

1306136 [2014] RRTA 328 (17 April 2014)

DECISION RECORD

RRT CASE NUMBER: 1306136
COUNTRY OF REFERENCE: Malaysia
TRIBUNAL MEMBER: Paul Fisher
DATE: 17 April 2014
PLACE OF DECISION: Melbourne
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Malaysia, applied to the Department of Immigration for the visa [in] January 2013 and the delegate refused to grant the visa [in] March 2013.
3. The applicant appeared before the Tribunal on 24 July and 29 August 2013 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's sister [Ms A]. The Tribunal hearing was conducted with the assistance of interpreters in the Cantonese and English languages.
4. The applicant was represented throughout the visa application and review process by his registered migration agent, who also attended the hearings.

CONSIDERATION OF CLAIMS AND EVIDENCE

5. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.
6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
8. Under s.36(2B)(a) of the Act, there is taken not to be a real risk that an applicant will suffer significant harm in a country if the tribunal is satisfied that it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm. That relocation must be 'reasonable' is also a requirement when considering the definition of 'refugee' and the tribunal draws guidance from the judgments of the High Court in *SZATV v MIAC* and *SZFDV v MIAC* which held that whether relocation is reasonable, in the sense of 'practicable', must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within

his or her country: *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.

9. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal has taken account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.
10. For the following reasons, the Tribunal has concluded that matter should be remitted for reconsideration.

Background

11. The applicant is a [age] year old Malaysian man of Chinese ethnicity. His identity and nationality are evidenced by his Malaysian passport, an extract certified copy of which accompanied the protection visa application. There is no evidence to suggest that the applicant is a citizen of, or has the right to enter and reside in, any other country, and the Tribunal has assessed his claims on that basis.
12. The applicant arrived in Australia [in] December 2007 as the holder of a three month electronic travel authority visa, but has remained here ever since. In his protection visa application the applicant's claim was limited to the assertion that in Malaysia he borrowed money from a 'street lender' and fears that this person will kill him for not giving it back, and it was noted that a full statement would follow in two weeks. However, it was almost two months before that statement was provided to the department; although the covering letter is dated 15 February 2013 the envelope is postmarked 5 March 2013 and it was received by the Department on 7 March 2013. The claims contained therein were somewhat more detailed and the relevant aspects of them are referred to below where appropriate.
13. The application was refused without the applicant having been interviewed. The delegate considered the claims to be lacking in detail, and drew an adverse inference from the long delay before any protection claims were raised, the applicant's failure to mention any concerns about returning to Malaysia when he engaged with the Department's compliance section to obtain a bridging visa in 2012, and his failure to contact her to arrange an interview. The delegate concluded that the applicant's claims were not genuine, and that his circumstances did not enliven Australia's protection obligations.

Assessment on Review

Matters in Issue

14. The review application was accompanied by a copy of the decision record. Having reviewed the papers, the Tribunal identified the matters in issue as being:
 - Whether there is any Convention basis for the harm feared;
 - Whether the applicant's claims are true;
 - Whether the harm feared amounts to serious or significant harm;
 - Whether the harm feared could be avoided by relocation within Malaysia.
15. As noted above, the applicant's nationality and country of reference, Malaysia, is not in issue.

16. Similarly, the Tribunal does not consider state protection to be in issue. The applicant has claimed that the police are corrupt and support the loan sharks, who bribe the police. Country information available to the Tribunal indicates that the Malaysian police are endemically corrupt and protect loan sharks. The Tribunal was referred in post hearing submissions to RRT decision 1216433 [2012] RRTA 1122 (17 December 2012), <http://www.austlii.edu.au/au/cases/cth/RRTA/2012/1122.html>, in which the Tribunal, differently constituted, reached this very conclusion (at [92]), although those submissions also included a number of reports describing of the arrest and punishment of loan sharks, in one case referring to the death penalty being imposed, these interventions seem to have occurred after the victims had already suffered serious or significant harm, and the Tribunal nevertheless considers that state protection against such threats is not generally available in Malaysia in accordance with international standards, and Tribunal adopts the reasoning of RRT decision 1216433, at least with respect to the unavailability of state protection.

Convention Nexus

17. No Convention ground was identified by the applicant, either in respect of the motivation of those seeking to harm him or the unavailability of state protection. In his protection visa application and supporting statement he indicated that initially the loan shark wanted his money back, but now he wants to kill the applicant because it is now too late to repay the money as he has lost face with his workers. He also noted that the Malaysian authorities will not protect him against the harm feared because they are corrupt, and actually accept bribes to help loan sharks find defaulters. In post hearing submissions it was noted that the applicant, being from a poor background, cannot influence the authorities, and it was conceded that his claim fell outside of the scope of the Convention. The Tribunal finds accordingly, on the basis that the essential and significant reasons for the harm feared are criminal greed and corruption rather than any Convention reasons.

Credibility of Claims

Failure to arrange departmental interview

18. The Tribunal asked the Applicant whether he was aware that he was expected to contact the Department to arrange an interview after lodging the protection visa application, at which point the applicant's representative indicated that not even he was aware of this expectation, as the 'invitation' was hidden away at the end of a long letter. The Tribunal notes in this respect that the paragraph headed 'invitation to interview' is located at the bottom of page 10 of a series of attachments to the letter acknowledging the protection visa application. It is apparent from the departmental file that after the protection visa application was acknowledged that applicant attended at the Department [in] March 2013 with his representative for the purposes of providing personal identifiers, and subsequently provided a more detailed statement of his protection claims, and in post hearing submissions it was explained that having done those things they were assuming that the Department would take the next step of inviting them to an interview. The Tribunal observes that it is difficult to see how, if the representative, being a native English speaker, did not apprehend the significance of the invitation to interview, a person such as the applicant who evidently has only a smattering of English could have done so. Consequently, the Tribunal places no weight on the failure of the applicant to arrange an interview with the Department at the primary processing stage.

Delay in raising protection claims

19. The applicant was asked about the delay in applying for protection. He sought to explain this by saying that in the past he had not realised that a person in his situation could apply for refugee status. The Tribunal noted that the applicant had contacted the Department and obtained bridging visas, and queried why he had not expressed any concerns about returning to Malaysia at this point, to which he replied that he had not even realised that this someone in his situation could claim protection. He had been trying to arrange for an employer to sponsor him, having been introduced to the employer by a friend who was trying to obtain permanent residence here, another Malaysian man he knows as [deleted], who had been asked to attend a departmental interview in [another location] in 2012. [This man] spoke to the departmental officer who said that the applicant should come to Melbourne and discuss the matter with the Department there. When he did so he was told he needed a sponsor. He was given a bridging visa to regularise his status and depart Australia but he first needed to obtain a new passport as the old one had expired. However he had not in fact obtained a new passport as he was fearful of being sent back.
20. The applicant's representative observed that it was around this time that he became involved in the case, but that it was only on the third occasion when the applicant's bridging visa was about to expire that he became agitated and disclosed his concerns about the loan sharks, and the protection visa application was lodged shortly afterwards.
21. In post hearing submissions this was reiterated in more detail, the submission asserting that the first Compliance meeting was arranged in a hurry as the applicant was unlawful, and there was insufficient time to obtain proper instructions. On this occasion the applicant was given three weeks to leave Australia. The next time they attended a compliance interview it was to extend time to lodge a protection visa application, and the third time it was to advise them that that application had been lodged.
22. The Tribunal does not accept this. As noted in the primary decision, a copy of which was submitted with the review application, class WE bridging visas were granted to the applicant on three separate occasions, [in] October, [in] November and [in] December 2012. On each occasion the visa was granted for the purpose of allowing the applicant to make arrangements to depart Australia. The protection visa application was not lodged until [January] 2013. The Tribunal has great difficulty accepting that if the applicant had serious concerns for his safety he would not have made at least some attempt to articulate them sooner, given the circumstances that he was repeatedly being granted bringing visas permitting him to remain in the community for the express purpose of arranging his departure.
23. The post-hearing submissions on this point essentially contend that the applicant had no idea about applying for a protection visa until he was able to discuss the matter thoroughly with the representative. The Tribunal acknowledges that at least until 24 March 2012, when the complementary protection criterion was introduced, a person in the applicant's position could not attract Australia's protection obligations. However, while that might explain why, at least up to that point, a migration professional might have advised a client that such a claim would not succeed, it does not in the view of the Tribunal explain why a person genuinely fearful for his life, as the applicant claims to have been, would not articulate at least some concern about returning home when engaging with the very Department which regulates these matters.
24. Consequently, the Tribunal does draw an adverse inference from the failure of the applicant to raise any protection claims in a timely manner, including his failure to express any concerns for his safety in Malaysia during the three occasions he met with Compliance and obtained bridging visas on departure grounds.

Inconsistency of Evidence

Evidence of the Applicant

25. In his protection visa application the applicant stated that he had been unable to find sufficiently lucrative work in Malaysia to service debts he had incurred paying for his mother's [medical] treatment. The amount initially borrowed was "\$50,000 Malaysian" but that after one month he was told that the monthly interest rate was 3000, a rate of almost 150% per annum. The applicant thought that if he came to work in Australia he would be able to repay the debt, but despite trying his best and remitting money home for his family to pass on to the loan shark, by April 2012 the debt had ballooned to 200,000 in interest alone (approximately \$62,344 as at 12 April 2012 using the rate of 0.3117227289 Australian dollars per Malaysian ringgit accessed from the XE currency historical rates table located at <http://www.xe.com/currencytables/?from=MYR&date=2012-04-12>).
26. The loan shark is said to have warned both the applicant and his father over the phone that the applicant will be killed. The applicant's mother died in 2010 but he was too scared to return to Malaysia for the funeral. The rest of his family is now in hiding, with his father and brother having fled to Sabah and his sisters having married and taken on new names, which has protected them to date.
27. At the Tribunal hearing the applicant reiterated and elaborated on his protection claims. He explained that he had borrowed money both in order to pay for his mother's treatment for [a medical condition] - he is not sure precisely what the treatment entailed but his sister would have the details - and to pay off gambling debts. The Tribunal noted that his written claims made no mention of any gambling debts, but the applicant is sure than he mentioned this to his agent. The gambling debts were about AUD5000, and altogether he owed about 50,000 ringgit. The loan was taken out in Penang in 2006. He didn't know the name of the individual he had borrowed the money from, but he was taken to a shop, all of his own details were recorded, and he was photographed.
28. The applicant conceded that he was only working part-time, and realised that he may have to go overseas in order to earn enough money to meet the repayments, but his mother was ill, and friends had recommended borrowing from the loan sharks to get out of the situation he was in. For the next year he remained in Malaysia trying his best to meet the interest payments until going overseas became inevitable.
29. Asked whether he has any documents to evidence his claims, the applicant indicated that he can obtain documents about his mother's illness, but he has no evidence of the loan itself. The syndicate would ring him to ask for payments. He remitted money from Australia but not directly, and not formally. He would ask friends who had bank accounts to transfer money into his father's account, and then his father would transfer the money he sent home. In Malaysia there may be some money transfer documents, but he has not paid any money since 2008, as he was also sending money home for his mother, and he may have some record of those transfers as he used a bank.
30. The Tribunal queried whether any of the applicant's family members in Malaysia could corroborate his claims. He indicated that they could, and at the Tribunal's request provided his sister [Ms A]'s phone number.

Evidence of the Applicant's Sister [Ms A]

31. The Tribunal attempted to take evidence from [Ms A], and to the extent that the evidence was comprehensible she corroborated part of the applicant's claims, for example that their mother had died of [a medical condition] before, that prior to this they had borrowed money for her treatment, that the applicant had come to Australia to try to get work to repay the loans, and that she was being harassed, but she also appeared to contradict the applicant's evidence, as there was no mention of loan sharks, only loans from friends and relatives.

Objections and Adjournment of Hearing

32. However, the applicant's representative objected, and the Tribunal acknowledges, that the phone connection was poor, and that the applicant's sister and the interpreter appeared to be at cross purposes. The hearing was therefore adjourned, and reconvened with a different interpreter. Subject to what is said below, the Tribunal has disregarded the sister's evidence at the first hearing.

Further Evidence of Applicant

33. At the resumed hearing, the Tribunal noted that the applicant's claim relies on the fact that he has debts in Malaysia to certain loan sharks, and that he is fearful of being killed by them if he returns, and that his entire family has fled and is in hiding, and in particular that his two sisters are living with their respective husbands under different names which is protecting them for now.
34. The Tribunal noted that when it had taken evidence from the applicant's sister over the phone at the previous hearing, it was difficult to hear her at some points, and that at some points neither her comprehension of the questions put to her nor her responses to those questions was evident, although at other points these responses seemed quite appropriate to the questions.
35. The Tribunal acknowledged that some of what the sister appeared to have said corroborated the applicant's claim, but that the sister's evidence appeared to have differed from the applicant's claims in the following respects.
 - She said that the money had been borrowed from friends and relatives, not loan sharks.
 - Asked what would happen if the loan was not paid, she replied that she is trying to work in order to repay the loan, and that she has been subjected to pressure to repay the loan, that sometimes they have chased her aggressively for money.
36. The applicant was then asked whether he agreed that his sister had said those things, to which he replied in the affirmative, but also noted that she had not told the full story. There were indeed loans from relatives they are trying to repay, but the main debt is to the loan sharks, and his sister has only been repaying the debt to other relatives.
37. The Tribunal noted that the applicant had not mentioned any loans to relatives in his statement. He acknowledged this, but also observed that his family is not in hiding from relatives, they are in hiding from loan sharks.
38. The applicant was asked whether he had spoken to his sister since the hearing was adjourned. He replied that he had, and that she had told him that during the hearing the reception had been very poor, and she couldn't hear clearly.

39. The applicant was then questioned in much more detail about the loans, in order to anticipate the possibility that the reliability of the sister's evidence had been compromised by collaboration during the adjournment period.
40. The applicant gave evidence that AUD 50,000 had been borrowed from loan sharks, equal to 160,000 in Malaysian ringgit. They have already paid a lot but the interest rates meant that they still owe a lot, and there is no way for him to clear the debt. In addition, another 200,000 ringgit was borrowed from friends, being relatives of his sister's husband, and about 60,000 of this had been paid off. Apart from the debt to the loan sharks, that is the only debt.
41. The applicant was asked why, if his sister was not having any problems with the loan sharks where she was living, he could not go and live with her, to which he replied that the loan sharks are only looking for him.
42. The Tribunal noted that this was inconsistent with the applicant's statement in which he asserted that the entire family had fled and was in hiding, but he simply replied that he is the one who still owes the loan sharks money.

Further Evidence of the Witness [Ms A]

43. The witness informed the Tribunal that 200,000 ringgit had been borrowed in total from loan sharks and friends and relatives. However, when asked for the breakdown of that figure, she indicated that 30,000 had been borrowed from relatives and 100,000 from loan sharks. Asked which friends and relatives she was referring to the witness said it was her mother's sister, her biological aunt. She then added that some money had also been borrowed from her husband's family, but this had been repaid, while 100,000 is still owed to her aunty and the loan sharks.
44. Asked whether this debt was being paid off, the witness indicated that it was, using the money her brother was sending. Asked whether he was still sending money she indicated that he was, and that this was being paid to the loan shark. She is under pressure to repay the loans from both the loan shark and from her relatives. Pressure had been placed on both herself and the applicant. She receives phone calls threatening them, and this has been going on for 4-5 years. However there has been no actual harm to date, just threats.
45. The witness was asked what she thought would happen if her brother returned to Malaysia. She indicated that she thinks he would be beaten up because they owe them money, Asked why in that case she has not been beaten up, she replied that it is because she is female.
46. The witness was asked to clarify whether she and her brother both owed money to the loan sharks, and she confirmed that was the case, and she had gone with him to get the loan.
47. The Tribunal asked why the applicant's brother couldn't simply work with her to repay the debt. She replied that she doesn't have the capacity to repay the debt. When they went to borrow the money it was done on the basis that her brother would travel overseas to work and earn the money to repay it. Even when their mother died he didn't come back for the funeral.
48. Asked why the applicant couldn't go and work somewhere else to repay the debt, the witness replied that he has been in Australia so long that he has adapted to the environment. The witness continued that if they can't repay the debt they will be beaten, and if he returns to Malaysia he won't earn as much, and there will be no way to clear the debt. Asked whether they could borrow money from friends and relatives again, the witness responded that it had

taken years to repay, and in any case she is afraid that if her brother returns they will harm him in any case.

49. Asked how the loan sharks would even find her brother in the event of his return, the witness indicated that they are all still living in the same place. Asked to confirm that she was saying that she lived in the same location as she was before her brother came to Australia she confirmed that was correct. Asked why her brother couldn't go and live somewhere in Malaysia, the witness replied that it was better for him to stay there. When the Tribunal questioned whether she was saying it was preferable for the applicant to continue to live somewhere he was facing the risk of being beaten up, the witness replied that they can't afford to move out.
50. Asked whether she wished to add anything else, the witness indicated that she couldn't afford to live anywhere else. She wishes the applicant could stay in Australia and work. Their mother died, and now they need their aunt to stay with them and work so that they can continue paying the debt. She and her sister have a very hard life. They barely earn enough for their own expenses, and rely on the applicant's earnings to repay the debt.
51. The applicant and his representative declined the opportunity to have any questions put to the witness, who was then excused.

Section 424AA Invitation

52. The Tribunal noted that the applicant had claimed that his family had all gone into hiding and were not dealing with the loan sharks, and had also said that when his sister gave evidence at the first hearing she was only referring to repaying the debt to the relatives. However, at the resumed hearing the sister's testimony contradicted these claims, as she indicated that she was still residing in the same house she lived in before the applicant even came to Australia, and is currently repaying money to the loan sharks. This information was said to be relevant because it suggested that the applicant's claims about risk of harm posed by the loan sharks had been exaggerated. The Tribunal indicated that as a consequence of relying on that information it would find that the applicant was not facing a real risk of significant harm in Malaysia. As the case falls outside the refugees Convention, the Tribunal would conclude that the applicant is not a person to whom Australia has protection obligation, and affirm the decision on that basis.
53. The applicant was invited to respond to or comment on the information, either orally or in writing, and offered the opportunity of an adjournment before doing so.

Section 424AA Response

54. The applicant responded immediately and orally. He indicated that his sister was not aware of the risk he was facing, because she is married and does not understand the risks existing in the outside world, unlike the applicant who is aware that many people who have borrowed money from loan sharks have been killed. He has seen lots of examples of borrowers who ran away, and when they came back they were killed.
55. The Tribunal noted that it was asking the applicant to explain the inconsistencies in his evidence about his sister about her circumstances, and queried why, in light of those inconsistencies, it should accept the truth of what he was saying. However the applicant offered no response.

Submissions of the applicant's representative

56. It was contended that the applicant and his sister are uneducated. His sister would not have been fully informed about the loan arrangements because women are kept in the dark in the applicant's culture, and this explains some of the inconsistencies. The reference to the applicant's family being in hiding was a reference to his father and brother in Sabah, whereas his sisters were simply living with their husbands having adopted their names, and leading the applicant to consider that they were safe in that situation. If the applicant returns then the loan shark would lose face, and therefore lose business, if he allows the applicant to go unpunished. The representative sought and was granted additional time to make written submissions.

Further Evidence of the Applicant

57. The applicant was also asked why, leaving aside the concerns the Tribunal has about whether he is facing a threat of significant harm, he could not relocate in order to avoid that threat, for example by joining his father and brother in Sabah. The applicant replied that the loan sharks will look for him, that they have pawns everywhere.
58. The Tribunal queried why, if the loan sharks were so concerned about losing face and also as ruthless as the applicant claims, they had not sought to enforce the debt against the applicant's family members in his absence, to which the applicant replied that it is not his father's debt. Asked why in that case the father was said to have fled to Sabah, the applicant replied that the family comes from Penang but they can't live there because the loan sharks were looking for them.
59. The Tribunal observed that this suggested that they had in fact safely relocated to Sabah, to which the applicant asserted that if he goes there the loan sharks will look for him, they would chase the father as a means of looking for him.

Post Hearing Submissions

60. The written submissions sought to address the s.424AA concerns identified at the hearing, contending that the applicant was the *principal* borrower from the loan shark, and it is he the loan shark would wish to make an example of, rather than his sister, because she is female, and harming her physically would not enhance his reputation, although the loan shark nevertheless continually harasses her to pay money or find out where the applicant is.
61. Later in the submission, however, the applicant is described as the person that *solely* borrowed the money from the loan shark and that he did not involve his sister in the loan. He asserted, in effect, that his sister did not know what she was talking about and would only have known about the loan to the relatives and not the loan to the loan sharks, and reiterated that women are not targets in such matters.
62. The submissions also annexed and sought to rely on the aforementioned RRT decision, along with RRT Research Response MYS31873 dated 8 June 2007, and four media reports, the contents of which are described in more detail below. All of this information relates to the phenomenon of loan sharks and their mistreatment of debtors in Malaysia.

Conclusion on Credibility

63. The applicant's evidence was contradicted by the evidence of his sister in a number of respects, namely that she has not going into hiding at all but still lives where she did before

the applicant even came to Australia, and that she is currently dealing with the loan sharks. The applicant's response to the 424AA invitation did nothing to address the concerns raised in this respect.

64. The applicant's evidence was also internally inconsistent in various respects, giving rise to concerns about the truth of his evidence, or at least the nature and seriousness of the threat he claims to be facing. For example:

- The applicant originally claimed to have got into debt because he had to borrow money for his mother's medical treatment, but at the Tribunal hearing he admitted that he also had gambling debts. Subsequently, after his sister had mentioned repaying debts to relatives, the applicant conceded that they also owed money to relatives, but insisted that was only part of the story and there were debts to loan sharks too. He added that his sister was only repaying the debts to the relatives, but as noted above she gave evidence indicating that she was repaying the debts to the loan sharks;
- The applicant had also originally claimed that his family was in hiding. When asked why he could not live with his sister, who at this point was only said to be repaying debts to relatives, the applicant asserted that he was the only one that the loan sharks were looking for, which begs the question why he would claim that the rest of the family had fled and was in hiding;
- In any event, the Tribunal heard from the applicant's sister that she had in fact been in dealing with the loan sharks, and the applicant essentially conceded this in post-hearing submissions when he sought to rely on the fact that the loan sharks were continually harassing his sister to pay them money or find out where he is as justifying why it was not safe for him to return.
- The applicant's evidence was also inconsistent with respect to the amounts borrowed and whether he was the only borrower. For example, in his written claims and at the first day of the Tribunal hearing the applicant said he had borrowed 50,000 ringgit, whereas at second hearing he says he borrowed AUD 50,000 or 160,000 ringgit. He was also variously described in the post-hearing submissions as the principal borrower and the sole borrower.

65. Other aspects of the applicant's evidence also cause the Tribunal to form the view that he has at the very least exaggerated his claims with respect to the seriousness of the threat faced. For example:

- The applicant indicated at the hearing that he had first money borrowed from the loan sharks despite only having a part-time job, and that he assumed he would have to work overseas in order to pay it off, and yet also gave evidence that he remained in Malaysia for a further year before coming here. Although he indicated that he was trying his best to meet the debtors, this does not suggest to the Tribunal that he felt that the debt was particularly pressing, at least not at that point;
- The applicant also told the Tribunal hearing that when repaying the loan sharks he would arrange for money to be transferred to his father who would then transfer it to the loan sharks, but that he had not sent any money home since 2008. Given that some five years had elapsed by the time he gave this evidence to the Tribunal, and no significant harm seems to have befallen the applicant's relatives in Malaysia during this time, this suggests that the non-payment had not given rise to any significant problems.

66. This last point is important because the applicant has sought to hedge his bets with respect to whether members of his family are also at risk, variously claiming that they are all in hiding from the loan sharks and that he is the only one at risk which is why they have not been targeted. Despite the applicant seeking to rely on the evidence submitted, in certain respects it does not support his contentions that his family members or women would not be also targeted by loan sharks or subjected to much greater pressure than they seem to have been. For example, the report dated 27 May 2009 from the *Seattle Times* entitled *Malaysian loan sharks chain men to wall for months* indicates that a number of debtors had been mistreated in that way in an effort to get their families to repay the debts. Another report dated 27 June 2010 from the *Star Online* entitled *Ah Long to hang for murder* indicates that the victim had nothing to do with the debt his brother owed the accused men, but they had killed him anyway. Similarly, a report entitled *Loan sharks get more violent* published on 31 May 2012, also in the *Star Online*, notes that one victim was subjected to a Molotov cocktail attack by loan sharks looking for his sister and her husband who had fled after failing to pay their debts, while another report from the same publication dated 31 March 2013 and entitled *Family fears Ah Long wrath* describes the wife of a missing loan defaulted twice being targeted in Molotov cocktail attacks, first at her own home, then at the home of her sister where she had relocated to for safety.
67. While these examples underscore the seriousness of the threat posed by some loan sharks in some case, they also call into question the seriousness, and even the very existence, of any threat of harm to the applicant, given that no significant harm has befallen any of his family members who remain in Malaysia, and also bearing in mind the applicant's evidence indicating that his sister was only paying off the debt to her relatives, despite the seriousness of the claimed threat from the loan sharks.
68. Given the evolving evidence about whom the applicant owes money to and for what purpose, the Tribunal has doubts about whether there is any debt to loan sharks at all, but is prepared to accept, on balance, that there is at least some debt of this nature. The Tribunal accepts that the applicant has debts in Malaysia arising from the fact that he borrowed money to pay for their mother's [medical] treatment, but in light of the concerns outlined above, does not accept that he is the sole debtor, and also finds that both the size of the debt to the loan shark and the seriousness of the threat of harm if it is not repaid has been greatly exaggerated by the applicant.

Risk of Significant Harm to Applicant

69. Country information provided in support of the application and/or otherwise available to the Tribunal indicates that at least some loan sharks in Malaysia can and do inflict significant harm on some defaulters, and that Tribunal acknowledges that if the applicant's claims are capable of bringing him within the scope of the complementary protection provisions, as the Tribunal, differently constitute has found in a number of similar cases including the one cited above.
70. However, given the concerns set out above, including the evidence that the applicant's sister has not relocated and is in contact with the loan sharks contrary in each case to the claims and evidence of the applicant, the Tribunal is not satisfied that that there are substantial grounds for believing that, as a necessary consequence of the applicant being removed to Malaysia, there is a real risk that he will suffer significant harm, if indeed he faces any risk at all. The Tribunal notes in this respect that on the applicant's own evidence he has not sent any money back since 2008, and therefore does not consider that his return to Malaysia will make any difference to the family's capacity to service the existing debt.

Relocation

71. In any event, even if the Tribunal were otherwise satisfied that the applicant faced a real risk of significant harm in Malaysia, which it is not, it would nevertheless find that relocation within that country were reasonably open to the applicant.
72. The applicant contends that the attempting to relocate would be futile, as the loan sharks have details of his identity, and would be able to use this information to track him down, as he would sooner or later have to identify himself to the authorities, the implication being that the loan sharks would use their influence with the corrupt authorities to obtain information about the applicant. When the Tribunal put to the applicant that it appeared his father and brother had safely relocated to Sabah, the applicant replied that if he went there they would chase him, and use his father as a means of looking for him.
73. However, if that were the case, then bearing in mind the country information tendered by the applicant the Tribunal considers that serious pressure would have been brought to bear not only on the applicant's sister, who is in contact with the loan sharks but whom the applicant maintains they will not harm because she is a woman, but also on his father and brother in Sabah, who on any analysis of the evidence have not experienced any problems.
74. No claim has been advanced to suggest that relocation would not be reasonable for the applicant to undertake, as he is young and, according to his protection visa application, single. As to his employment history, although the protection visa application carries scant information on this point, the applicant recounted the following history to the Tribunal:
 - finished school in [year];
 - 1989-1994 helped in the family business;
 - 1994-2000 [occupation] in [another country];
 - 2000-2005 various [jobs] in Malaysia including;
 - 2005-2007 voluntary work [details deleted].
75. The applicant has also, self-evidently, relocated to Australia, and informed the Tribunal that he has been [working] since he arrived here, and continues to do so intermittently. The fact that the applicant's father and brother live in Sabah suggests that there would be no reason in principal for the applicant not to join them there and do likewise.
76. Consequently, even if the Tribunal were otherwise to find that there is a real risk that the applicant would suffer significant harm for the purposes of s.36(2)(aa), for the above reasons it would also find that s.36(2B)(a) applies to the applicant such that there would not be taken to be such a risk.

CONCLUSION

77. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
78. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

79. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

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

Paul Fisher
Member