

0906699 [2009] RRTA 1055 (20 November 2009)

DECISION RECORD

RRT CASE NUMBER:	0906699
DIAC REFERENCE(S):	CLF2009/36174
COUNTRY OF REFERENCE:	Morocco
TRIBUNAL MEMBER:	Mary Urquhart
DATE:	20 November 2009
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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 Morocco arrived in Australia [in] October 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] March 2009. The delegate decided to refuse to grant the visa [in] August 2009 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] August 2009 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. The applicant submitted a Statutory declaration dated [in] August 2009 in which he states:

“I, [the applicant] of [address] make the following declaration under the Statutory Declarations Act 1959:

My name is [the applicant] and I am a 28 year old male born in Fes. Morocco; my ethnicity is Moroccan Arab and I am not religious;

I make this declaration to support my appeal to the Refugee Review Tribunal from a decision made by the Department of Immigration on [date] August 2009;

My siblings and I have never practiced religion. My parents are Sunni Muslim but they never forced us to practice. We were taught the religion when we were young but neither I nor my siblings now practice any religion.

Morocco is a Country where almost the entire population is Sunni Muslim. Given that my siblings and I never practiced Islam, the entire neighbourhood believed that we were infidels. As such, we would be taunted by the other children as we would not be fasting or going to the mosque for prayers.

As I got older, I also started going out to bars and drinking whilst those that practiced the religion would not. As such, the police arrested me many times, often when they saw me leave a bar or nightclub. I would be arrested, taken to the police station and beaten. While being beaten they would call me an infidel and I would only be released after paying them money. As such, I was very well known in our area and was often the target of assaults by the authorities.

I was also well known in our area because I was an English teacher.

The police would also target me whenever I went out with my girlfriend as we were not married and it was against Islam and a crime in Morocco to walk around without being married.

Our area had an organisation called Anizyin which were religious fundamentalists. They acted like religious police whereby they would monitor the streets and target anyone who is doing something against the religion. They would beat and sometimes kill people in the street if they were coming home after drinking or if they were with a female who they were not married to.

I would often be targeted by them even if I did not have anything to drink because they knew that I was not religious. They also knew that I was teaching English which they believe is the language of infidels.

Anizyin also has members that are part of the Police Force or Government and as such, they have the power in the community to do whatever they want.

I confirm my previous claims with regards to witnessing the killing of a person by the Anizyin and note that I had seen the person killed on occasion at bars and nightclubs and as such believe that he was killed by them just for being non religious.

I also recognized the people that killed him as members of Anizyin and notified the police as to what I saw. From this point on, I became a constant target of Anizyin. I fear that they will kill me because I am not Muslim and further, I fear that I will specifically be targeted because they know that I do not support their cause.

Anizyin is very strict in its interpretation of Islam. As such, they believe it is their right to kill anyone that does not believe in God and who do not follow the Quran.

Even after fleeing Morocco, I was told by my family that members of Anizyin had come to my house looking for me. They have done this many times asking for my whereabouts as they want to kill me.

I cannot move to any other part of Morocco as Anizyin is a network and they have people everywhere. As such, even if I was to move, I fear that they will find me and kill me.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statute y Declarations Act 1959, and I believe that the statements in this declaration are true in every particular”

19. A summary of the applicant’s claims are as follows:

- In June 2007 he saw three men killing someone. He recognised the men as belonging to a local gang called Anizyin. They arc religious based and operate through out the country administering punishment for what they see as breaches of the law. In particular they target non-Muslims and non-believers.
- He does not have a religion, although he was born into a Muslim family.
- He called the police but the killers got away before their arrival. He told the police who he thought they were because he recognised them.
- Two of the killers were caught and charged and were jailed waiting a court date. He was sent a letter by the police to attend the court as a witness. He believes the Anizyin gang got information from the police about his identity because they seem to have good connections with the police.
- Members of the group went to his home looking for him while he was at work. His mother contacted him and told him not to go home. He went to [location deleted: s431(2)] to stay with his brother. As he was a stranger to the city he had to declare his new address to the local authority. They told him he had to contact the police to explain what he was doing there because he was a stranger. He could not do that because he know the gang would find out where he was because of then connection.
- He was being followed by the gang in co-operation with officials.
- He decided that he could not stay in Morocco and be safe. He went to Casablanca to get away from them until his father arranged to get him a passport and he obtained a visa to visit Thailand It was relatively easy to get a visa to Thailand and he stayed for a year before coming to Australia. He did not stay in Bangkok because he feared he would be found by the group.

- The Anizyin have good connections to the government and the police because of widespread corruption. They can get access to information and he will not be safe anywhere. The authorities cannot protect him because the group has got many contacts in the government; the police and bureaucracy.

CLAIMS AND EVIDENCE

20. 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.
21. The applicant appeared before the Tribunal [in] September 2009 to give evidence and present arguments.
22. The applicant was represented in relation to the review by his registered migration agent.
23. The applicant's representative submitted a document to the tribunal stating:

“Our client is seeking a review of his application for a protection visa from Morocco.

His claims and attached Statutory Declaration detail the persecution he and his family were subjected to by the authorities due to their lack of religious activities and involvement. Although our client was born into a Muslim family, he instructs us that he does not have a religion.

By way of summary, our client instructs that since his arrival in Australia his family has repeatedly been in contact with him advising him that members of the Anizyin Organisation have attended to his family home asking for his whereabouts. They have further advised him that such visits have occurred on a frequent basis. Our client instructs us that the reason behind such visits is to find our client and have him killed for alleged breaches of the Islamic faith.

The Anizyin Organisation is a fundamentalist group and extremely strict in its interpretation of the Islamic faith. As such, they believe it is their right to kill any person who does not believe in Allah or follow the Quran. The Anizyin Organisation is made up of members of the Police Force as well as government officials. It is for this reason that they have the power to do whatever they like in the community.

It is due to this information that our client believes that should he return to Morocco he will be subjected to serious harm and eventually killed.

Our client further confirms that he fears for his family given that they have risked their own lives by informing him of the situation back home and further helped him flee.

Our client also instructs that he is unable to move to any other part of Morocco as the Anizyin Organisation has a network of people everywhere. He further instructs that as time has passed his fear of returning home has mounted due to the continuing warnings by his family of his inevitable fate should he return.

It is therefore submitted that the applicant's claimed harm is sufficiently grave to constitute persecution”.

- 24.

Background

25. The applicant's file reveals his ethnicity is Moroccan Arab. Although born into a Sunni Muslim family he states he is a non believer. The applicant is single. He advises that his father, mother, four brothers and five sisters are resident in Morocco. He said he had been working as a teacher. Prior to that he was an accountant and a self employed factory owner.

Evidence at the hearing

26. The applicant stated his date of birth as [date deleted: s.431(2)] and said his occupation was that of a teacher; however he was not working at the moment. He said he is going to commence a casual job at [business deleted: s.431(2)] in Tasmania next month. He told the Tribunal he had no family in Australia. His parents, five sisters and four brothers all live in Morocco. He said that two of his sisters are married; two of his brothers are married; and all his other siblings live at home with his parents. It was his evidence that he grew up in a Muslim family, but told the Tribunal that only his parents practised the Islamic religion. He said all his brothers and sisters are non-believers.
27. The applicant first came to Australia [in] October 2008 on a Tourist Visa. He said he had been in Thailand teaching English for one year prior to this. He had travelled from Thailand to Laos to extend his Thai visa sometime in 2008. The applicant produced his passport, a certified copy of which is on the file. He carries a Moroccan passport, issued by the Prefecture of Fes [in] October 2007, valid until [date deleted: s431(2)] October 2012.
28. The applicant stated that he was seeking a Protection Visa on the Convention grounds of a particular social group and religion. He told the Tribunal that his lawyer had helped him with his application, but that the information in it was his information; that it was all true and correct; and that he had no changes to make to it.
29. He was asked by the Tribunal why he left Morocco. He replied he had to leave because while he was working he saw two guys kill someone. He didn't know the man who was killed, but he had seen him "around at the pub". He said he did know the people who killed him because they were part of the Anizyin.
30. The Tribunal asked him, who were the Anzyin. He replied they were people from the Muslim community. They were people who held Islamic beliefs. He said they targeted anyone doing something against Islam, like drinking or going out with girlfriends or doing something against the Muslim way.
31. The Tribunal asked him how he had been targeted. He said if he went to the pub, then, when coming home, there might be a few of them (the Anizyin) and they would beat you up. He said they would beat you up saying "you are a Moroccan, you should be a Muslim".
32. The Tribunal asked him if this had happened to him, and he said it had happened many times. He told the Tribunal he was 19 when he started to go to the pub with friends. He said that coming home one night he was really drunk and two of the Anizyin knew him from his neighbourhood, they knew where he lived and they beat him up. The Tribunal asked him when this happened. He said he thought it was in 2002. The

Tribunal asked him what injuries he had. He said they had beaten him with a stick, but he did not have any injuries. He said it was more like they were trying to scare him. The Tribunal asked him if he reported this to the police, and he said no he just told his father and family what had happened.

33. The Tribunal asked the applicant when the next time was that he had been attacked by the Anizyin. He said he could not remember as it had happened so many times. He said anytime he went to the pub he mostly had this problem, but he never reported it to the police. He said he didn't report it to the police because they would just say he was drunk, and it would be a bigger problem for him. The Tribunal asked him about his drinking and how often he was drunk. He replied that he was drunk not every weekend, but perhaps once a month he would get pretty drunk.
34. The Tribunal put to him that in his documentation, and in his claims, he said that he was arrested by the police many times. He said when he came home after drinking, the police would stop him and see him drunk and they would take him to the police station and he would have to pay a fine and then he could go home. He said if you are drunk it is like you are making a crime, that is the law. He said they see me drunk, they say it is against Islam, and that I am not a believer.
35. The Tribunal asked him if he was being targeted for doing something against Islam even though he was not part of Islam. He agreed this was the case. Again the Tribunal asked him how often he had been arrested by the police, and he said maybe more than 30 times. He said every time he went to the pub he would go out and would be in trouble with the police.
36. The Tribunal questioned the applicant further about the Anizyin. He said these were people who were from the suburbs. Every suburb had a group like them. They can be made up of anyone he said. He said they stop you, they beat you and they might kill you. The Tribunal asked him if the group was a well-known group in Morocco. He said no, it was only known in the suburbs where he lived. He then described the Anizyin as a local gang. He said people were too scared to report them to the police.
37. The Tribunal asked the applicant if any of his siblings had difficulties with the Anizyin. He replied that his brothers have some problems like he does, but that they remain in Morocco and that they have not complained to the police.
38. The Tribunal put to him that he had described the Anizyin as being like religious police. He agreed saying they try to do something that the police cannot do, so if they see someone drunk they stop him and beat him up, whereas the police would arrest him and make him pay a fine.
39. It was put to the applicant that the Anizyin are doing something criminal, and he agreed. It was put to him that when he saw the Anizyin killing a man that he did report it to the police. He said he was frightened, but he called the police. The police came and he told them what he had seen and about the people who did it and the two guys who did it were arrested. He said he was then sent a letter saying that he had to attend court. He told the Tribunal that this is why he left Morocco. It was his belief that some Anizyin came looking for him because they had got information about who he was and where he lived from the police. He said they knew he was the person who reported

what happened. He described the Anizyin as a fundamentalist group. He said he couldn't tell the police anything because the Anizyin are all Muslim.

40. The applicant said he then left Fes and went to live in [location deleted: s431(2)] where he stayed with his brother for one month. He said that when he was there he was asked by a leader of the suburb, in which his brother lived, to take his ID and register in the area. He said he didn't want to do that because if he did, he would have the same problem again with the Anzyin. Someone would then ring Fes and someone in the police would find out where he was and the Anizyin would come for him. This is what he thought would happen. He said he then went to Casablanca and stayed there until his passport was ready. He was asked by the Tribunal what date he had seen the killing, and he said it was in June 2007 and he obtained his passport [in] October 2007, some five months later.
41. The Tribunal put to the applicant that Morocco was a Monarchy, which allowed freedom of religion. He agreed that that was so, but said when you are with a girlfriend you can be arrested by the police and sometimes in trouble with the Anizyin. The Tribunal asked the applicant how many times he had been arrested with his girlfriend. He said he can't remember how many times, but every time or mostly if the police saw him with his girlfriend, they would arrest him and he would have to pay a bribe to the police. He said that in Fes you are likely to be arrested if you are recognised as Moroccan. He said you would not be arrested if you were out with a girlfriend if you were a tourist, but if you were a Moroccan you would be asked for your ID; they would know that you were Moroccan; and you would be arrested.
42. The Tribunal put to him that independent country information could find no reference to the Anizyin group in any articles or other information. Again the applicant said the Anzyin were a local group known only in the suburbs.
43. The applicant told the Tribunal he wanted to live somewhere where he could have all his rights. It was put to the applicant that the rest of his family must feel safe because his parents, brothers and sisters are still living in Morocco Presumably they stay there because they feel safe. The applicant responded that he only had the problem because he had witnessed the killing.
44. The applicant told the Tribunal that if he moved to any other city in Morocco he would have to register or report to the authorities and give his ID and that the police would then contact Fes. He said the Anizyin is the small local name for the group, but that it is everywhere in Morocco. He said the group beat and kill people all the time.
45. The applicant told the Tribunal that he is still scared and didn't know what to do and feels the Anizyin are looking for him.
46. The Tribunal asked the applicant again if there had been any threats against his family, and he said no there had not but this time added that his brothers had been beaten when at the pub.
47. The Tribunal asked him what particular social group he claimed to belong to. He replied non-believers in Islam.

48. The Tribunal referred to the applicant's claims and asked him how being an English teacher caused him difficulty. He did not respond to the question. The Tribunal asked him how the Anizyin would know where he was if he was living in a different part of Morocco. He said as a non-believer he would be targeted if he was drinking and hanging out with girlfriends.
49. It was put to the applicant that Morocco has a strong relationship with the USA and is known for its control of fundamentalists. He agreed with this information. The Tribunal asked him what he meant when he said he didn't support the cause of the Anzyin. He replied because he was not a Muslim.
50. The Tribunal asked the applicant about his education. He reluctantly agreed he went to a Moroccan Muslim school in primary and secondary school. He said he then went to university in 2001 for some six months and studied economic science and did a six month computer course. It was his evidence that he commenced his university course when he was 20 years old. He agreed that he was therefore still at school when the beatings he claims to have experienced first happened.
51. The applicant was asked about the system of justice in Morocco. He agreed that there was a system of justice based on Sharia law. He agreed there were courts and lawyers and that people had representation and that there was legislation about crime, but he said the law could not protect him because of the corruption in his country. The applicant complained about the corruption in Morocco.
52. The applicant said he was not intending to live in Australia, but wanted to be sent somewhere where he would feel safe.
53. The Tribunal put to the applicant that he claimed collaboration between the police and the Anizyin and yet, at the same time, his evidence shows that the police were doing their job in pursuing the Anizyin who have acted outside the law.
54. The Tribunal asked the applicant how his fear related to his being a non-believer. The Tribunal reiterated that it understands the applicant's fear, having witnessed a murder, but not how it relates to his non-religion or non-belief. The Tribunal pointed out the inconsistency in the applicant claiming on the one hand that there was collaboration between the police and the Anizyin, but also claiming on the other hand that the police were doing their job, and agreeing with the Tribunal that the Anzyin were committing criminal acts outside the law.
55. The Tribunal put to the applicant that he says the Anizyin have many contacts in the police. On the one hand he referred to the Anizyin as a local group and on the other hand said they have a very broad network that reaches to the highest levels of government, the bureaucracy, the police, and the judiciary. These things seem to be in conflict. Further, there is no independent country information found about the Anizyin at all.
56. The Tribunal put to the applicant that it can accept that there is bribery and corruption in Morocco, but that it seems unusual that there is this group called the Anzyin, with its tentacles reaching to all these different areas, but that nothing is known about them. In response the applicant said that people wouldn't come and write about these things. The Tribunal put to him that there are international organisations that look at human rights

issues and Morocco is a country that is very open to other countries; to criticism; and to building strong relationships with the United States. In light of this the Tribunal would have thought that something would have been known about an organisation, such as the one the applicant described.

57. The Tribunal put these questions to the applicant under Section 424AA of the Act and asked him to comment in writing by 19 October 2009.
58. [In] October 2009 the Tribunal received a response in writing which sets out the following:

“Our client instructs that when he saw the altercation between Anizyin members and a person known to him, he contacted the police in the hope that they would arrive prior to the death of this person. Our client reiterates his evidence that Anizyin are essentially Islamic fundamentalists who aim to have an Islamic state free from non believers. He instructs that there are many groups throughout Morocco and that they work together in order to secure their goal.

At the time that he telephoned the police, our client instructs that he was not aware of the extent of the infiltration of Anizyin members or supporters within the police force and other parts of the authority. Our client instructs that this only came to light when his address was made available to Anizyin members by the police and/or prosecutors in the matter.

Our client instructs that the Moroccan authorities pretend to investigate crimes committed by Islamic groups such as Anizyin so that they can portray a suitable facade to foreign countries. Our client instructs that this is evidenced by the fact that the police and/or the prosecutors made his address available to Anizyin's members so that they would ensure that our client would not give evidence. As such, he instructs that had he not fled, members of Anizyin would have killed him.

Our client instructs that the authorities are aware that he is not Muslim and further, not a supporter of the Islamic cells such as Anizyin, which is another reason why they allowed his address to be released.

Our client reiterates his evidence that groups such as Anizyin have contacts throughout Morocco and therefore will be able to locate him. He instructs that he cannot relocate to any other part of Morocco given that he needs to register with the authorities and as such, they are likely to again release his details to Anizyin or its affiliates within Morocco.

Our client instructs that the authorities are covert in their support of groups such as Anizyin due to their beliefs and ideals. As mentioned above, our client instructs that many people who do not believe nor support the Islamic cause are persecuted by the authorities. Such persecution is evidenced by the country information provided previously together with the following articles:

Threats for breaking Morocco fast

A Moroccan man campaigning to change the law banning eating in public during the Muslim Ramadan fast says he has received 100 death threats this week

Radi Omar denied that his group was anti-Islam. "We are in favour of individual freedom," he told the BBC.

Six of his colleagues are in custody after planning to eat in public last Sunday and he demanded their release.

Mr Omar said they were being well treated but he assumed they were not being fed during the fasting hours.

The group, known as the Alternative Movement for Individual Freedoms (Mali), has more than 1,200 members on its Facebook site.

They planned a public defiance of the law at the train station in Mohammedia near Casablanca last Sunday but were dispersed by the police.

The protesters were prevented from eating and so should not have been detained, Mr Omar said, adding that they have not been charged.

Under Moroccan law, eating in public during the hours of daylight, when Muslims are supposed to observe a fast, can lead to a fine and up to six months in prison.

Story from BBC NEWS. <http://news.bbc.co.uk/go.pr>, Published: 2009109118 11:30:48 GMT [http://latimesblogs.latimes.com/babylonbeyond/2009/09/morocco-ramadanprotestpicnickers-face-prosecution, html# comments](http://latimesblogs.latimes.com/babylonbeyond/2009/09/morocco-ramadanprotestpicnickers-face-prosecution.html#comments)

Morocco-France: Mysterious disappearance of an anti fasting journalist Zineb El-Rahzoui's disappearance, Thursday, has inundated the Moroccan media. For some six days now, members of her family and the Moroccan Association of Human Rights are desperately seeking the founder of the Movement for alternative civil liberties (MALI). September 13, the activist took part in a "non-fasters" demonstration in Morocco to protest against a law that punishes "public non-observance of the Muslim fasting month of Ramadan."

Zineb El Rhazoui is nowhere to be found. The Moroccan Association of Human Rights (A.MDH) has had "no news" of the Franco-Moroccan journalist since Thursday. She is suspected of being the brain behind a failed "non fasters" demonstration during the Ramadan fasting month in Morocco Zineb El Rhazoui is a member of the Movement for alternative civil liberties (MALI). September 13, the group organised a picnic in a wooded area close to Mohammedia, to break their fast in the afternoon. Their goal was to denounce a Moroccan law that punishes 'public non-observance of the Muslim fasting month of Ramadan. "Article 222 of Morocco's Penal Code states that "any Moroccan Muslim who publicly violates (the fast) is punishable by six months in prison and a fine," while another out rightly bans de-conversion from Islam.

Referring the case to the Department of Justice, the president of AMDH said, "it is not known whether she disappeared in an illegal manner or if she is hiding to avoid the tension associated with her recent activities ". Before her disappearance, five of the six young members of MALI who also campaigned for the abrogation of Act 222 were summoned for questioning by the Moroccan police. Zineb El-Rhazoui, who was also summoned Thursday at Mohammedia, has not been seen since. The authorities claim not to "know where she is."

A mysterious disappearance?

Ibdtisam Lachgar, one of Zineb's close friends who had communicated with her by mail and telephone, told AFP Sunday that "Zineb did not know whether or not to honour the police summon": According to Lachgar, "her phone has been switched of

since. She also told the AFP that Zineb had told her that, given the outcome of the case, she preferred "not to see anybody". "I do not want to show myself... I think I'll stay put in an apartment", Zineb told her friend.

Following the affair, several Moroccan newspapers wrote frenzied articles denouncing the group's "virulent" acts. On the front page of the September 16 edition of the *Al Alam*, a local newspaper that belongs to the Istiglal Party (also the Moroccan Prime Minister Abbas El Fassi's party), an editorial read: "They don't belong with us". Besides the libellous headlines, members of MALI received death threats via the Internet, indicated a communiqué from Human Rights Watch. September 15, an official newspaper published a statement from the Provincial Council of Mohammedia Ulemas (doctors of Islamic law), in which they denounced the picnic organised by "the agitators" as an "abhorrent" act that "defies the teachings of God and the prophet with all the severe sanctions it would bring about."

"Moroccan authorities point proudly to the country's multi-confessional heritage," Sarah Leah Whitson, Middle East and Africa at Human Rights Human Rights Watch said in a statement. "But tolerance means also protecting the right of individuals, such as those in MALI, to define and practice their faith as they wish and as they set out to do - in a manner respectful of others.<http://en.afrik.com/article 16203.html>

The above articles show that persecution at the hands of the authorities continues for people like our client who do not abide by the strict interpretation of Islam.

Given the above matters, we submit that our clients fear of persecution is for a convention reason and further, there is a real chance based on his evidence; that he will be persecuted if he is refouled".

59. The Tribunal has given consideration to this response by the applicant.

Country information

60. The Report on International Religious Freedom Near East and North Africa Morocco 2008 Released by the Bureau of Democracy, Human Rights, and Labour accessed Mon, 22 Sep 2008 01:28:10 GMT states :

The Constitution provides for the freedom to practice one's religion. Islam is the official state religion, and the King is "Commander of the Faithful and the Supreme Representative of the Muslim Community." Non-Muslim foreign communities openly practice their faiths.

There was no change in the status of respect for religious freedom by the Government during the period covered by this report. The Government places certain restrictions on non-Islamic religious materials and proselytizing. Several small religious minorities are tolerated with varying degrees of official restrictions. The Government monitors the activities of mosques and places some restrictions on Muslims and Islamic organizations whose activities are thought to have exceeded the bounds of acceptable religious practice and become political in nature.

There were reports of societal abuses or discrimination toward those with different religious beliefs, and converts from Islam to other religions.

The U.S. Government regularly discusses religious freedom with the Government as part of its overall policy to promote human rights.

Section I. Religious Demography

According to the 2004 census, the country has an area of 172,320 square miles and a population of 34 million, of which 99 percent are Muslim, and 1 percent are Christian.

According to the country's Jewish community leaders, there are an estimated 4,000 to 6,000 Jews, the majority of whom reside in Casablanca and are the remnants of a much larger community that has mostly emigrated. The estimated size of the Rabat Jewish community is 150 to 200. The remainder of the Jewish population is dispersed throughout the country. The population is mostly elderly, with a diminishing number of young people.

The expatriate Christian community, Catholic and Protestant, consists of approximately 5,000 practicing members, although some estimates are as high as 25,000. Most Christians reside in the Casablanca and Rabat urban areas.

The Baha'i community, also located in urban areas, numbers 350 to 400 persons. The Government recognizes the presence of a Shi'a Muslim community, estimated at 3,000 members.

Section II. Status of Religious Freedom

Legal/Policy Framework:

The Constitution provides for the freedom to practice one's religion. Islam is the official state religion, and the King is "Commander of the Faithful and the Supreme Representative of the Muslim Community" with the responsibility of ensuring "respect for Islam." The Government prohibits the distribution of non-Muslim religious materials, bans all proselytizing, and tolerates several small religious minorities with varying degrees of restrictions. The Government monitors the activities of mosques and places other restrictions on Muslims and Islamic organizations whose activities are deemed to have exceeded the bounds of acceptable religious practice and become political in nature.

According to Article 220 of the Penal Code, any attempt to stop one or more persons from the exercise of their religious beliefs or from attendance at religious services is unlawful and may be punished by 3 to 6 months' imprisonment and a fine of \$16 to \$79 (115 to 575 dirhams). The article applies the same penalty to "anyone who employs incitements to shake the faith of a Muslim or to convert him to another religion." Any attempt to induce a Muslim to convert is illegal. Foreign missionaries either limit their proselytizing to non-Muslims or attempt to conduct their work discreetly.

The Government cites the Penal Code's prohibition on proselytism in most cases in which courts ruled to expel foreign missionaries. Voluntary conversion is not a crime under the criminal or civil codes.

A 2002 law restricting media freedom states that expression deemed critical of "Islam, the institution of the monarchy, or territorial integrity" is not permitted and may be punishable by imprisonment.

Jewish and many Christian communities openly practice their faiths. A small foreign Hindu community may freely perform cremations and hold services.

The Government requires religious groups to register in order to undertake financial transactions and other business as private associations and legal entities. Registered churches and associations include the Catholic, Russian Orthodox, Greek Orthodox, French Protestant, English Protestant, and Anglican Churches. During the reporting period, the Government did not license or approve new religions or religious organizations.

The Government continues to encourage tolerance, respect, and dialogue among religious groups. During the reporting period, senior government officials, including the Minister of Islamic Affairs and Endowments (MIAE), received delegations of U.S. Christian and Jewish leaders. Morocco participates in the Alliance of Civilizations and other international groups that promote religious tolerance.

During the Islamic holy month of Ramadan, the King hosts an annual colloquium of Muslim religious scholars from around the world, including the United States, that considers ways to promote moderate and peaceful religious interpretations and encourages tolerance and mutual respect within Islam and between other religions.

61. A member of the board of directors for the Moroccan Association for Human Rights (Association marocaine des droits humains, AMDH) provided the following information during a 25 October 2004 telephone interview:

The board member said that there are many atheists in Morocco and that some tolerance is shown toward them by the Moroccan population, which is almost exclusively Muslim. However, he said that many atheists agree that it is better not to make one's atheism public. He said that, according to Moroccan law, an atheist can be arrested for making his or her lack of religious faith public, for example, for suggesting that the state should be non-religious. He added, however, that he had never heard of legal action being taken against someone for his or her ideas about a non-religious state.

According to the board member, the reaction of Muslims could be harsher; for example, the defenders of human rights, women's rights and other rights could be threatened, and they are often considered to be atheists by Muslims.

The board member pointed out that Moroccan society is generally tolerant of the practice of Islam. Those who do not attend public prayer during the day are not hassled. However, he said that there is less religious tolerance in Moroccan society than there was in the 1960s and 1970s. For example, during Ramadan, almost everyone—even people who drink regularly or who are prostitutes—makes an effort to respect the spirit of Ramadan and to not eat in public places during the day. Moroccans who are neither Jewish nor Christian do the same; if they do not, they risk being punished for two to three years. The board member referred to the case of two young men who were arrested and incarcerated for three months because they stopped fasting one day before the end of Ramadan; the men were following the schedule of Ramadan in Saudi Arabia, where the fasting had already ended. The board member said that, aside from difficulties relating to disrespect shown to Ramadan, there are no problems concerning individuals who do not practice Islam.

62. Restrictions on Religious Freedom

The MIAE monitors or provides guidance on Friday mosque sermons and the Qur'anic schools to ensure the teaching of approved doctrine. At times the authorities suppress the activities of religious oriented political groups but generally tolerate activities limited to the propagation of Islam, education, and charity. The Government requires that mosques close to the public shortly after Friday services to prevent use

of the premises for unauthorized political activity, and mosques comply. Only the Government can authorize the construction of new mosques, although most mosques are constructed using private funds. There are occasional credible reports of unauthorized or informal mosques.

The MIAE controls and monitors the activities of mosques, places restrictions on activities deemed to have exceeded the bounds of religious practice or become political in nature, and provides religious training for imams. Authorities stated that these measures have eliminated the exploitation of mosques for political propaganda, such as distributing pamphlets and raising funds for illicit organizations.

The Government does not recognize Adl wa Ihsane, the Justice and Charity Organization (JCO), an organization that rejects the King's spiritual authority. The JCO advocates an Islamic State, continues to organize and participate in political demonstrations, and operates web sites although the Government does not allow the public distribution of its published materials. The Government continued to prohibit its public meetings throughout the reporting period, referring to the organization as one using religion for political purposes.

Ongoing struggles between the Government and the JCO continued during the reporting period. In March 2007 four JCO members were sentenced to 1 year in prison for participating in illegal gatherings. JCO sources reported that members were regularly harassed.

On February 23, 2008, the media reported the arrest of 53 members of the JCO in Essaouira for holding an unauthorized meeting at the house of a regional leader. The meeting was attended by the movement's regional leaders from Marrakech, Casablanca, Mohammedia, and Essaouira.

63. The Ministry of Interior continued to monitor proselytizing, especially in the Atlas Mountains, the Souss area, and major cities. According to media reports, the Ministry of Islamic Affairs and Endowments expressed concern about missionary activity in some remote areas. Also according to the media, the MIAE reported that more than 3,000 persons converted to Christianity in 2007, although actual numbers are difficult to verify.
64. There were no reports of religious prisoners or detainees in the country.

Forced Religious Conversion

65. There were no reports of forced religious conversion, including that of minor U.S. citizens who had been abducted or illegally removed from the United States, or of the refusal to allow such citizens to be returned to the United States.

Improvements and Positive Developments in Respect for Religious Freedom.

The Government monitors and works to counter extremism in the name of religion by promoting religious tolerance.

Muslim citizens study at Christian and Jewish schools. Muslim students constitute the majority at a Jewish school in Casablanca, and a hospital run by the Jewish community provides care to low-income citizens regardless of religion.

Several interfaith associations were formed and held conferences in and around the country throughout the reporting period. In February 2008 a Judeo-Rifian association

was founded to promote religious understanding and combat terrorism and intolerance.

The MIAE continued reforms launched in 2004 to counter extremist ideology and promote religious moderation and tolerance. It supervises revisions to the country's religious curriculum and broke with precedent by training and appointing women as spiritual guides to mosques across the country. Since the inception of the program, more than 200 women have been trained and appointed to religious leadership positions. Additionally, the Ministry's closed-circuit television network broadcasts approved religious messages and sermons to 2,000 mosques daily. On February 10, 2008, a government-owned television channel dedicated its monthly program "Fi Dilal Al Islam" ("In the shadow of Islam") to the dialogue between Islam and other religions.

During the reporting period, the MIAE continued to revise national school curricula to remove passages and lessons that misinterpret Qur'anic passages in ways that incite hatred, or disrespect women, other cultures, and different religions.

The 14th annual "Fez Festival of Sacred Music," which included musicians from Muslim, Christian, Jewish, Hindu, Buddhist, and other spiritual traditions, was held June 6-14, 2008.

Section III. Societal Abuses and Discrimination

There were reports of societal abuses or discrimination toward those with different religious beliefs, and converts from Islam to other religions. In January 2008 sources in the Christian community reported that several citizens were harassed by local police when they attempted to attend a funeral at a Christian church in Casablanca.

Free expression in religious matters is tolerated; however, society discourages public efforts to proselytize. Many Muslims view the Baha'i faith as a heretical offshoot of Islam and consequently consider Baha'is as apostates. Most members of the Baha'i community avoid disclosing their religious affiliation; however, concerns about their personal safety and property do not prevent their functioning in society, and some hold government jobs.

Members of the Berber community and other citizens, including some members of non-Muslim religious communities, complained of difficulty in registering children's names that were deemed "non-Muslim" by authorities. Most received permission, but only after a lengthy bureaucratic appeal process that sometimes lasted 2 years. After much discussion in the press, the Minister of Interior stated there was officially no restriction on names, but registration of non-traditional names remained potentially difficult in practice.

There is widespread consensus among Muslims regarding religious practices and interpretation. However, some dissenters challenge the religious authority of the King and call for the establishment of a government more deeply rooted in their vision of Islam. The Government views such dissent as political rather than religious in nature, since critiques relate largely to the exercise of power.

Section IV. U.S. Government Policy

The U.S. Government regularly discusses religious freedom with the Government as part of its overall policy to promote human rights. U.S. embassy officials encountered no interference from the Government in making contacts with members of any religious group.

U.S. government officials met regularly with religious officials, including the MIAE and other senior ministry officials, Islamic religious scholars, leaders of the Jewish community, Christian missionaries, the leaders of the registered Christian communities, and other local religious groups, including Muslim minorities. The U.S. Government sponsored programs focusing on religious tolerance and freedom using the U.S. model.

U.S. government officials also met regularly with members of religious communities to promote tolerance and freedom. Officials actively promoted and facilitated meetings between the MIAE and visiting U.S. religious leaders. Released on September 19, 2008.

66. While no specific information was found on Anizyin having contacts in the police or Government, sources indicated Islamist viewpoints were accepted within the Government, which is under the control of the Monarchy. Zeghal argues in a 2008 book that the Monarchy and Islamist movements “present similarities...in some of their religious interpretations and a degree of proximity to Islamic state institutions” (Zeghal, M. 2008, *Islamism in Morocco: Religion, Authoritarianism and Electoral Politics*, Markus Weiner Publishers, Princeton, NJ, p xvi
<http://books.google.com.au/books?hl=en&lr=&id=4rEiZcjiNhgC&oi=fnd&pg=PR7&dq=islamist+fundamentalism+morocco+fes&ots=Bt4aVfBIHj&sig=A19pO6bkpgPBWGqLiFPqTTOMgx0#v=onepage&q=&f=false> – Accessed 18 September 2009

67. The US Department of State itself noted Moroccan authorities’ heavy handed approach to Islamists in its report 2008 Human Rights Practices: Morocco:

As in recent years, law enforcement efforts continued to focus arrests more narrowly than the previous broad dragnets used following the 2003 Casablanca attacks. Police disrupted six suspected terrorist cells during the year and arrested more than 100 individuals.

...In July 2007 the government opened the trial of 52 individuals arrested in 2006 as part of the so-called Ansar El Mehdi case on charges of conspiring to overthrow the monarchy through terrorism. Many of the defendants claimed to the media, nongovernmental organizations (NGOs), and in court that they had been tortured and mistreated. They were denied permission to call witnesses, and in February the defendants were sentenced to 25 years in prison.

...Under the antiterrorism law, after the first 96 hours two additional 96-hour extensions are allowed at the prosecutor’s discretion. Under the law a person may be detained without trial for up to one full year while an investigating magistrate completes his work.

...The antiterrorism law does not include a system of bail.

...Because of delays in notifying family, lawyers sometimes were not informed promptly of the date of arrest and were not able to monitor compliance with administrative detention limits, which authorities exceeded when individuals were suspected of links to terrorism.

...The Association El Nassir, an NGO that advocates on behalf of jailed Islamists, estimated that 200 individuals remained in custody without charge at the end of 2007 as a result of terror-related dragnets.

...In August the international NGO Reporters Without Borders (RSF) reported that since the beginning of King Mohammed VI's reign in 1999, at least 34 media institutions had been censored and at least 20 journalists had been prosecuted under press, penal, or anti-terror laws (US Department of State 2009, Country Reports on Human Rights Practices 2008: Morocco, February, Sections 1c and 1d).

Corruption

68. While no information was found on local corruption in Fes, reports indicate that corruption is prevalent throughout Morocco. The previously mentioned US Country Reports on Human Rights Practices 2008: Morocco detailed corruption in the police and security apparatus:

Corruption and impunity remained problems and impacted police effectiveness. The MOI increased investigations of police abuse and corruption, but the investigations rarely resulted in reported disciplinary action or judicial proceedings. Cases usually languished in the investigatory or trial phases without reaching resolution.

In February six prison guards were sentenced to between two months suspended and four years' imprisonment on charges of forgery, corruption, and aiding a prisoner in escaping from custody. On December 30, two gendarmes were arrested after they were caught receiving bribes. One was sentenced to five years in prison, and the other awaited trial at year's end. Authorities arrested 30 non-commissioned officers in the gendarmerie on corruption charges. Of those, 16 were sentenced to between two months and six years' imprisonment, and 14 remained in custody awaiting trial.

In August 2007 the police chief in Rabat was charged with participation in a drug smuggling and prostitution ring. His case was pending at year's end.

In December 2007 three gendarmes in Inezgane were convicted and sentenced to one year in prison and fired from the gendarmerie for accepting a bribe to help convince a woman to withdraw her charges of rape. The MOJ prosecuted six members of the gendarmerie for cases related to abuse of citizens. Another case resulted in a not guilty verdict and cases against four individuals are pending. The DGSN did not bring any abuse cases against its members.

In 2007 six security agents, three members of auxiliary forces, three civil servants from the MOI, and 11 others were sentenced to between three and five years in prison for acquiring forged documents to receive government benefits fraudulently.

... In May 2007 authorities blocked access to YouTube.com for six days after it aired videos considered insulting to the king and for four days due to concerns about a video implicating police in corruption (US Department of State 2009, Country Reports on Human Rights Practices 2008: Morocco, February, Section 1d).

In 2009, the Business Anti-Corruption Portal (an inter-governmental anti-corruption network) relying on 2006 data stated that there was "well organized" corruption in the police force:

Several observers highlight the traffic police as being particularly corrupt.

There is no freedom of information law. In practice the government did not grant access to official information to citizens and non citizens, including foreign media. (US Department of State 2009, Country Reports on Human Rights Practices 2008: Morocco, February, Section 1d).

FINDINGS AND REASONS

69. The applicant is a 28 year old male born in Fes. He travelled to Australia on a passport issued by the Prefecture of Fes of the Kingdom of Morocco. There is no evidence before the Tribunal which would indicate that the applicant is not a national of Morocco. Nor is there any evidence before me which would indicate that the applicant is a national of any other country. On the evidence before it, including the evidence of a certified copy of the applicant's passport, the Tribunal accepts that he is a national of Morocco.
70. The applicant claims if he were to return to Morocco he would face prejudice and possibly persecution because of his religion and membership of a particular social group "non believers in Islam".
71. The applicant claims he witnessed a killing and that those responsible for the killing were part of a group called Anizyin and they were able to get details of his name and where he lived from the police with whom he claims they have a close connection. He claims he is at risk from this group. The police will not provide him with protection as this group have many connections with the authorities including the police. The applicant claims that the group are religious based and target non-Muslims of which he is one
72. The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70.)
73. The Tribunal accepts the applicant's evidence that he is not a religious person, and is a non-believer. The Tribunal accepts the applicant's evidence that he and his siblings have never practiced religion and that their Sunni Muslim parents never forced them to practice any religion. Having said that, the Tribunal finds, for reasons that follow the Tribunal does not accept that the applicant is a credible witness. His responses to questions were at times vague, at times exaggerated and at times appeared to be merely self serving.
74. The Tribunal does not accept that sometime in 2002 when coming home drunk one night two members of a group perhaps known as Anziyin, who knew the applicant from his neighbourhood, and knew where he lived had some sort of altercation with him. Nor does the Tribunal accept that the applicant was beaten as claimed. The Tribunal does not accept the applicant's evidence he was attacked by the Anizyin so many times that he could not remember when these incidents happened. The Tribunal found the applicant's evidence sometimes vague at other times exaggerated and that it was contrived to booster the applicant's claim for protection. Further the Tribunal is of the view that any altercations that may have occurred, if they occurred, between the

applicant and any neighbourhood group, as he first described the Anizyin, may have arisen because of drunkenness on the applicant's behalf or other reason but not because of his religion or non-belief in religion in particular Islam.

75. The Tribunal has considered the applicant's evidence in relation to incidents involving himself and the police including his claim that police would beat and sometimes kill people in the street if they were coming home after drinking or if they were with a female who they were not married to. The Tribunal does not accept that the applicant has been arrested by the police, more than 30 times, for doing something against Islam, even though he was not part of Islam and that he had to pay fines to be released.
76. The Tribunal accepts on the applicant's own evidence that he was really drunk, once a month. For this reason the Tribunal finds that the applicant was known to police and that he may have had trouble with police when he went drinking at the pub. The Tribunal accepts, on the basis of country information, set out above, that there is corruption in the police and that the applicant may have had to pay bribes to them. However the Tribunal finds that any trouble the applicant may have had was for a non-Convention related reason not because of his religion or non-belief in religion in particular Islam as claimed.
77. The Tribunal does not accept that the applicant was arrested by police for being with a girlfriend more times than he could remember nor that he was in trouble with the Anizyin for the same reason because he was a non-believer in Islam. The Tribunal found the evidence lacked detail was vague and implausible. The Tribunal finds the applicant is not a credible witness.
78. The applicant claims that in June 2007 he witnessed a man being killed in Fes and reported this to the police. The Tribunal accepts that this incident may have occurred. The applicant claims to have recognised the killers because they were part of the Anizyin group in his area as he had seen them around. He says he knew the man killed because he had seen him at a pub he had frequented. The applicant claims that as a result of his recognition of the perpetrators and of his calling in the police the two killers were caught and charged by the police. The Tribunal accepts the applicant's evidence in relation to this account of events.
79. The applicant claims that he fears he will be killed by the Anizyin if he were to return to Morocco in the reasonably foreseeable future because he reported the killing and because the Anizyin have been able to get details of his name and where he lived from the police. The applicant claims that he fears harm from the group called Anizyin who he claims have many connections with the police and authorities. The claims submitted by the applicant are general and no evidence has been provided to support them. The Tribunal has not been able to locate a reference to the Anizyin group. However it is prepared to accept the possibility of its existence. The Tribunal has carefully considered the applicant's evidence and whilst the Tribunal accepts that the applicant may be at some risk from the people who have been charged with the murder it does not accept that the applicant would be sought out and harmed because of his religion or particular social group, non-believers in Islam, by such group.
80. The applicant witnessed a crime and from the information he has provided, the police acted and those responsible were caught and charged. The applicant while claiming that the group he fears collaborates with the police and that he is therefore at risk, he has

also stated that the police have acted appropriately in capturing and charging those responsible for the crime. The applicant has not provided any information which would support a claim that the Anizyin group collaborate with the authorities or that they would actively seek the applicant with the assistance of the police to retaliate against him. No evidence or information has been provided which would indicate that the police are unduly influenced by this organisation or that the applicant is at risk because of what he witnessed or that state protection would not be provided to him.

81. Furthermore whilst the applicant has formed the view that the police collaborates with the claimed Anizyin group as he believes they gave his name and address to the group, the Tribunal finds there may be other explanations for the claimed Anizyin group having the applicant's details. He claims to have known the people who committed the crime by sight and the victim from the pub. It is possible in such a community he was also known. The Tribunal does not accept that police passed on details of the applicant to any group.
82. The Tribunal has considered the applicant's claims that the Anizyin target people because they are not religious or are teachers and/or are people who speak English or who walk with women they are not married to. The applicant has provided no supporting material other than his own accounts that this occurs. Whilst the Tribunal accepts that if such a group as Anizyin exists, it may well target people as claimed, however in relation to the applicant, the Tribunal finds that whilst he may be at risk of harm from those charged with the murder, it does not accept that the applicant would be sought out and harmed because of his religion or particular social group, non-believers in Islam
83. The applicant claims he was followed by the gang in co-operation with officials. He also claims that members of the Anizyin group went to his home looking for him. He claims that since he has been in Australia his family have had frequent visits from them looking for him. The Tribunal accepts that people may have gone to his home looking for him. However the Tribunal is not satisfied that the reason for the visits is as claimed. The Tribunal finds that whilst the applicant may be at risk of harm from those charged with the murder it does not accept that the applicant would be sought out and harmed by such people because of his religion or particular social group, non-believers in Islam.
84. The applicant claims that he is at risk of serious harm because of his profile as a non-believer in Islam as he is not religious and does not practise religion. The Tribunal has considered whether persons with such characteristics comprise a group that is capable of constituting a particular social group for the purposes of the Convention. The determination of whether a group falls within the definition of a "particular social group" for the purposes of the Convention has been summarized as follows:

First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large (*Applicant S v MIMA* (2004) 217 CLR 387 at [36] per Gleeson CJ, Gummow and Kirby JJ).

McHugh J in *Applicant S* summarized the issue in broadly similar terms:

To qualify as a particular social group, it is enough that objectively there is an identifiable group of persons with a social presence in a country, set apart from other members of that society, and united by a common characteristic, attribute, activity, belief, interest, goal, aim or principle (at [69] per McHugh J

Applicant S establishes that although relevant, there is no requirement that the group be recognized or perceived by the society as cognizable within the society, however in determining whether a group is a particular social group the decision maker must have regard to both objective and subjective perspectives. Objective perspectives will include considerations such as the cultural, social, religious and legal factors affecting the members of the group in the particular society (at [400] per Gleeson, Gummow and Kirby JJ).

85. As to whether there exists in Morocco a particular social group comprised of persons with the characteristics described above, the Tribunal has had regard to country information set out above which indicates that the majority of Moroccans are Muslims (2008 United States Department of State Report on Religious Freedom in Morocco). Having regard to this information, the Tribunal accepts that non-believers in Islam may constitute a particular social group for the purposes of the Convention.
86. In this regard the Tribunal accepts that the applicant is a non-believer. While the Tribunal has no reason to doubt that the applicant is a non-believer, the Tribunal does not accept that he is at risk of serious harm from the Anizyin or police because he holds (or is perceived to hold) non religious views or because he drinks and keeps company with single girls. Consequently, the Tribunal finds that he does not have a well founded fear of persecution by reason of being a non-believer in Islam in Morocco.
87. The applicant claims to be at risk from the police who he claims have been infiltrated by the Anizyin. The Tribunal does not accept this and finds his evidence in relation to the police is inconsistent. On the one hand the applicant has reported the claimed killing to the police. They acted on the information and brought the alleged perpetrators before the courts and asked him to be a witness at court. The applicant agreed, in his oral evidence, that this was the appropriate course for the police to take. The applicant then claims that because some people came to his home looking for him he believed the police had released his personal details to the Anizyin putting him at risk of harm and for this reason he fled Fes.
88. As set out above, whilst the Tribunal has not been able to locate a reference to the Anizyin group it is prepared to accept the possibility of its existence however the Tribunal finds there are many instances in the applicant's oral evidence that would suggest he was well known to police and to a group such as the claimed local Anzyin. For example, the applicant claims to have been targeted by the Anzyin and arrested by police on numerous occasions from the age of 19 when he says he first started going to the pub. He gave a lot of evidence about his drinking and drunkenness, arrests and beatings and being seen out with girls he was not married to. Whilst the Tribunal does not accept that the applicant has been attacked by the Anizyin or arrested by police for the reasons claimed it finds that he is a person who would be already known in his community and district and for this reason does not accept that police infiltrated by the Anizyin passed on personal details about the applicant.
89. The Tribunal does not accept the applicant's submission that it was only after he had reported the killing that he came to know the police were infiltrated by Anzyin nor that

the police are infiltrated by the Anizyin. Furthermore the Tribunal does not accept that police will not provide the applicant with protection from the Anzyin should they seek to harm him. The Tribunal finds the applicant's evidence in relation to this to be exaggerated and untrue.

90. The Tribunal notes the applicant claims that people were too scared to report incidents with the Anizyin to the police because he claims the police are infiltrated with Anizyin. However he did not hesitate to report the murder he witnessed to police. The Tribunal does not accept the applicant's post hearing submission in response to Tribunal questions that at the time he telephoned police to report the murder, he was not aware of the extent of the infiltration of Anizyin members or supporters within the police force and other parts of the authority nor that this only came to light when his address was made available to Anizyin members by the police and or prosecutors. The Tribunal finds this explanation self seeking and implausible. The Tribunal has found no independent evidence to support the Anizyin group having a profile such as that claimed by the applicant.
91. The Tribunal notes the applicant's oral evidence at the hearing that the police have acted appropriately in response to the reporting of the crime. The applicant states that from the information he provided, the police caught those responsible and charged them and that court proceedings were in progress.
92. The Tribunal does not accept that the applicant is fearful of repercussions from the group called Anizyin because of his religion or because he is a non-believer but rather because he has reported them to the police. The Tribunal accepts the applicant's evidence that his family including his non believing siblings remain in Morocco, and feel safe and that only he has a problem because he reported the gang who committed the murder. It follows that the Tribunal finds that the applicant does not face a real chance of serious harm of persecution in Morocco should he return in the reasonably foreseeable future because of the Convention grounds of religion or membership of a particular social group, being non-believers in Islam.
93. The Tribunal does not accept the applicant's claim, made for the first time at the hearing, that the person murdered was murdered because he was a "non believer". The Tribunal finds the applicant's reference to this was a vague attempt to sure up his argument for the danger that he claims exists for non believers whilst at the same time acknowledging that his own non-believing siblings remain at home in Morocco
94. The Tribunal notes the applicant's claims that he was taunted by others for not fasting in accordance with Muslim practices. The Tribunal has considered the country information put in by the applicant in support of his claims. The Tribunal notes that whilst it pertains to a wide range of human rights' issues, it contained nothing specific in relation to any group called Anizyin. Whilst there were some reports of societal abuses or discrimination toward those with different beliefs and converts from Islam to other religions, the report also states that freedom of expression in religious matters is tolerated. The Tribunal finds no information which would support a claim that the Anizyin group collaborate with the authorities or that they would actively seek out the applicant wherever he was in order to retaliate against him.
95. No evidence or information other than the applicant's claims has been provided which would indicate that the police are unduly influenced by the Anizyin or that the applicant

is at risk because of what he witnessed or that state protection would not be provided to him.

96. The Tribunal has considered whether the applicant's siblings and family have had difficulties with the Anizyin. The applicant's evidence was that his brothers have some problems like he has later adding they had been beaten up at the pub. He was asked if there had been any threats against his family and he said no. The Tribunal has considered the evidence that the applicant's family remain in Morocco, that his siblings are all non religious and non believers and that on the applicant's evidence they have not complained to the police. The Tribunal finds the applicant's family have not experienced the same harm claimed by the applicant for their non religious position.
97. The Tribunal does not accept the applicant's claim that he fears harm from a high profile group called Anizyin which he claims has many connections with the police and authorities. The Tribunal finds no evidence to substantiate these claims. The applicant's own evidence was vague and inconsistent. He variously claimed the group was a local neighbourhood gang and at the same time a group with an extensive and far reaching network.
98. The Tribunal has considered the applicant's delay in applying for protection as part of its assessment of his application for protection. In response to Tribunal questioning at the hearing the applicant told the Tribunal he came to Australia [in] October 2008 on a Tourist Visa and had been in Thailand teaching English for one year prior to this. He had travelled from Thailand to Laos to extend his Thai visa sometime in 2008. It was put to the applicant that he had delayed in seeking asylum until March 2009. He responded to this saying he was still scared and didn't know what to do and that was why he delayed.
99. The Tribunal finds the applicant's delay in submitting a Protection Visa application raises serious concerns about the immediacy, gravity and credibility of his claims to fear persecution in Morocco immediately before his departure in 2007. The Tribunal can find nothing in the information submitted to indicate any circumstances which would have prevented the applicant from seeking protection in Australia immediately or soon after his arrival in Australia. The delay indicates that at the time of his arrival the applicant did not have a strong fear for his personal safety or future well-being in Morocco. In reaching this conclusion the Tribunal has had regard to comments by Heerey J in *Selvadurai v Minister for Immigration and Ethnic Affairs*:

The applicant complained of the Tribunal's taking into account the fact that the applicant did not lodge his application for refugee status until some 20 months after he had arrived in Australia and just prior to the expiration of his visa. In my opinion, this was a legitimate factual argument and an obvious one to take into account in assessing the genuineness or at least the depth, of the applicant's alleged fear of persecution... (Part 5:9)
100. Having considered the applicant's claims both singularly and cumulatively the Tribunal finds no plausible evidence before it that the applicant has suffered, or will suffer in the reasonably foreseeable future, persecution in his country from government authorities, from the police or from anyone else in Morocco, because of his religion or because he is a member of a particular social group being non-believers in Islam, or for any other Convention reason. In the Tribunal's view the evidence does not establish that there is a

real chance that the applicant will suffer persecution for a Convention reason either now or in the reasonably foreseeable future if he returns to his country.

CONCLUSIONS

101. 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

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer's I.D. prrt44