1500704 (Refugee) [2015] AATA 3767 (1 December 2015)

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DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1500704
COUNTRY OF REFERENCE:	Malaysia
MEMBER:	Stuart Webb
DATE:	1 December 2015
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicants Protection visas.

Statement made on 01 December 2015 at 4:49pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

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 to refuse to grant the applicants Protection visas under s.65 of the *Migration Act 1958* (the Act).

2. The first named applicant claims to be a citizen of Malaysia, while the second named applicant claims to be a citizen of the Republic of China (Taiwan), applied for the visas [in] September 2014 and the delegate refused to grant the visas [in] December 2014.

3. The applicants appeared before the Tribunal on 27 November 2015 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.

4. For the decision, the first named applicant, who lodged a Form 866C application, will be known as the 'applicant', whereas the second named applicant, who lodged a Form 866D with no claims of her own will be known as the 'second applicant'.

RELEVANT LAW

5. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.

Refugee criterion

6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of 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).

7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.

8. 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.

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

10. 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)). Examples of 'serious harm' are set out in 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.

11. 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.

12. 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.

13. 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 being persecuted for a Convention stipulated reason. 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.

14. 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person in respect of 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.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or

inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.

18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Section 499 Ministerial Direction

19. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

Member of the same family unit

20. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa of the same class as that applied for by the applicant. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Regulations for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include de facto partners.

CONSIDERATION OF CLAIMS AND EVIDENCE

21. The applicant made the following claims with his application. Before he came to Australia he worked as [occupation] for a [company]. His boss accused the applicant of stealing money. The boss threatened his life by hiring gang members. These gang members broke into his home and destroyed his property, they used red paint to scare his family. The applicant's boss and gang members can do anything to get the money. He has been told the gang members come to his home and ask for him. He tried to report it to the police many times but they did nothing. The applicant stated that the police know the gang members and protect them. The applicant left Malaysia in August 2011 and arrived in Australia [in] August 2011 on a 3 month visitor visa. He has not left since. He lodged his protection visa [in] August 2014.

22. The secondary applicant made no claims for protection of her own. She provided no evidence at the hearing regarding any protection claims. She stated that she would return to Malaysia with the applicant should he be required to return to Malaysia.

Findings and reasons

Country of nationality

23. The applicant claims to be a citizen of Malaysia and provided copies of his passport to the Department with his application. The Tribunal finds that the applicant is a citizen of Malaysia,

that Malaysia is the applicant's country of nationality for the purposes of the Refugees Convention and receiving country for the purposes of the complementary protection assessment.

24. The second applicant claims to be a citizen of Taiwan and provided copies of her passport to the Department with her application. The Tribunal finds that the applicant is a citizen of Taiwan, that Taiwan is the applicant's country of nationality for the purposes of the Refugees Convention and receiving country for the purposes of the complementary protection assessment.

Third country protection

25. The applicant has no right to enter and reside in Taiwan, he has a right to enter Taiwan for one month without a visa, however he cannot reside longer than that without seeking a visa. There is no evidence before me to suggest that the claimant has the right to enter and reside in any safe third country for the purposes of s.36(3) of the Act.

Credibility

26. The Tribunal is aware of the importance of adopting a reasonable approach in the finding of credibility. In *Minister for Immigration and Ethnic Affairs and McIlhatton v Guo Wei Rong and Pam Run Juan* (1996) 40 ALD 445 the Full Federal Court made comments on determining credibility. The Tribunal notes in particular the cautionary note sounded by Foster J at 482:

> …care must be taken that an over-stringent approach does not result in an unjust exclusion from consideration of the totality of some evidence where a portion of it could reasonably have been accepted.

27. The Tribunal also accepts that 'if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt'. (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status,* Geneva, 1992 at para 196). However, the Handbook also states (at para 203):

> The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.

28. When assessing claims made by applicants the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicants. When doing so it is important to bear in mind the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims.

29. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true (see *MIMA v Rajalingam* (1999) 93 FCR 220).

30. However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out (see *Randhawa v MILGEA* (1994) 52 FCR 437 at 451 per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.)

Claims

31. The applicant provided some further detail about his claims. He stated he worked for a [certain business], though the business operated as a front as [another business]. The Tribunal noted that this was different to his claim where he stated he worked for a [company]. The applicant stated that this was the actual business, not the front business.

32. The applicant stated he was responsible for liaising with [customers]. He would check the identity documents of the customers, and then pass them onto his [employer]. He was not responsible for any collection of [money]. Again this is different to the claim made in his application where he stated that he was [occupation].

33. He had a colleague who worked with him in the liaison side of the business. This man embezzled [amount] Ringgits from the employer, arranging for [details deleted] then disappearing without repaying any money. the applicant stated the work colleague used his name in this embezzlement. He then changed this, stating that the colleague had used the names of [customers] that the applicant had [dealt with], the applicant had been responsible for the passing on of the information to his boss. The applicant stated that his colleague and [a number of customers] had then disappeared. The boss blamed the applicant as he had brought the [information] to him, the applicant claimed it was possible his boss believed he had colluded in the crime. The Tribunal asked how the applicant had been fooled with regard to the identity documents. The applicant stated it is easy to get fake phone numbers and identity documents in Malaysia. The applicant stated that his colleague and [a number of customers] had disappeared and had not been found.

34. The Tribunal asked why the applicant was blamed by his employer, given the details the applicant had provided, including that a colleague had disappeared and the applicant had remained with the business. The applicant stated that the boss though he was the culprit because he had brought in the customers. The Tribunal again noted that the applicant had remained in his position when his colleague had disappeared. The Tribunal questioned the applicant with respect to the blame that was apportioned to him because of this event. The applicant stated that maybe his boss thought he was playacting, but was also one of the conmen.

35. The Tribunal asked if his employer had gone to the police to report the embezzlement. The applicant stated that [their business] was not legitimate so he could not go to the police to report it. The Tribunal notes that the applicant has claimed that his employer has good relations with the police which was why he had not help from them. This evidence is slightly contradictory

36. The applicant stated that this happened in February 2011. The applicant stated that red paint was thrown on his home by bad guys. The Tribunal questioned why this would be done. The applicant then stated that in April 2011 two riders were on a motorbike when they went past him, one jumped down and stabbed him he required 2 months in hospital. The applicant showed a scar in his [body] that he stated was the stab mark. It appeared, the Tribunal's admittedly unprofessional eye, to be a scar that could have been caused by a stabbing.

37. The Tribunal asked a number of questions about this element of the applicant's claim. The Tribunal asked why the applicant had not included this in his written claim, given it was such a serious claim. The applicant stated that he had forgotten to mention it to his lawyer, who helped him prepare the application. The Tribunal noted it was a very strange thing to miss out. The applicant stated he did not think it was important. The Tribunal is extremely concerned by this response to these questions.

38. The Tribunal asked if the applicant had any documentary evidence regarding the injuries and treatment. The applicant stated he did not have any in Australia. He had not realised it was

important. The Tribunal asked if he had spoken to the police about his concerns. The applicant stated he had been to the police when the paint was poured outside his house, but nothing happened, his boss has good relations with the police.

39. The Tribunal is extremely concerned by the failure of the applicant to make any comment regarding the stabbing incident in his application, or provide any supporting information about this incident. The Tribunal considers that the applicant would not have forgotten about this incident if it had been part of the intimidation of his employer, the Tribunal considers that if this injury had been caused in the manner as now claimed the applicant would have mentioned it in his original application, not forgotten it or thought it not worth mentioning. The Tribunal accepts that the applicant may have been stabbed, for an unknown reason and at an unknown time, but does not accept that he was stabbed by people working for his employer after an embezzlement issue arose at his work. The Tribunal does not accept that the applicant

40. The Tribunal asked the applicant when he got his visa to come to Australia. The applicant stated it was in August, the month he came to Australia. The Tribunal put adverse information to the applicant regarding his migration history. The Tribunal noted that departmental records showed that he had in fact been provided with the visa to come to Australia [in] June 2011, but had in fact not arrived in Australia until [date] August 2011. The Tribunal expressed its concern that the applicant had not left for some time after he was permitted to travel, which raised questions as to the applicant fearing harm in Malaysia.

41. The applicant stated he went to [Country 1] and [Country 2] before come to Australia, which he did note in his application. He states in his application that he went to [Country 1 in] July 2011, a month after his Australian visa was granted. The Tribunal asked why the applicant went to [Country 1] and [Country 2]. The applicant stated that he went to [Country 2] after he recuperated to hide. The Tribunal noted that he had actually gone to [Country 1] first, as per his application, in July 2011. This was a month after he got his visa to come to Australia. The applicant then stated he went to these countries to recuperate, he was not fully recovered and it would have been impossible for him to work in Australia straight away. There was a high cost of living in Australia, he needed to be healthy to work. The Tribunal noted that the visa to Australia was a visitor visa and did not entitle him to work. The applicant was aware of this. The applicant stated that if he worked illegally in Australia for a couple of days a week he would have enough to live on. The Tribunal noted that the applicant was saying he came to Australia to work. The applicant stated he did come to Australia to work, but also get away. He would be hard to find in Australia.

42. The Tribunal asked if there had been any threats to his family arising out of this issue. The applicant stated that there had not been, they were only interested in the applicant. The Tribunal noted that the applicant's written statement was therefore not correct, that had not come to the applicant's home and asked for the applicant. The applicant stated that they may have telephoned his family asking for the applicant. The Tribunal noted that what had happened was now almost 4 years ago, and asked if there was any ongoing interest in the applicant. the applicant stated it was really hard to say, they may have forgiven him, or might still want him.

43. The Tribunal asked the applicant about residing elsewhere in Malaysia. The applicant stated he could not, the gangs had good contacts, they could find him anywhere. The Tribunal noted that the gangs had been unable to find the [number] men who the applicant had perpetrated the criminal offence the applicant claimed occurred, which caused the Tribunal to question the efficiently of the gangs in finding people in other locations in Malaysia.

44. The Tribunal notes that it is also legitimate to take into account an applicant's delay in lodging an application for a protection visa in assessing the genuineness, or at least the depth, of the applicant's claimed fear of persecution (per Heerey J, *Selvadurai v Minister for*

Immigration and Ethnic Affairs (1994) 34 ALD 347). The Tribunal asked the applicant why he had not lodged a protection visa soon after he arrived, if he feared returning to Malaysia. The applicant stated he was not aware of this protection channel, he only learnt about it from friends in 2014. He was aware that his visa had entitled him only to three months in Australia. The Tribunal asked the applicant why he had not sought advice from an agent or spoken to the Department about his circumstances. the applicant stated he was short of money after he came, he could not afford an agent or a lawyer. The Tribunal questioned the claim by the applicant that he was unaware of the protection applications that could be made in Australia, given the prominence of this issue in Australia over the past few years. The Tribunal is concerned by the extended delay in the application, in particular after the applicant allowed his visa to expire and did nothing to maintain his lawful residence in Australia. The Tribunal notes that the applicant had stated that he came here for financial reasons, though also stated he wanted to get away.

45. The Tribunal has considered the claim of the applicant that he was blamed by his employer for a crime that occurred at his workplace. No report of the crime was ever made, the Tribunal has only the applicant's claim that it occurred. The Tribunal considers it plausible that a crime occurred as claimed by the applicant.

46. However, the Tribunal does not accept as plausible that the applicant was blamed for the crime, was targeted, threatened or harmed because of this crime. The applicant has provided details as to how his colleague orchestrated the crime, [details deleted], as per his standard business practices. His colleague has then disappeared, as have the [customers], and the money has not been repaid. The applicant remained at the business while this criminal activity occurred, and was not involved with the commission of the crime. He did not disappear or go into hiding when this occurred.

47. The Tribunal does not accept that the applicant's employer would have blamed the applicant for this criminal activity, or considered that he was involved, that he was play-acting as the applicant claimed. The Tribunal considers that the description of the crime provides a clear responsibility for the crime, the applicant's colleague and associates, and while the applicant would have been asked about what happened from his perspective, the Tribunal does not accept that the applicant would have been held responsible for the actions of another person. The applicant remained at home[1] and employed as [occupation][2] until August 2011, which does not support his claim he was threatened, harmed and blamed for being involved in the criminal activities. The Tribunal considers that the applicant would have assisted his employer in trying to seek those responsible for the crime, and would not have been held responsible, given his remaining in the business and in Malaysia. The Tribunal considers that the applicant was not involved in the crime, was not blamed for or accused of colluding in the crime, or was harmed or threatened because of the crime.

48. The Tribunal notes that the applicant has provided contrary, changed and limited evidence regarding what threats were made to him in the aftermath of the crime being discovered. The applicant stated in his application that gang members '*broke into his home and destroyed his property, they used red paint to scare his family*'. The applicant did not claim that his home was broken into and property destroyed, he stated only that '*bad guys poured pain on the residence'*. There is some difference in this event.

49. Two months later the applicant claims that he was stabbed by a man jumping off a motorbike. The applicant did not mention this very serious claim in his original application, he 'forgot' and 'did not think it important'. He stated he was hospitalised, but has not provided supporting information about this. The Tribunal does not accept that the applicant was

[1] Q36, 866C, DIBP folio 24
[2] Q40, 866C, DIBP folio 22

stabbed by any bad guy at the behest of his employer in 2011. The Tribunal considers that the applicant would have raised this in his application as it is the most serious incident that he claims to have faced. The Tribunal considers that the applicant has sought to embellish his claims by drawing in an unrelated injury that happened in different circumstances, not related to this claim, and not claimed by the applicant as part of any other reason why he cannot return to Malaysia. The Tribunal does not accept that the applicant was stabbed in April 2011 by gang members working on behalf of his boss. The Tribunal does not accept that the applicant was hospitalised for an injury during this time.

50. The applicant has then altered his evidence regarding subsequent threats to his family. The applicant in his application stated that people had come to his family home. He resiled from this claim at the hearing, saying that nothing had happened. He then stated that they telephoned looking for him. The Tribunal does not accept that this occurred, the Tribunal considers that the applicant is seeking to embellish his claims that he is a person of interest, and that this subsequent coming to his home or phone calls made did not occur.

51. Given the consideration of the claims made by the applicant regarding the mistreatment he received, the Tribunal does not accept that he or his family has ever been threatened or harmed because of the crime at his workplace in February 2011.

52. The Tribunal notes that the applicant received a visa to come to Australia in June 2011. He did not travel to Australia, but spent a month in Malaysia before going to [Country 1] in July 2011 and then [Country 2]. He eventually came to Australia [in] August 2011. The Tribunal notes that the applicant claimed the crime occurred in February 2011. The applicant remained in his home region until departing for [Country 1] in July 2011. He did not seek to come to Australia earlier, which may have been reasonable if he believed himself at risk of harm. He got his visa in Jun 2011, four months after the crime, and then remained in Malaysia for another month before going to [Country 1]. The Tribunal considers that the actions of the applicant remaining in his home region during in these five months after the crime occurred demonstrate that the applicant did not have a fear of being harmed during this time. The applicant has not claimed to be in hiding during this time in Malaysia, the applicant stating in his application to have resided at the same address in Malaysia from 2004 to August 2011.

53. The Tribunal has also considered whether the applicant would have concerns about returning to Malaysia now or in the reasonably foreseeable future. The applicant stated he does not know if he is a person of interest to his former employer.

54. The Tribunal notes that the applicant remained in Malaysia for a further 5 months after the crime, employed at the same business. He did not have any issues arising from the crime at that time. The applicant has left Malaysia in July 2011 and eventually made it to Australia. The applicant has acknowledged that financial opportunity was a reason for coming to Australia, the opportunity to work and earn money, even though this was illegal.

55. The Tribunal does not accept that there would be any interest in the applicant so long after the crime occurred and after the applicant was not a person of interest for such an extended period in the aftermath of the crime. The Tribunal does not accept that four years later, after returning to the same location in Malaysia, that the applicant would be harmed. The Tribunal considers that the applicant's residence in Australia, earning money, and ultimate return to Malaysia, would not cause the applicant to be harmed, by his former employer or anyone else.

56. On the evidence before it, the Tribunal does not accept that the applicant has a real chance of serious harm on return to Malaysia, now or in the reasonably foreseeable future. The Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention

reason. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).

57. The Tribunal also considered whether the applicant meets the complementary protection criterion under s.36(2)(aa). The Tribunal has considered whether it has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.

58. For the reasons set out above, the Tribunal has not accepted there to be a real chance that the applicant faces serious harm from his former employer or gang members if he returns to his home in Malaysia, now or in the reasonably foreseeable future. In *MIAC v SZQRB* [2013] FCAFC 33, the Full Federal Court held that the 'real risk' test imposes the same standard as the 'real chance' test applicable to the assessment of 'well-founded fear' in the Refugee Convention definition. It follows that the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Malaysia, there is a real risk that the applicant will suffer significant harm.

59. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

60. The Tribunal has noted that the second applicant has not raised any claim of her own as to fearing harm. She has applied solely as a dependent of the applicant, and as such, relies upon the claims as made by the applicant for the consideration of a protection visa. The Tribunal has not accepted that the applicant is a person in respect of whom Australia has protection obligations under either 36(2)(a) or 36(2)(aa). As there are no separate claims made by the second applicant, the Tribunal , is not satisfied that the second applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention or Complementary Protection provisions as found in the *Migration Act* 1958. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) or s.36(2)(aa).

61. For the reasons given above the Tribunal is not satisfied that any of the applicants is a person in respect of whom Australia has protection obligations. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) or (aa) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b) or (c). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

DECISION

62. The Tribunal affirms the decision not to grant the applicants Protection visas.

Stuart Webb
Member