

1001133 [2010] RRTA 418 (24 May 2010)

DECISION RECORD

RRT CASE NUMBER: 1001133

DIAC REFERENCE(S): CLF2009/157641

COUNTRY OF REFERENCE: Malaysia

TRIBUNAL MEMBER: Patricia Leehy

DATE: 24 May 2010

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Malaysia, arrived in Australia [in] November 2002 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] November 2009. The delegate decided to refuse to grant the visa [in] February 2010 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] February 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

20. The applicant appeared before the Tribunal [in] May 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil and English languages. The applicant was represented in relation to the review by his registered migration agent.

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21. According to his Protection Visa application, the applicant is a single male who was born on [date deleted: s.431(2)] in Malaysia. He says that he is of Tamil ethnicity, and is a Christian. He says that his parents and a brother are currently resident in Malaysia. He says that he was educated for 15 years, and completed a course [Qualification 1] in 2001.
22. The applicant claims that he belongs to a Catholic Christian family and is faithful to his religion. He says that he left Malaysia because the Malaysian Islamic Court issued an arrest warrant against him and an Islamic radical group tried to kill him. The Islamic group forced him to change his religion and attend a Koran school. They threatened him to change his name. He says that he did everything according to their rituals but still used to visit churches. He says if he returns to Malaysia he will be killed by radical Muslims. He believes that he will not be protected by the Malaysian authorities. He says that he will submit further evidence and documents. The applicant says that he left Malaysia legally and did not have trouble obtaining a travel document in Malaysia. A certified copy of the biodetails of his passport, issued in October 2002, was submitted with the application, along with an identification card.
23. According to Departmental records, the applicant arrived in Australia [in] November 2002, and applied for a Protection Visa [in] November 2009.
24. [In] February 2010 the applicant's adviser sent to the Department a number of documents, which included the applicant's Student ID Card in his Christian name for 1999-2000; birth certificate; baptism certificate showing him to have been baptised at the church of [name deleted: s.431(2)] in [Region 1]: [in] 1981; educational qualifications in the applicant's Christian name, including a Diploma in [Subject A] issued [in] May 2000 and a report from [education provider deleted: s.431(2)] issued [in] October 2002, stating that the applicant had gained a Distinction, a Merit and a Pass in three subjects for the Intermediate Certificate in [Subject B] Level 1; Malaysian driver's licence in his Christian name for 1999-2000 and from 2005-2007; Islamic identification card in the name of [Islamic name deleted: s.431(2)], issued [in] February 2001; photos of what are claimed to be injuries to the applicant's [arm]; letter from [company deleted: s.431(2)] addressed to the applicant dated [in] August 2002,

offering him a position as [role deleted:s.431(2)] for the period from [a date in] August 2002 to [a date in] February 2003.

25. [In] February 2010, the applicant submitted a Statutory Declaration. The Declaration includes the following relevant information:

- More than three generations of his family belong to the Catholic religion, though he was born and raised in a village where most of his friends were Malay Muslims;
- Since his childhood he has faced discrimination and has bad experiences, such as being called a black person; some of his Muslim friends have helped him when he faced problems with fanatical Muslims;
- The applicant fell in love with a Malay girl, [name deleted: s.431(2)], in January 2000 after high school which caused jealousy among Malay Muslim boys;
- Muslim police accused him of anti-Muslim activities and he was taken to a police station, detained for 7 days in a cell, and continually tortured; they blindfolded him and hung him upside down and repeatedly bashed him as he was handcuffed; after 7 days he was forced to sign a false statement;
- The applicant was given a six month sentence in the under age offender section of [Region 1] prison where he witnessed Muslim teenagers bashing and abusing Indian and Chinese inmates;
- The applicant witnessed an act of sodomy on an Indian boy at night and one of the Malay Muslim officers told him he had to convert to Islam or sleep with Muslim boys;
- The applicant decided to convert to escape from this situation; he was released in October 2001 as a Muslim and told to get circumcised as an act of appreciation to God;
- From the beginning of 2002 the applicant was being watched closely by the Muslim community and Islamic extremists known as Mujahideen (KMM) although he was unaware of it;
- In June 2002 he was attending Mass on Sunday when he was pulled out of church and surrounded by angry Muslims who attacked him; he was hit with an iron rod;
- The applicant had a severe cut on his [arm] and underwent surgery; he had three months' treatment on his [hand];
- The applicant says that he missed out on his [Qualification 1] education and the church community could not help him because if they became involved they would have problems with Muslim fanatic groups;
- The applicant says that the church father was scared to visit him in hospital and told other people to stop visiting; the applicant was not able to visit his parents because his family would be targeted by Muslim fanatics who expected his whole

family to convert to Islam; he was not allowed to enter a church because it might be targeted by Muslim fanatics;

- The applicant says he was not allowed under Malaysian law to convert back to Christianity;
- The applicant says that he is still psychologically and emotionally affected by his experiences; he says he feels he made a terrible mistake in prison;
- The applicant says his parents helped him to apply for a passport in his original Christian name and he left Malaysia;
- He says that since his arrival in Australia he told his story to no-one and he did not know about Australian immigration laws; he says that he did not take any initiative to develop his career and always worried about his visa status;
- He says that his passport has expired and he is scared to visit the Malaysian High Commission to renew it (although he submitted a Malaysian passport which he renewed in March 2010 at his Tribunal hearing); he says he would prefer to kill himself rather than return to Malaysia;
- He says he cannot relocate in Malaysia.

26. The applicant includes the text of the US State Department's *Country Report on Human Rights Practices* 2008 (published February 2009) for Malaysia with his statement.

27. The applicant was invited to attend an interview with the Department [in] February 2010. The applicant was fluent in English and the interview was conducted in English. The information given at the interview is summarised below:

- When asked why he delayed for such a long period in lodging a Protection Visa application, he said that he was very traumatised by his experiences and was not familiar with Australian laws; he was repeatedly bashed by Malaysian police and falsely accused of things; this was before he went into prison;
- When asked what he has done about his religion since he has been in Australia, he said that he has had to work, for example on a farm in Victoria; he was also very paranoid and did not want to talk to people; he was misinformed by people and was told it was too late to do anything; it was only recently that he met someone who said that the Australian government would help him;
- The applicant again asked what church he had been attending and he said he went occasionally to [church and suburb deleted: s.431(2)]; he feels he is a Christian, he was born Christian and would die for it;
- When asked why the applicant's name in his passport was not a Muslim name, he said that he had been told to be circumcised, but he had not done so and he then had to see the Imam; he has not done these things; until he is confirmed as a Muslim he keeps two identities;

- The applicant has been in contact with his parents; when asked what his parents had told him, he said he did not want to talk about these things;
- The applicant was asked what he thought would happen to him; he said he would be killed for not practising as a Muslim; he has already been attacked and paralysed and he has been lucky to get away;
- He said that he did not think he would be protected; he said that the authorities were the ones who abused him; they hung him up and kicked and punched him;
- The applicant was asked whether he could apply to convert back to Christianity; he said that he could not; he would be killed; he said that the mujahideen are everywhere;
- The applicant said that he did not have a choice but to convert to Islam when he was in prison; in order to survive he had to convert;
- The applicant said that he was regarded as an Indian by the prison guards;
- When asked whether he practised Islam on his release from prison, he said he could not go home to his family in case he endangered them; he did not practise Islam and has not practised since;
- The applicant said that if he went back to Malaysia he would be forced to live as a Muslim; he could not go to a church; everyone knows him at home;
- The applicant said that he would be found by the mujahideen if he relocated to Kuala Lumpur and they would track him down;
- The authorities would not help him if he went to them for help;
- The applicant said that he is a Catholic; when asked why he did not attend church regularly, he said that he was living in fear.

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28. The applicant provided no additional information with his review application to the Tribunal.
29. The applicant attended a hearing [in] May 2010. He brought his Malaysian passport, renewed in Australia in March 2010 in his Christian name, to the hearing. The passport contains a note stating that the applicant previously travelled on a Malaysian passport [in] October 2002 and that the previous passport was cancelled and returned to the applicant. At the hearing, the applicant said that he had no family members in Australia, and that his parents and a younger brother were living in [Region 1] at the address he was living in before he came to Australia. His elder brother was married and living elsewhere. His younger brother is unemployed and his father works at [location deleted: s. 431(2)] as a security guard. All his family are Catholic and attend church regularly. The applicant is in regular contact with his mother, and things are peaceful there at the moment. They are pleased that the applicant is in Australia and no-one has harassed them recently because of him.

30. The applicant confirmed that he is of Tamil background. He said that he had attended [education provider deleted: s.431(2)] and successfully gained qualifications there in 2002 before he came to Australia. He said that at [education provider deleted: s.431(2)] there were mainly Chinese and Indian students. He agreed that he had successfully completed his course there.
31. It was put to the applicant that since he had delayed 7 years before lodging a Protection Visa application, the Tribunal might form the view that he was not afraid of being persecuted when he left Malaysia and arrived in Australia. He said that he was very stressed when he arrived because of what the police had done to him in Malaysia. It was put to him that he had previously said that he had been arrested by the police in June 2000, so it was two years before he left Malaysia, and in that time he had attended classes and successfully completed the requirements. This would appear to indicate that any stress he felt was not so severe as to impact adversely on his study. He said that it had only been a year that he had been out of prison before he came to Australia. He had studied while he was in prison, and was forced to complete his studies after he came out. The applicant repeated that he did not know what to do after he came to Australia. He was stressed by his experiences and did not trust anyone. It was put to him that while this might have caused a delay of some months or even a year, seven years was a very long delay. The applicant said that he still felt traumatised by what had happened to him in Malaysia.
32. The applicant was asked whether he had practised his religion since he had been in Australia. He said that he went to church on occasions such as Easter. He had gone to mass at Easter and maybe a couple of times since. He agreed that Catholics were expected to attend mass every Sunday, and said that he had not done so. He said he considered himself a Christian.
33. The applicant was asked what he feared if he returned. He said he feared everything would happen to him as happened before. He made one big mistake which was to convert to Islam. It was put to the applicant that all his documents, including the passport he was issued with before he came to Australia indicated that he is Christian. The applicant said that before they issued the passport they saw his birth certificate but in between he had converted to Islam. It was put to the applicant that both his old and new passports indicated that he is Christian. The authorities, including the educational authorities in Malaysia, accepted him as Christian. All the documents presented with one exception indicate that he is Christian. The applicant said that he lived in an apartment building in which everyone was Muslim. They know that he had converted to Islam and he would have to follow through on it or he would be killed. When asked who knew he had converted, he said that everyone in his area knew including the local police. He said he would have to go back to his parents' place. He would have to live with his parents. He said he was very afraid. He was asked to explain exactly what had happened.
34. The applicant said he had been falsely arrested. He was asked when the incident with the police had occurred. He said that the problem had arisen because he had had an affair with a Muslim girl soon after he started at college in early 2000. Her family got to hear about it, and as a result they accused him falsely of [Offence A] and the police arrested and charged him. He said that this was about April 2001 that he went to prison. He was asked whether he had been before a court of law. He said that he had, and that he had been convicted of [Offence A] and given a six month sentence. He was asked whether he had any documents to support the charge, conviction, arrest or release. He said that he did not have any. They never gave him any documents. He said he did six months in prison. It was put to him that it was difficult to believe that he had no documents relating to his arrest or imprisonment. He said that his parents could not afford bail for him or a lawyer. He was asked to explain what

happened to him. He said that police in plain clothes came around to his house and saw him [information deleted: s.431(2)]. They took him to the police station. They asked him about the affair with the girl, and then they accused him of [Offence A]. He said that they did this at the instigation of the girl's family who were well-connected. He said that the police mistreated him while they held him at the police station. Every police officer who came into the room at the police station beat him up. They kept him there for 7 days. They mistreated him because of his affair with the girl and because he is an ethnic Tamil. They took him to court in a truck and he spent a few hours in court. They asked whether anyone could provide bail, but his parents could not afford to do so and there was no-one else. He said that he spoke in his own defence, and denied that he had ever [committed Offence A]. He said that the magistrate, who was an ethnic Tamil, took into account that he was a student, and he was told that he got a reduction in his sentence. The applicant said that although he was just over the age limit, he was put in a juvenile prison for six months. He was lucky to be put in the juvenile prison.

35. The applicant said that he was harmed by the guards on two occasions while in the juvenile prison. Once he and another Tamil in the room were accused of having tobacco, and he was thrown on the floor and they caned him on the soles of his feet. On another occasion a similar thing happened. He was asked about being forced to convert to Islam. He said that he was not really forced to convert. He thought it would make his life easier if he agreed to convert, and he was also afraid of the guards, so the guards began the process of conversion.
36. The applicant said that when he was released he continued his studies. He was asked whether he experienced any harassment up to the occasion when he was beaten up by Muslim youth in 2002. He said that he was regularly harassed by Muslim young men in his building. On one occasion he was returning home with his brother and he was assaulted by one of a group of youths who used to hang around in front of the apartment building. His brother could not help him because he would be beaten up as well. The applicant said that he was set upon by the Muslim youths who injured his arm in June 2002. He was asked whether someone advised him to leave Malaysia. He said that his mother told him to do so. He applied for a passport and when he got it he immediately applied for a tourist visa.
37. It was put to the applicant that while the Tribunal appreciated that the applicant was upset and afraid at the idea of returning to Malaysia, it appeared that his problem was very local. Because he was a well-educated and adult person who was clearly resourceful, it appeared reasonable to the Tribunal that the applicant could return and live somewhere other than in the immediate vicinity of his parents' place. All the applicant's documents with one exception identified him by name as a Christian. There was no reason why anyone should assume that he had converted to Islam. The applicant said that if anyone got word of this, he would be killed. It was put to the applicant that there was nothing in the country information which would indicate that he would not be protected. The applicant said that he had already been mistreated and wrongly convicted by the authorities.
38. The applicant was given a copy of the US State Department's 2009 Annual Report on International Religious Freedom for Malaysia and an extract relating to the treatment of minorities from the US State Department's 2009 Country Report on Human Rights Practices for Malaysia. It was put to the applicant that this information appeared to indicate that he would be safe if he returned to Malaysia, and in particular that it would be reasonable for him to relocate away from his local area in Malaysia to avoid local problems. The applicant was asked whether he wished to think about these matters and either return for a hearing or

provide a written response. He said that he would provide a written response within two weeks.

39. The applicant said that he was very concerned that his migration agent had a lot of his documents and had travelled back to Malaysia recently. The applicant was concerned that he might have shown someone his Muslim documents. It was put to the applicant that there was no reason to expect that the agent would show anyone his documents. The applicant said he was concerned about it because the agent was supposed to attend the Tribunal hearing with him. He could not trust him.
40. The Tribunal received a submission from the applicant [in] May 2010. He says that he cannot go back to Malaysia because he will be “brutally tortured and prosecuted” He says that he will be forced to practise Islam [information deleted: s.431(2)] He says that he does not have freedom of religion. He says he will suffer from depression and Traumatic Stress Disorder if he returns to Australia. He says that he will not be able to work to support himself because of his criminal record as a result of the charges fabricated against him. He says there will be no social security for him. He says that the suffering he faced in his country was a traumatising experience for him. He says that he wants to stay in Australia since he found it a safe place to stay and practise his religion

Country Information

41. The US State Department in its International Religious Freedom Report 2009 (released 26 October 2009) for Malaysia provides the following information:

The Constitution provides for freedom of religion. Article 11 states, "Every person has the right to profess and practice his religion," but also gives state and federal governments the power to "control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam." Article 3 of the Constitution states, "Islam is the religion of the Federation" and that "Parliament may by law make provisions for regulating Islamic religious affairs." Article 160 of the Constitution defines ethnic Malays as Muslim. Civil courts generally ceded authority to Shari'a courts on cases concerning conversion from Islam, and the latter remained reluctant to allow for such conversions...

Muslims generally may not legally convert to another religion, although members of other religions may convert to Islam ... The Government restricts distribution of Malay-language Christian materials in peninsular Malaysia and forbids the proselytizing of Muslims by non-Muslims. There were few reports of societal abuses or discrimination based on religious affiliation, belief, or practice...

There were no reports of religious detainees or prisoners in the country...

There were a few reports of societal abuses or discrimination based on religious affiliation, belief, or practice.

Religious converts, particularly those converting from Islam, may face severe stigmatization. In many cases, converts conceal their newly adopted beliefs and practices from their former coreligionists, including friends and relatives

42. The report gives no incidents of harm to individuals because of their Christian belief or practice. It states that Muslim groups are strictly monitored and that “deviationist” Muslim groups are prosecuted.

43. The US State Department in its *Country Report on Human Rights Practices 2009* (released March 2010) for Malaysia includes the following information:

Malaysia is a federal constitutional monarchy with a population of approximately 28.3 million. It has a parliamentary system of government headed by a prime minister selected through periodic, multiparty elections. The United Malays National Organization (UMNO), together with a coalition of political parties known as the National Front (BN), has held power since independence in 1957. The most recent national elections, in March 2008, were conducted in a generally transparent manner and witnessed significant opposition gains. On April 3, Najib Razak was sworn in as prime minister. Civilian authorities generally maintained effective control of the security forces.

The government generally respected the human rights of its citizens; however, there were problems in some areas...

The law and government policy provide for extensive preferential programs designed to boost the economic position of ethnic Malays or bumiputras, who constituted a majority of the population. Such programs limited opportunities for nonbumiputras in higher education, government employment, business permits and licenses, and ownership of land. Businesses were subject to race-based requirements that limited employment and other economic opportunities for nonbumiputra citizens. According to the government, these programs were necessary to ensure ethnic harmony and political stability.

Despite the government's stated goal of poverty alleviation, these race-based policies were not subject to upper income limitations and appeared to contribute to the widening economic disparity within the bumiputra community. Ethnic Indian citizens, who did not receive such privileges, remained among the country's poorest groups.

44. The Tribunal was unable to find any recent reported incidents of Muslim extremists harming individuals in the major human rights publications.

FINDINGS AND REASONS

45. On the evidence before it, including the evidence of the applicant's Malaysian passport, the Tribunal accepts that he is a Malaysian national.
46. The applicant initially claimed in his Protection Visa application that he left Malaysia because the Malaysian Islamic Court issued an arrest warrant against him and an Islamic radical group tried to kill him, forcing him to change his religion and attend a Koran school. He said he was afraid to return because he would be killed by radical Muslims. In subsequent evidence he claimed that he was imprisoned in a juvenile detention centre in Malaysia in 2001, as a result of what he claims was a fabricated charge against him of [Offence A]. He has submitted no documentary evidence in support of these latter claims, but has given an account of a relationship he formed with a Muslim girl which was resented by his predominantly Muslim peers who, according to the applicant, fabricated a false charge of [Offence A] against him. The applicant has further claimed that during his imprisonment he was seriously mistreated, and that he agreed to convert to Islam to alleviate his situation. He has submitted one document, purporting to be an identification card for the applicant with an Islamic name, issued [in] February 2001. The applicant has also claimed that he has been pursued by Islamic extremists since his release from prison, and that he was severely beaten in June 2002 by an Islamic mob in connection with his attendance at Mass on a Sunday. He

has claimed that he feared he would be killed for not following through on his alleged conversion to Islam and practising as a Muslim. He says that he will not be able to practise his religion as a Christian and will not be able to work to support himself because of his criminal record. The applicant has also claimed to have suffered discrimination because of his ethnicity as a Tamil of Indian descent.

47. The Tribunal doubts the veracity of many of the applicant's claims for a number of reasons, including inconsistencies in his evidence. It considers many of his claims exaggerated. The applicant's initial claims make no mention of a period of imprisonment later claimed to be six months in duration, a matter which would appear to be too significant to omit in making an application for protection, unless the period of imprisonment was criminal in nature rather than Convention-related. There is no mention of a Malaysian Islamic Court issuing an arrest warrant against him in his subsequent evidence to the Department or the Tribunal, though he has claimed to have been convicted by a criminal court. In seeking to support the applicant's claim of converting to Islam, he has submitted an identification card in a Muslim name. However, this card was issued in February 2001. This issue date is inconsistent with his claim to have been released from 6 months' imprisonment in October 2001 and to have converted to Islam while in prison, making it impossible for the card to have been issued to him as a Muslim before about April 2001. The applicant also claimed to have met the Muslim girl with whom he had a relationship in January 2000, but claimed that this did not result in any adverse consequences until over 12 months later, when he was imprisoned on a false charge. In the Tribunal's view, it is unlikely that the girl's family would have delayed so long before taking action against the applicant if it disapproved of the relationship.
48. The Tribunal also finds the applicant's claims implausible for other reasons. He was able to obtain higher education qualifications for which a certificate was issued in October 2002, indicating that he was able to pursue his studies successfully despite his claims to have been detained and seriously mistreated in detention for a substantial period of time up to 2002, and to have been subjected to a serious physical attack in June 2002. All the identification documents together with educational qualifications submitted by the applicant, with the exception of one alleged identification card, are in the applicant's Christian name, indicating that the government and educational and other authorities in Malaysia accept him as Christian. Of most concern is that the applicant waited some seven years before applying for protection in Australia. When this was put to him at a Tribunal hearing, he was unable to offer any other explanation than that he had been traumatised by his treatment in Malaysia and was not aware he could apply for protection. While the Tribunal accepts that there might have been some delay in lodging an application for a variety of reasons, including trauma and lack of information, the Tribunal does not accept that a delay of such duration in applying for protection can be adequately explained by the reasons the applicant has given.
49. Despite these serious concerns, the Tribunal formed the impression from the detailed evidence given by the applicant at his Tribunal hearing that he has in fact spent some time in gaol in Malaysia, that he was mistreated during that time, and that as a way of securing an easier time in prison he said he agreed to convert to Islam. Whatever the reasons for his imprisonment, the Tribunal accepts that he was mistreated in prison in part for reason of his ethnicity as an ethnic Tamil, and for reason of his religion as a Christian. The Tribunal has therefore given the benefit of doubt to the applicant in accepting that he has suffered harm in the past sufficiently serious as to amount to persecution in a Convention sense.
50. The Tribunal further accepts, on the basis of the country information above at para 43 that there is institutional discrimination in favour of native born persons in Malaysia, and that

ethnic Indian citizens remain among the country's poorest groups. The Tribunal therefore accepts that the applicant has been subjected to discrimination in the past on the basis of his ethnicity as an ethnic Indian. It does not accept, on the evidence before it, that this discrimination has prevented the applicant from receiving a good education or that it has been sufficiently serious as to amount to persecution in a Convention sense, apart from his mistreatment in prison for reason of his ethnicity as detailed above

51. The Tribunal has considered whether there is a real chance that he will be persecuted if he returns to Malaysia in the foreseeable future.
52. The evidence given by the applicant indicates that his experience of serious harm has been inflicted on him by persons in his local area for a variety of reasons, some of which are likely, in the Tribunal's view, to be Convention-related. Given the period of some 8 years which has elapsed since the applicant left Malaysia, the Tribunal is of the view that it is unlikely the applicant will again be harmed by individuals in his local area for whatever reason. The behaviour described by the applicant is typical, in the Tribunal's view, of what might be expected of teenage gangs, and the applicant and his peers are now adult.
53. However, in the unlikely event that local individuals will seek to do serious harm to the applicant if he returns, it has considered a number of matters. The country information, which the Tribunal accepts as authoritative, indicates that there have been no recent instances of serious harm done to individuals in Malaysia for reason of their religion or their ethnicity, although the State Department has indicated that there is institutionalised ethnic discrimination in Malaysia which results in disadvantage for ethnic minorities and particularly ethnic Indians. In general, therefore the Tribunal is satisfied that there is not a real chance that an individual returning to Malaysia will be persecuted within the meaning of the Convention for reason of his religion or his ethnicity.
54. The Tribunal therefore considers that it is reasonable for the applicant to relocate from his local area where he has experienced problems with local Muslim gangs to other areas of Malaysia to avoid such problems. The applicant is highly educated, fluent in English, and an adult. While he has claimed that his prison record will prevent him from finding work, he has submitted a letter from a prospective employer written just before he left Malaysia offering him temporary employment which contradicts his claim. The Tribunal does not accept that the applicant would be unable to find employment as a result of a period of time spent in juvenile detention some 10 years ago.
55. The applicant has claimed that he is particularly at risk because he agreed to convert to Islam while he was in gaol. He has however submitted a number of documents issued since the time of his imprisonment, including his current passport, which indicate that he is Christian as far as the government and educational authorities are concerned. The applicant has said that people in his local area know that he converted to Islam and would pursue him because he does not practise as a Muslim. The Tribunal considers this highly unlikely, given that most of his identification documents accept that he is Christian. However, in the unlikely event that local people sought to do him harm on this basis, the Tribunal considers it reasonable that the applicant relocate to another area of Malaysia where the chance that anyone would know that he had agreed to convert to Islam but did not do so is, in the Tribunal's view no more than a remote possibility.
56. The applicant has not made claims to fear persecution on any other Convention basis than his religion and his ethnicity, and the claims that he has made are, in the Tribunal's view,

extremely local in nature. The actions taken against the applicant in the past are not consistent with the general environment in Malaysia in the present, or in the foreseeable future according to the country information. The applicant's persistent general claims about threats from fanatical Muslims are not borne out by the country information and the Tribunal does not accept them.

57. The Tribunal is not satisfied that there is a real chance that the applicant will be persecuted within the meaning of the Convention if he returns to Malaysia in the foreseeable future. It is not satisfied that the applicant has a well-founded fear of Convention-based persecution in Malaysia.

CONCLUSIONS

58. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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