

**060860015 [2006] RRTA 210 (29 November 2006)**

**DECISION RECORD**

**RRT CASE NUMBER:** 060860015

**DIMA REFERENCE(S):** CLF2006/82210

**COUNTRY OF REFERENCE:** Thailand

**TRIBUNAL MEMBER:** Kira Raif

**DATE DECISION SIGNED:** 29 November 2006

**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**

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

The applicant, who claims to be a citizen of Thailand, arrived in Australia and applied to the Department of Immigration and Multicultural Affairs for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights by a letter.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The applicant applied to the Tribunal for review of the delegate's decision. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged, in this case 13 July 2006, although some statutory qualifications enacted since then may also be relevant.

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

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

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

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

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 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 documentary material before the Tribunal is contained in Tribunal case file 060860015 and the Departmental case file CLF2006/82210. 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.

### *Primary application*

According to the Protection Visa application the applicant is a female born in Khon Kaen, Thailand. She has completed many years of schooling. She did not list her occupation on the application forms. The applicant stated that she is of Thai ethnic group and Buddhist religion. She speaks, reads and writes Thai.

When making the application, the applicant made the following claims:

- In mid 2000 she was raped by her boyfriend. Her boyfriend's family agreed to let her live with the family, provided she changed her religion to Islam.
- After the applicant moved in with her boyfriend's family, they often had fights and he was physically abusive. On several occasions the applicant left home and stayed with her friend. Several months later she was hospitalised as a result of an assault upon her perpetrated by her boyfriend.
- The applicant reported these incidents to the police but the police did not want to get involved, stating that it was a family matter.
- Following this incident the applicant did not attend a Muslim religious rite and her boyfriend's family were not happy about it. A few months later the boyfriend's family told the entire family to attend a religious rite. The applicant refused because she said she was no longer a Muslim. The family was very angry and her boyfriend slapped her.
- The following day the applicant ran away from the family and stayed with a friend. She decided to apply for a visa to Australia because she did not feel safe living in Thailand.
- The applicant believes that her boyfriend's family will kill her if they find her because she did not obey them. Moslems are not allowed to betray their religion. The applicant stopped practising as a Moslem and converted back to Buddhism. She is seen by her boyfriend and his family as having betrayed them and their religion and it is an honour as true Moslems to kill her.

### *Application for review*

The applicant made an application for review on a particular date. She did not provide any written material to the Tribunal.

### *Hearing*

The applicant appeared before the Tribunal to give evidence and present arguments. The applicant's evidence at the hearing is summarised below.

The Tribunal put to the applicant the contents of her claims which she had provided in support of her application for the protection visa. The applicant confirmed that the contents of the statements and other materials provided to the Department of Immigration and the Tribunal were true and correct and that she did not wish to change anything.

The applicant stated that she completed many years of schooling. Then she started working and she has worked for many years in private sector. She stopped doing this work because there was nobody to help her parents, so she returned home. The applicant worked at her parents' farm and also selling things. The applicant worked in Bangkok and at her parents' farm in Khon Kaen.

The applicant said that she travelled to Bangkok because she had a boyfriend there. She travelled back and forth between Khon Kaen and Bangkok. She returned to Khon Kaen during the seasons when she had to work in the farm, otherwise she was in Bangkok. She worked in the farm during particular period, depending on the rain. The applicant stated that her parents still own the farm at present.

The applicant stated that when in Bangkok, she lived with her boyfriend from mid 2000. The applicant said that prior to that she lived in a city, which is part of Bangkok. In that period she worked in various private sectors. The Tribunal asked the applicant if it was easy for her to find a job. The applicant said that it was easy because she had friends and she rang them when she came to Bangkok. The applicant said that she sometimes looked for jobs herself and sometimes she asked others. She would take whichever job was better.

The applicant said that she does not speak any languages other than Thai.

The Tribunal asked the applicant about the events in mid 2000. The applicant said that they were seeing one another as friends, they went out together. She had intercourse with him. Her boyfriend spoke to the applicant's family asking that the applicant should go to live with him. The applicant said that she knew her boyfriend for a few years.

The applicant said that when in mid 2000 her boyfriend asked her family that she should live with him, there was no problem at that time so she started living with him. After she started living with him, there was a problem and he asked her to convert to Islam. The applicant converted. The Tribunal asked the applicant to explain how she converted to Islam. The applicant said that she is a Buddhist but she changed to Islam, so she no longer attended Buddhist temples to pray. The applicant confirmed that there was a conversion ceremony. It was in their language, which the applicant did not understand. The applicant said that she did not need to do anything, she was not allowed to eat pork and she was not allowed to wear the Buddha.

The Tribunal again asked the applicant to describe the conversion ceremony. The applicant said that as a woman, there is not a lot of ceremony involved, unlike the men's ceremony. The applicant said that she was given a scarf to put on her head. They said some prayers which she did not understand. After that she had to practice, such as not going to the Buddhist temple and not eating pork. The Tribunal asked the applicant if anything else happened at the ceremony other than her putting on the scarf and others saying prayers. The applicant said there was nothing else because as a woman she did not have to do much. That was what happened to her, she does not know about the others. She did not see women in the Temple, only men. The applicant said that her boyfriend let her know what she had to do according to Islam. The Tribunal asked the applicant if she had to say anything during the ceremony. The applicant said that she had to state whether she accepted that religion and deny other religions. The applicant said that her boyfriend and his family were present. The

Tribunal asked the applicant if she had to take up a Muslim name. The applicant said that she did not. The Tribunal asked the applicant if she had to go to any classes about Islam. The applicant said that there was a book about Islam for her to read. The applicant could not remember the name of the book, but she said that she read it.

The Tribunal asked the applicant about Islam. The applicant said Islam teaches people to be good. The book states the things that one cannot do as a Muslim. It also teaches about God's existence.

After the conversion, the applicant lived with her boyfriend and they were arguing. The applicant said that she and her boyfriend rented a place for the two of them while the boyfriend's family lived nearby. During religious occasions they would have contact with the boyfriend's family. The applicant stated that if she had time after work, she would visit her boyfriend's family, she would see them a few times a month.

The applicant said that she married her boyfriend in a religious ceremony in mid, but they did not register. After she started living with her boyfriend, she sometimes visited her family, but mainly she sent them money.

The Tribunal asked the applicant about her arguments with her boyfriend. The applicant said that he hit her and kicked her on the chin and slapped her face. The applicant said that she did not understand why he was doing it, he had a short temper. The applicant ran away from the house. When she ran away, she lived with her friend in Bangkok. Her boyfriend found her and her friend did not want to get involved, so the friend advised the applicant to talk to her boyfriend, to sort things out. The applicant returned to her house in the country and then returned to Bangkok. The applicant said that she returned to Bangkok to live with her boyfriend again because after she ran away, his family talked to her while she was living at her parents' house and told her that it would not happen again. The applicant said that she believed that her boyfriend would improve and would not mistreat her again.

The applicant said that after she returned, she and her boyfriend moved to live with his family. They did not continue to live in the rented place because his parents guaranteed that nothing would happen again, so they asked the couple to move to their house.

The applicant stated that she did not work, she helped looking after the house. She stopped working because her boyfriend did not allow her to work. The applicant said that he was jealous person and he was worried that she may meet someone at work. The Tribunal pointed out that the applicant was working before. The applicant said that she did not know why, she was told not to go to work and to stay home to clean the house and look after his parents.

The Tribunal asked the applicant if she had any savings. The applicant said that she did not have much, she had certain amount of money. She said the starting wage was about 4,000 per month. The applicant confirmed that her savings was a reasonable amount. The applicant said that she gave this money to her parents when she moved to live with her boyfriend because she did not put this money to her account. The applicant said that she asked her parents to keep the money for her, but to let her know if they needed it. The applicant said that the money had not been spent yet, it has been kept for her.

The applicant said that she and her boyfriend had arguments. Her boyfriend was hitting her again. One day there was a religious ceremony and the applicant did not go. Her boyfriend hit her. The Tribunal asked the applicant why she did not go to this ceremony if she attended other ceremonies before. The applicant said that they always argued and she already did not want to live with him. The Tribunal asked the applicant why she did not leave him. She said

that after he hit her and was going to kill her, she left. The Tribunal asked the applicant why she did not leave him earlier. The applicant said that when they had arguments before, she rang her parents and her mother told her to be calm and patient. When he hit her that day, her boyfriend told her not to let him see her face again, otherwise he would kill her. This Then the applicant left him because he said he was going to kill her. She firstly went to her friend in Bangkok. This was a different friend to the one she went to before. She stayed with the friend for some time. Her friend asked the applicant to make an application to leave the country. The applicant then came to Australia.

The Tribunal asked the applicant why she did not come soon after the event. The applicant said that when she sent in her application, she did not have enough documents and also money.

The Tribunal asked the applicant if she reported any of these incidents to the police. The applicant said that she did. The police told her that it was a family matter and to resolve it by herself.

The Tribunal asked the applicant about her claim that she converted back to Buddhism. The applicant said that after she separated from her boyfriend, she became a Buddhist again. The applicant said that there was no ceremony, but she no longer had to follow the other rules, for example she could eat pork again. She was no longer praying as a Muslim.

The Tribunal asked the applicant what would happen to her if she returned to Thailand. The applicant said that if she met him, he will kill her, so the applicant is afraid. The Tribunal asked the applicant if she considered living anywhere else in Thailand. The applicant said that she does not know anywhere else in Thailand, she only knows Bangkok and her home. The Tribunal pointed out that the applicant came to Australia which she also did not know. The applicant said that she is afraid that he will find her if she is in Thailand. The Tribunal pointed out that Thailand is a large country with the population of many millions. The Tribunal asked the applicant how her boyfriend would find her if she does not reside in Bangkok. The applicant said that when she lived in another area, her boyfriend rang her, he somehow found her, she did not know how he knew her number. Perhaps he followed her. The Tribunal noted that the applicant earlier stated that this area was part of Bangkok. This was less likely to happen if the applicant lived in another area. The applicant said that her boyfriend works in an organisation and they have branches in the country.

The Tribunal asked the applicant if she thought her boyfriend would find her, no matter where she moved in Thailand. The applicant said it was so, because he looks after the provincial braches and he works in these areas. The applicant said that she is afraid to return to Thailand.

The applicant stated where she currently works. She has worked there for a few months. She does not receive a set salary, her income depends on how much she works. She makes between \$1,000 and \$2,000 a week.

#### *Evidence from other sources*

Khon Kaen is a province located in north-eastern Thailand. It is said to be the second-largest province in the north-east region with a city population of 150,000.<sup>1</sup>

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<sup>1</sup> 'Welcome to Khon Kaen, Thailand' (undated), KhonKaen.com website <http://www.khonkaen.com/> – Accessed 22 November 2006; Khon Kaen Province' 2006,

In an academic paper for The University of Münster, Germany, author Nishii Ryoko describes the prevalence of interfaith marriages between Muslims and Buddhists in Southern Thailand. Ryoko states that “People of different religions usually cannot live in the same house... one of the partners has to convert”. Though the author’s study is confined to Southern Thailand, no conflicting information was found to suggest that the provinces of Northern Thailand differ. The pertinent extracts follow in detail.

Elsewhere in this border region intermarriages, which are rare, are not commonly accompanied by conversion of one of the partners. At other places on the east coast of Southern Thailand or in northern Malaysia, in the few reported cases of conversion connected with intermarriage, the Buddhist has always converted to Islam. In the frequency of intermarriage, the acceptability of conversion, and the fact that the conversion can go either way, Islam to Buddhism or Buddhism to Islam, this village is highly distinctive.

**...Buddhists are regarded as Muslims when they convert to Islam by shahada (reciting the words of faith). If the Buddhist partner does not recite the words of faith, the other partner is regarded as a Buddhist. In other words, the religious boundary is delineated only by reference to Islam. In daily life, villagers usually regard those who go to mosque as Muslims and those who go to temple as Buddhists [Researcher emphasis].** After marriage, converts cannot live with their parents who are of different religion. This religious boundary limits the elasticity of cognatic kinship relations.<sup>2</sup>

Domestic violence continues to be a significant problem in Thailand with no specific law addressing domestic violence despite a draft bill being before the parliament for nearly a year. Similarly, issues such as spousal rape are not specifically recognised under Thai legislation. With domestic violence considered to be a ‘private matter’ by many Thais. Many commentators believe that domestic violence is seriously under reported and that police are reluctant to pursue reports of domestic violence. Thai police are accused of “ignoring and trivializing domestic violence” and are “vested with near total power over complaints”.<sup>3</sup> Consequently both the prosecution and conviction rates of those charged with abusing their partners is relatively low in comparison with the extent of the problem in Thailand. According to the latest US State Departments report on human rights in Thailand:

**Domestic violence against women was a significant problem, and there were no specific laws addressing the problem.** A few domestic violence crimes were prosecuted under provisions for assault or violence against a person. Domestic violence often went unreported, and the **police often were reluctant to pursue**

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Wikipedia website, 12 November [http://en.wikipedia.org/wiki/Khon\\_Kaen\\_Province](http://en.wikipedia.org/wiki/Khon_Kaen_Province) – Accessed 22 November 2006

<sup>2</sup> Ryoko, N. (undated), ‘A way of Negotiating with the other within the self: Muslim’s acknowledgement of Buddhist ancestors in Southern Thailand’, The University of Münster website [http://www.uni-muenster.de/Ethnologie/South\\_Thai/working\\_paper/Nishii\\_Negotiation.pdf](http://www.uni-muenster.de/Ethnologie/South_Thai/working_paper/Nishii_Negotiation.pdf) – Accessed 22 November 2006

<sup>3</sup> Clift, E. 2006, ‘A Timely Study Highlights Violence Against Thai Women’, Toward Freedom website, 4 January [http://towardfreedom.com/home/index2.php?option=com\\_content&task=view&id=718&Itemid=61&pop=1&page=0](http://towardfreedom.com/home/index2.php?option=com_content&task=view&id=718&Itemid=61&pop=1&page=0) Accessed 27 October 2006; Ekachai, S. 2005, ‘Thailand: Violence in the home’, *Bangkok Post*, 24 November [http://cst.bangkok.unfpa.org/401\\_2648.asp](http://cst.bangkok.unfpa.org/401_2648.asp) (sourced from the United Nations Population Fund (UNFPA) website) Accessed 27 October 2006



**reports of domestic violence.** Reliable statistics on rates of domestic violence were difficult to obtain but there were 60 thousand reported cases in 2004, double that of 2003. On November 28, the public health minister noted that the number of reported cases of abuse had increased from 5 per day in 2002 to 28 per day in during the year. Approximately half of these cases involved sexual abuse. It was unclear whether the increase reflected an increase in violence or an increased public awareness of the problem and an increased willingness on the part of battered women to report it to authorities. A 2003 study by the Institute for Population and Social Research at Mahidol University found that up to 41 percent of the women surveyed in Bangkok had experienced some type of physical or sexual violence. In April a survey by a Bangkok psychiatrist reported that more than 25 percent of the sampled Bangkok households had experienced domestic violence. **NGO-supported programs included emergency hot lines, temporary shelters, counseling services, and a television program to increase awareness of domestic violence, HIV/AIDS, and other issues involving women. The government's "one-stop" crisis centres, located in state-run hospitals, continued to care for abused women and children but faced budget difficulties.**<sup>4</sup>

Of special interest is a 2006 report by Elayne Clift for the human rights organisation Toward Freedom, which discusses the first World Health Organisation (WHO) study on domestic violence and Thailand's pending domestic violence law. In relation to police protection in Thailand the report states:

The police, known for ignoring and trivializing domestic violence in Thailand, are vested with near total power over complaints and judges have the authority to decide on measures they think will keep the family together. Reconciliation and out of court settlements are encouraged.<sup>5</sup>

A 2006 article by *The Nation* in Thailand states the following regarding domestic violence against women:

Violence against women is on the increase, yet in many countries, amazingly, it is not considered a crime. In Thailand a woman at the receiving end of domestic violence is usually too ashamed to ask for help from her family. The neighbours are simply not interested and the police, when called in, are unwilling to help because, they say, it's a private problem.

Domestic violence is not limited to low-income households where the squabbles can be "excused" by frustrations over money. In today's cutthroat society, a married woman with a successful career, children and an upscale condo is as likely to be on the receiving end of blows as a common-law wife living in the slums.<sup>6</sup>

There are still a range of welfare services provided to victims of domestic violence by both government and non-governmental agencies throughout Thailand. These services include

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<sup>4</sup> US Department of State 2006, *Country Reports on Human Rights Practices for 2005 - Thailand*, 8 March <http://www.state.gov/g/drl/rls/hrrpt/2005/61628.htm> Accessed 30 October 2006

<sup>5</sup> Clift, E. 2006, 'A Timely Study Highlights Violence Against Thai Women', Toward Freedom website, 4 January [http://towardfreedom.com/home/index2.php?option=com\\_content&task=view&id=718&Itemid=61&pop=1&page=0](http://towardfreedom.com/home/index2.php?option=com_content&task=view&id=718&Itemid=61&pop=1&page=0) Accessed 27 October 2006

<sup>6</sup> 'Ending the Violence' 2006, *The Nation*, 25 March

temporary housing for victims and their families, crisis-centres, counselling services, legal services, emergency ‘hotlines’, educational programs and the ‘Children and Women’s Protection Centres’ located in many Thai police stations. However, it is significant that these services reportedly suffer from serious budgetary constraints. Furthermore, it is interesting to note that the issue of domestic violence seems to attract considerably less attention both from government and non-government agencies – both locally and internationally – than does the endemic problem of sex trafficking of Thai women and children. The TIP in Asia portal provides a comprehensive list of government and non-government agencies, listed by province, for services for victims of domestic violence and trafficking.<sup>7</sup>

Despite this there still seems to be significant problems in Thailand with judicial practices favouring the perpetrators of domestic violence over the victims. Perpetrators are either failing to be prosecuted or even when prosecutions are successfully concluded through the courts the courts rarely impose significant sentences. For example on 28 August 2003, *BBC News* reported a number of incidents in which the murder of Thai women had gone unpunished by the Thai courts. The report was primarily concerned with the case of a British national from south Wales who, after being convicted of “premeditated murder”, was allowed to “walk free” – “Journalist Andrew Drummond explained that women’s rights were ‘not particularly strong’ in Thailand.

## **FINDINGS AND REASONS**

The applicant travelled to Australia on a valid Thai passport and claims to be a national of Thailand. The Tribunal accepts that the applicant is a national of Thailand and has assessed her claims against Thailand as her country of nationality.

The Tribunal found the applicant to be a credible witness who gave evidence in a consistent and forthright manner. Although the applicant was somewhat vague in her description of the conversion ceremony, the applicant stated that she had little interest in the religion and she converted and practiced because her boyfriend had requested it. In Tribunal’s view, this may also account for the applicant’s general and limited knowledge of Islam. The Tribunal accepts that the applicant converted to Islam.

The Tribunal accepts the claims made by the applicant with respect to the harm she suffered perpetrated by her boyfriend. The Tribunal accepts that she had suffered physical harm on several occasions. The Tribunal accepts that such harm was a result of domestic violence and that it was partially related to the applicant’s religious practices. The Tribunal accepts that the harm was perpetrated by the applicant’s boyfriend. The Tribunal accepts that the applicant reported the harm to the police, but that no action was taken.

As the Tribunal found that the fear of harm is private, the Tribunal considered whether the state is able to protect the applicant against such harm. If that protection is withheld from the applicant for a Convention reason then the fear of harm, though private and non Convention related in itself, may nevertheless, constitute persecution. In the High Court decision in *Minister for Immigration v Khawar* (2003) 210 CLR 1 the majority found that the selective and discriminatory withholding of state protection for a Convention reason may constitute

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<sup>7</sup> Your Anti-Trafficking in Persons in Asia Web Portal (undated), ‘Thailand: Directories’, <http://www.tipinasia.info/TH/dir.php?l=en> Accessed 27 October 2006; See also Macan-Markar, M. 2005, ‘Rights-Thailand: Battered Women, No Longer Alone’, *Inter Press Service*, 24 November -<http://ipsnews.net/news.asp?idnews=31161> Accessed 26 October 2006

persecution for a Convention reason even where the harm feared is for a non Convention reason.

Independent evidence before the Tribunal, cited above, indicates that there is inadequate state protection offered to victims of domestic violence in Thailand. Evidence indicates that the police are reluctant to pursue reports of domestic violence and that the rates of prosecution and conviction for perpetrators of domestic violence are low. On the basis of that evidence, the Tribunal finds that the applicant is likely to be denied state protection because she is a woman. The Tribunal finds that the essential and significant reason such protection would be withheld is for reason of the applicant's membership of a particular social group, defined as women residing in married or de facto relationships, who are subjected to domestic violence. The Tribunal accepts that the applicant had a well-founded fear of persecution. The Tribunal therefore finds that the harm is Convention-related in two respects: the applicant's religion and membership of a particular social group.

However, the focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country. The international community is not under an obligation to provide protection outside the borders of the country of nationality if real protection can be found within those borders. Therefore, even if an applicant has a well-founded fear of persecution in their home region, the Convention does not provide protection if they could nevertheless avail themselves of the real protection of their country of nationality elsewhere within that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1. However, this principle only applies to people who can genuinely access domestic protection, and for whom the reality of protection is meaningful. If relocation is not a reasonable option in the particular circumstances, it may be said that, in the relevant sense, the person's fear of persecution in relation to that country as a whole is well-founded: *Randhawa* per Black CJ at 442-3, Beaumont J at 450-1.

The Tribunal finds that the harm the applicant fears is localised. The applicant claims that the harm was perpetrated by her boyfriend. Although the applicant claimed in the primary application that she also feared harm from members of her boyfriend's family, there is no evidence before the Tribunal that they had harmed the applicant in the past. Neither did the applicant indicate in her oral evidence that they had threatened the applicant or that they intend to harm her in the future. The Tribunal does not accept that there is a real chance that the applicant will face persecution from the members of her boyfriend's family.

The applicant stated that when her boyfriend threatened her last time, he said that he "did not want to see her face again". This suggests that the applicant's boyfriend would not actively pursue the applicant, if she was not residing with him. There is no evidence before the Tribunal that the applicant's boyfriend had made any attempts to locate the applicant between the time she left his family home and the time she left the country. Tribunal does not accept that the applicant's boyfriend would take steps to locate her, if she returned to Thailand now or in the foreseeable future.

The Tribunal also does not accept that the applicant's boyfriend would be able to locate her, if she resided outside Bangkok or her parents' home. Although the applicant said that her boyfriend located her when she resided with a friend, the applicant also said that this area was part of Bangkok. The Tribunal does not consider plausible the applicant's explanation that her boyfriend may be able to find her in other areas because he works for a particular organisation which has branches in the country. The Tribunal does not accept that even a large organisation with branches in many parts of the country will have details about every resident of the country. Neither does the Tribunal accept that every employee of the

organisation will have access to such records. The Tribunal finds that there is little chance that the applicant's boyfriend will locate the applicant, if she were to reside outside Bangkok and away from her parents' home.

The Tribunal has considered whether it would be reasonable for the applicant to relocate to another part of Thailand. When questioned about the relocation at the hearing, the applicant stated that she did not consider residing in another part of Thailand because she was not familiar with areas, other than Bangkok and Khon Kaen. The Tribunal does not consider this to be significant because the applicant had travelled to Australia, a country with which she was even less familiar. She is gainfully employed. She has been able to adapt well to the new environment in a new country, despite language and cultural differences which are likely to have been more pronounced than if the applicant were to relocate to another area in Thailand.

The applicant stated that she had been working in Australia for the past few months and that she receives income from that employment. The applicant also stated that when she travelled to Bangkok from Khon Kaen, she was able to find employments. The applicant said that she was able to obtain some employment with the help of friends and she found other jobs herself. The Tribunal is of the view that the applicant will be able to find gainful employment, if she were to relocate to another area in Thailand. Further, the applicant stated that she had significant savings. The applicant stated that her parents had not used this money and that these savings are held by her parents for the applicant. The Tribunal is of the view that the applicant's savings will assist her in being able to relocate to another part of Thailand.

The Tribunal finds that, given the applicant's background, skills, experience and monetary savings, it would be reasonable for her to relocate to another part of Thailand. The Tribunal finds that there is no real chance that the applicant will face persecution now or in the reasonably foreseeable future if she relocates within Thailand to an area outside Bangkok or Khon Kaen.

## **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 dependent 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. PMRTL

