's history deleted in accordance with s.431 as it may identify the applicant].

The Tribunal informed the visa applicant that the case had been constituted to a Member of the Tribunal and invited him to provide any documents or written arguments that he wishes the Tribunal to consider.

A letter was forwarded to the applicant, pursuant to section 424A of the Act, seeking comments on information the Tribunal considered would be the reason, or part of the reason, for affirming the decision under review. The applicant had changed his address without notifying the Tribunal and did not receive the letter. However, during a telephone conversation he was informed by an officer of the Tribunal about the letter and subsequently was faxed a copy. He requested and was allowed an additional time in which to respond to the letter. The applicant advised that he had appointed an authorised representative, but did not provide information as to who the representative was. At the same time he also provided a statutory declaration. At a later date the appointment of a representative was formalised by

letter and another statutory declaration was provided. The representative later asked the Tribunal to ignore the previous statutory declaration because it was a draft only and omits some details. The second statutory declaration contains the same essentials.

In the second statutory declaration the applicant states his personal and working history as noted previously including that he came to Australia in the early 2000s for reasons of tourism: "*I was very interested in Australia. I had read a lot about the Australian lifestyle and as things were becoming increasingly frightening and unpleasant in Israel I thought that Australia would be a good place to travel to*". He states that "*many people are critical of the way Israel has conducted itself politically particularly as regards to Palestinians and also as regards its close neighbours such as Lebanon*". In the early 2000s the Israel-Lebanon war broke out and "*I do disapprove of Israel's conduct in relation to the war with Lebanon*". He refers to terrorist attacks perpetrated against Israel and that they are partly attributable to Israel's own policy decisions. "*I am afraid of returning to Israel. The situation in Israel is not at all safe for ordinary people. Terrorist attacks and bombing happen every day. There is a real prospect of a significant escalation of hostilities between Israel and its closest neighbours*".

The statutory declaration also states:

> "I understand and have been told by the Department and the Refugee Review Tribunal that I cannot be a refugee just on the basis that I am afraid of returning to Israel. However, I want to make it very clear that I feel unable to return to Israel because if I return to Israel I will be required to undertake 30 days of national service each year. I do not believe in violence and I do not believe in the activities and policies of the Israeli Government or the Israeli Army. I would feel unable to do national service for the Israeli Army because of my political opinions. A failure to undertake national service as required could produce a penalty in the form of imprisonment [paragraph 17]
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> "In addition, I believe that I would suffer from persecution unless I am willing to fall into line with the common views held by Israelis about our neighbours including the Palestinians and the Lebanese and about the need to forcibly repress our neighbours and the Palestinians. [paragraph 18].
>
> "I would describe myself as a moderate but to many Israelis my views would be a betrayal of Israel. I would be at risk of being targeted by extreme political groups or killed. The Israeli government and agencies like the police are not able to protect me. [paragraph 19]
>
> "In addition, I believe there would be a social stigma attached to me having unpopular, arguably unIsraeli political views. I would be repelled by society. When applying for

> employment I may have to demonstrate that I have completed my 30 days per year of national service. My political views would certainly be known to others and would virtually preclude me from securing employment or advancement in Israel." [paragraph 20]

Hearing

The applicant appeared before the present Tribunal to give evidence and present arguments. He stated that he did not require an interpreter.

At the hearing, the applicant corroborated his personal and travel details. He said he had been employed in the army [information deleted: s431]. In the normal course of events, after his initial three years service, he would be expected to serve 30 days per year as a reservist. However, he confirmed that he had not served the time in any year from then until the present time. Asked what was the basis of his objection to military service, the applicant said he did "*not agree with it. It is wrong. I believe in peace*". He said he changed his view while in Australia, because when "*you are inside Israel you are surrounded by opinion, but when you are outside you see things properly*" He said he did not believe there would be peace in Israel, "there is no way I will go back" He may be gaoled for refusing to serve in the army. He said he thought he would be persecuted because of his opposition to military service and therefore he had a political opinion. He said "they" would think that he is "weird" for holding this opinion. He would lose his friends, he would not be able to get a job, there is a group of criminals who would harm him. He said that people in Israel held the view that "*every Arab/Palestinian must die*" The applicant was unable to identify the alleged 'group of criminals' except to say that they are the group who support the government and have the power to do as they want. He was unable to provide details on this group. He said he would be a target from one side because of his Jewishness and from the other because of his opinion.

The agent noted that the first statutory declaration was substantially the same as the second statutory declaration but was incomplete and asked the Tribunal to disregard it. The Tribunal agreed to disregard the former and take into account the latter only.

The applicant's agent requested an additional week in which to submit further documents. By letter the applicant's agent provided the following submission:

> The applicant falls within the definition of refugee because of his political opinion. The applicant was not interested in Israeli politics until after he had travelled He formed his views especially during the hostilities between Israel and Lebanon in the early 2000s while he was in Australia. His political opinions are now in opposition to the policies of the Israeli government and the Israeli Army and different from those held by most Israeli

> citizens. He does not agree with the forcible repression of Israel's neighbours and the Palestinians. The applicant claims that in Israel political discussion is very much part of everyday life. He states that his views would be seen by many Israelis as a betrayal of Israel, he is at risk of being targeted by extreme political groups who may kill him, and the Israeli government and police cannot protect him. His views would result in him being rejected so that it would be difficult for him to find employment.
>
> The representative quoted from an Amnesty International report to the effect that "conscientious objectors, including pacifists and those opposed to implementing Israeli policies in the Occupied Territories, who refuse to perform military service are normally imprisoned for weeks and sometimes months after receiving unfair trials by military officers".

The representative referred to a number of previous RRT cases where other Israelis successfully claimed protection on the basis of conscientious objection, but also noted that these cases were not binding on the Tribunal.

Independent Country Information

The *United States Department of State Country Reports on Human Rights Practices* - which was released by the Bureau of Democracy, Human Rights, and Labor, included the following relevant information about the situation in Israel:

> With a population of approximately 7 million, including approximately 5.3 million Jews, Israel is a multiparty parliamentary democracy. "Basic laws" enumerate fundamental rights. The 120-member, unicameral Knesset has the power to dissolve the government and mandate elections. On March 28, the 17th Knesset was elected democratically. On May 4, Prime Minister Olmert presented his government to the Knesset.
>
> The judiciary is independent and has sometimes ruled against the executive, including in some security cases. Notwithstanding some cases of abuse by individuals, the civilian authorities maintained effective control of the security forces.

An *Amnesty International Report 2007*, *Israel and the Occupied Territories* provides some information about the situation in Israel vis-a-vis the Palestinians to the effect that larger numbers of Palestinians than Israelis were killed during 2006. The 34 day war which broke out on 12 July 2006 after Hizbollah's military wing crossed into Israel and attacked an Israeli patrol, killing three soldiers and capturing two others, involved heavy Israeli attacks into Lebanon and Hizbollah missiles fired into Israel, causing the deaths of 43 civilians.

Amnesty reports that killings of Israelis by Palestinian armed groups continued but decreased

to half the previous year's level and to the lowest since the beginning of the intifada in 2000. In total 21 Israeli civilians and 6 soldiers were killed in Palestinian attacks. There was a significant increase in the launching of homemade 'Qassam' rockets by Palestinian armed groups from the Gaza Strip into the south of Israel.

Israeli settlers in the West Bank repeatedly attacked Palestinians and their property as well as international peace activists and human rights defenders. In June the Israeli Supreme Court issued a ruling instructing the army and police to protect Palestinian farmers seeking to work their land from attacks by settlers. The incidence of attacks decreased but several more were carried out in the presence of Israeli security forces who failed to intervene.

Military Service

Sources consulted such as the Economist Intelligence Unit and the US Department of State indicate that all Israeli citizens and permanent residents of both sexes are liable for compulsory military service. Overseas Jews may also volunteer for service. No provision is made for alternatives to military service for conscientious objectors although there are categories of persons exempt from military service. Military service usually lasts for 4 years for officers, 3 years for men, 21 months for women, with some variations for certain specialists such as medical personnel and new immigrants. After initial military service, released soldiers continue to serve as reservists, contributing one month per year. Theoretically, this may continue into their early 50s, although in practice it usually ceases by the early 40s.

Exemptions are typically granted to religious students, married women or women with children, and those with medical or psychological conditions, as well as other categories

In a 2003 a paper by Andreas Speck for *War Resistors International* the following observations of the system in general was made:

> Conscription exists since the establishment of the State of Israel in 1948. The present legal basis of conscription is the 1986 National Defence 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).

The paper by Andreas Speck for *War Resistors International* 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.
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> 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).

Provisions made for pacifists

The sources consulted indicate that there are no provisions such as alternate forms of service for conscientious objectors under Israeli law. However, persons who are deemed to be genuine conscientious objectors may be granted exemption from service: one issue involved here is whether the person is an "absolute" pacifist or whether they object to performing military service on "political" grounds, such as in the Occupied Territories. There is also some evidence that the large number of draftees who are granted medical exemptions may include people who are simply unwilling to serve.

A 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).

A report by the *Immigration and Refugee Board of Canada* indicates that while there are no legal provisions for conscientious objectors, a large number of draftees are granted medical exemptions; and some commentators say that these include persons who are simply unwilling to serve:

> Draftees who are given a Profile 21 medical classification based on a medical condition that makes them unsuitable for military service are exempt from service in the Israel Defence Forces (IDF) (Haaretz 5 Dec. 2006; The Jerusalem Post 1 Feb. 2006).
>
> New Profile, a pacifist non-governmental organization (NGO) opposed to the military draft, estimates that a quarter of draftees are exempt on medical grounds and that "[i]t is common knowledge that a large proportion of these [draftees] in fact choose not to serve" (n.d.). In August 2006, the Hebrew-language newspaper Maariv reported that some 20 percent of young Israelis eligible for conscription do not enlist in the Israeli army That figure is a slight drop from November 2001, when an article appearing in the Irish Times noted that of the total number of Israeli draftees, some 25 percent fail to enlist, and a further 20 percent drop out of the IDF at a later time. (6 Nov. 2001). Like New Profile, the article mentions that there are resisters and that the majority of them manage to obtain exemptions under Profile 21, although "Profile 21 people don't show up in the statistics as draft resisters" (Irish Times 6 Nov. 2001). Similarly, Maariv noted in April 2003 that approximately 20 percent of draftees had either not been conscripted into the defence forces or, once recruited, were exempt from service on medical-psychological grounds. However, in the first three months of 2003, defence statistics showed a 25 percent drop in the number of soldiers discharged from service on psychiatric grounds, after having been assessed under a Profile 21 classification (Maariv 9 Apr. 2003). The decrease in numbers was the result of an IDF decision to reduce the number of discharges on psychological grounds by classifying some soldiers who used to be discharged under Profile 21 under Profile 41, which indicates that they experience "adjustment difficulties" (ibid.). Soldiers classified under this profile are not discharged from the military but are instead given a lighter service (ibid.).
>
> In a report on the practice of recruiting children, New Profile cited figures from Ynet, the main Hebrew-language Web site of the daily Yediot Ahronot, indicating that some 40 percent of eligible men and 54 percent of eligible women are not conscripted (29 July 2004, 11). A 25 July 2005 article appearing in The Jerusalem Post, citing figures from

the IDF, also reported that 42.3 percent of Jewish women "opt out of military service." Of these, 10 percent drop out for medical reasons or personal "unsuitability," and 32.1 percent base their claims for opting out on religious beliefs (The Jerusalem Post 25 July 2005). Senior military officials consider this figure suspiciously high (ibid.). Similarly, the Glasgow-based Sunday Herald estimates that only half of eligible women actually serve in the Israeli army: almost 20 percent are exempted because of religious beliefs; 20 percent because they do not meet the educational requirements; and 10 percent because they are married (17 Apr. 2005) (Immigration and Refugee Board of Canada 2007, ISR102087.E – Israel: Proportion of draftees who are disqualified from military service for receiving a Profile 21 classification or for other reasons (2005-2006), 26 February).

FINDINGS AND REASONS

The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well founded" or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169 70.)

The applicant traveled to Australia on a valid Israeli passport and he states that he is a national of Israel. Therefore, for the purposes of the Convention the Tribunal has assessed his claims against Israel as his country of nationality. He is currently outside his country of nationality. He states he had no difficulty in obtaining travel documents and has traveled in a number of countries for the purposes of tourism.

The Tribunal accepts the applicant is an Israeli male who arrived lawfully to Australia on a valid visa. He was subsequently granted other valid visas. He subsequently applied for the Protection visa currently the subject of this review.

The essential claims of the applicant are that:

(1) he is persecuted by the organisations, or members of those organisations, that are hostile to Israel (such as Hezbollah and terrorists) and which put him in fear of his life if he returns to Israel and from which the authorities (Israeli government agencies) are not able to protect him; and

(2) he has objections to performing military service.

The Tribunal is required to assess whether the first claim is a claim linked to any recognised Convention ground as well as, as Lindsay FM expressed it, "… whether the applicant's 'conscientious objection' to performing military service could be regarded as a form of political opinion, or whether 'conscientious objectors' could constitute a particular social group". The Tribunal notes that the use of the term 'conscientious objector' is a shorthand way of referring to the applicant's objections to military service, as well as to the expressions used by the first Tribunal, and not intended to convey a finding of fact to the effect that the applicant is a 'conscientious objector'.

Persecution by organisations hostile to Israel

The Tribunal accepts that while the applicant was in Australia, the 34 day war between Israel and Lebanon took place in July/August 2006. The Tribunal accepts that during this war the applicant's family may have relocated temporarily to City 2 as City 1, where the applicant and his family usually reside, was subjected to attack by Hezbollah from southern Lebanon. The Tribunal has no reason to doubt the applicant's unwillingness to return to Israel nor that he has a fear of the possibility of being a victim of a future attack by parties hostile to Israel. The Tribunal accepts the applicant has a subjective fear of returning to Israel because of the "terror" that has occurred in the country in the past and which continues to happen in the form of terrorist attacks and armed conflict. The Tribunal accepts that there are security issues in Israel as a result of hostilities between Israel and several of its neighbouring countries. However, there is no claim or evidence before the Tribunal that the applicant or his family have been personally targeted during any attacks or terrorist incident. As the applicant himself identified, terror was a reality all Israelis lived with every day. It is settled law that the Convention definition does not encompass those fleeing generalised violence, internal turmoil or civil war (*MIMA v Haji Ibrahim* (2000) 204 CLR 1 and hardship and dangers to persons affected by war or civil disturbance do not, without more amount to persecution within the meaning of the Convention (*Rahman v MIMA* [2000] FCA 73). However, looking at the evidence as a whole, the Tribunal is not satisfied that the applicant's feelings of fear and frustration at having to live in a continuing climate of uncertainty because of the conflict which exists in Israel amounts to persecution as contemplated by the Convention. The Tribunal does not accept that the harm the applicant fears from terrorist attacks and armed conflict between waring States is linked to any of the Convention grounds or that such generalised violence or war would impact upon or affect the applicant differentially due to his civil or political status.

… whether the applicant's 'conscientious objection' to performing military service could be regarded as a form of political opinion

Nature of the applicant's objection to military service.

In the application form there are clear statement of reasons for his reluctance to return to Israel. For example, "*My fear from what can happen to me if I go back, as you know all Israeli man have to go to the military in age 18 for 3 years and after that for 30 days in a year. If I go back the army will probably call me to serve the country and with the situation in Israel it's a really big risk*" (sic).

The applicant stated life in Australia was normal and the way it should be. It was the way he wanted to live, without fear. He wanted to bring up his kids in a good place. The applicant queried who could promise him that if he went back to Israel, a terrorist would not blow himself up and he would be there. He claimed this was what frightened him and made him scared of returning to Israel. He was scared that, like the bomb that fell on the building next to his house, it could also happen to his home the next time. He found it really traumatic to live in fear all the time, and that there was a possibility that the next bus he got on would have a terrorist on it who would decide to blow up the bus. He could not see a future living in fear all the time. He had seen the way that people live in Australia and believed that was the way life should be.

The applicant feared all the terror that was going on in Israel and the people that were responsible for the situation. Terror was a reality that all Israelis lived with every day. The Israeli authorities were doing their best, but could not protect people from terror in a Jewish country surrounded by Arabs.

At the hearing the applicant stated that everything changed for him since coming to Australia When he was in Israel it was normal to serve in the army and fight the Palestinians, Lebanese and others but now that he had known something else he now believed it was wrong to go with a gun and kill others. The Tribunal asked the applicant why he now believed it was wrong. The applicant stated it was complicated as the Palestinians wanted Jerusalem, the Syrians wanted Golan Heights and Hezbollah from Lebanon were against Israel and this would not change. Similarly, there was no way Israel would give in to what the Arabs wanted so there was no chance of peace in the future. The reasons he had claimed to fear returning to Israel was because of the general conditions in the country as a result of the hostilities between Israel and its neighbours.

In his statutory declaration the applicant stated "*I am afraid of returning to Israel. The situation in Israel is not at all safe for ordinary people. Terrorist attacks and bombing happen every day. There is a real prospect of a significant escalation of hostilities between Israel and its closest neighbours*".

At the hearing, when the applicant was asked what was the basis of his objection to military service, the applicant said he did “not agree with it. It is wrong. I believe in peace”. He said he did not believe there would be peace in Israel.

The meaning to be attributed to the term ‘conscientious objector’ in the Australian context is probably best exemplified by the definition in Butterworth’s Concise Australian Legal Dictionary, 2nd Edition: “A conscientious objection calls for the existence of a present compulsive and complete conscientious aversion to the particular service on moral grounds, possibly but not necessarily informed by religious reasons. Such a belief must be distinguished from a mere intellectual persuasion”: *R v District Court of Northern Queensland* [1967] ALR 161.

On the evidence just discussed the Tribunal accepts that the applicant objects to service in the Israeli Defence Forces, for much the same reason as he is reluctant to return to Israel at all. That is, his objection is predominantly a subjective fear of returning to Israel because of the “terror” that has occurred in the country in the past and which continues to happen in the form of terrorist attacks and armed conflict and which result in the applicant having a fear of being injured or killed in such service. The applicant professes to have acquired a belief in peace and objection to military service in principle only since he has been in Australia. The Tribunal is not satisfied that a generalised claim to a belief in ‘peace’ is a meaningful expression of ‘conscientious objection’ or a manifestation of other than a ‘mere intellectual persuasion’ at best. The Tribunal is not satisfied on the applicant’s evidence that he has genuine moral, religious or other firmly-held convictions about his claimed aversion to military service. The Tribunal finds that the applicant is not a conscientious objector to military service.

The Tribunal notes that independent country information corroborates the explanation of compulsory military service given by the applicant. The Tribunal notes that the enforcement of laws providing for compulsory military service (and for punishment of desertion or avoidance of such service) does not provide a basis for a claim of persecution within the meaning of the Convention: *Mijoljevic v MIMA* [1999] FCA 834. The Tribunal finds that in Israel the obligations to undertake military service generally amount to a non-discriminatory law of general application.

The applicant confirmed that he had not served the 30 days per year, usually required of a reservist, in any year from when he finished his initial service until the present, principally because he was studying or overseas at the appropriate time and was not required to serve. He did not confront the Israeli Defence Force with his views about objection to military service when he was in Israel and it has not been necessary for him to do so since he completed his basic national service. The Tribunal is not satisfied that the applicant would make known his

views about objection to military service when he was in Israel nor that he would refuse to serve if he returned to Israel.

Furthermore, even if the applicant did refuse to serve in the IDF after he returned, it would be a matter for the Israeli authorities to re-assess the genuineness of the applicant's claims to conscientious objection. The Tribunal is not satisfied that the applicant would be subject to differential treatment either in having his case assessed or in its outcomes, and therefore, in the absence of potential discriminatory treatment on this basis, the Tribunal also finds that in Israel the obligations to undertake military service generally amount to a non-discriminatory law of general application.

… whether 'conscientious objectors' could constitute a particular social group.

Having said that, however, whether or not the applicant is a conscientious objector the Tribunal must further enquire as to whether the political opinions that the applicant professes to hold indicate that there is a real chance of discriminatory treatment for a Convention reason.

In his second statutory declaration, the applicant expressed a view that he feared he would suffer from persecution if his political views were known to be different from the commonly held views, thus:

> "… I believe that I would suffer from persecution unless I am willing to fall into line with the common views held by Israelis about our neighbours including the Palestinians and the Lebanese and about the need to forcibly repress our neighbours and the Palestinians. [paragraph 18]
>
> "I would describe myself as a moderate but to many Israelis my views would be a betrayal of Israel I would be at risk of being targeted by extreme political groups or killed. The Israeli government and agencies like the police are not able to protect me. [paragraph 19]
>
> "In addition, I believe there would be a social stigma attached to me having unpopular, arguably unIsraeli political views. I would be repelled by society. When applying for employment I may have to demonstrate that I have completed my 30 days per year of national service. My political views would certainly be known to others and would virtually preclude me from securing employment or advancement in Israel." [paragraph 20]

The agent's letter further summarised the applicant's stance as follows:

> The applicant falls within the definition of refugee because of his political opinion. .. His

> political opinions are now in opposition to the policies of the Israeli government and the Israeli Army and different from those held by most Israeli citizens. He does not agree with the forcible repression of Israel's neighbours and the Palestinians. The applicant claims that in Israel political discussion is very much part of everyday life. He states that his views would be seen by many Israelis as a betrayal of Israel, he is at risk of being targeted by extreme political groups who may kill him, and the Israeli government and police cannot protect him. His views would result in him being rejected so that it would be difficult for him to find employment.

The Tribunal accepts that the political views expressed by the applicant may be, in some important respects, in opposition to those of the current Israeli government.

According to independent country information, Israel is a multiparty parliamentary democracy and the current government was democratically elected. The judiciary is independent and has sometimes ruled against the executive, including in some security cases. [*United States Department of State Country Reports on Human Rights Practices* – 2006]. The country information provides evidence of expression of opposition by Israeli citizens to their government's policy in respect of actions taken in the occupied territories, and to the conduct of foreign policy. However, such opposition should be seen as the clash of political interests in a democracy, in which the applicant has chosen to take a particular side or stance. The applicant seeks to go further than this and claims that his views are so opposed to the government view, that his life is at risk because of extreme political, pro-government, groups who may kill him.

It is important to note that the applicant is not a sole Israeli voice in opposition to government policy, he appears to be in what is presently a minority opinion in a democracy. At the hearing the applicant was unable to identify the alleged 'group of criminals' who may kill him, except to say that they are the group who support the government and have the power to do as they want. He was unable to provide details on this group and his assertions were unsupported by any other evidence. His claims are not corroborated by country information available to the Tribunal either from its own sources or provided by or in support of the applicant. The Tribunal is not satisfied that such a group exists.

The Tribunal does not accept the political views attributed by the applicant to the Army. Broadly speaking, and notwithstanding some cases of abuse by individuals, the civilian authorities maintained effective control of the security forces [*United States Department of State Country Reports on Human Rights Practices – 2006*]. The Israel Ministry of Foreign Affairs noted that:

> 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.

The Tribunal accepts that the IDF is itself a non-political organisation and that to attribute political opinion to the Army, as distinct from the government, is erroneous in the present case.

The applicant's claims that the kind of persecution he might suffer includes rejection by his friends and society at large, and it would be difficult for him to find employment. Rejection by one's friends over a political opinion is not a Convention ground; being in a minority opinion in a democracy which is possibly subject to debate and aversion is not a Convention ground; and neither of the foregoing supports a proposition that the applicant would be unemployable.

The Tribunal finds that there is not a real chance that the applicant would suffer from persecution by reason of holding political views different from those attributable to a majority of Israeli citizens. The Tribunal finds that the persecution claimed to be feared by the applicant from failing to hold the common views held by other Israelis is not linked to any of the Convention grounds or would impact differentially upon the applicant due to his civil or political status.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal is not 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 does not satisfy the criterion set out in s.36(2) for a protection visa.

DECISION

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

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. lward