

1303454 [2013] RRTA 527 (9 August 2013)

DECISION RECORD

RRT CASE NUMBER: 1303454

DIAC REFERENCE(S): CLF2012/243529

COUNTRY OF REFERENCE: Malaysia

TRIBUNAL MEMBER: Paul Fisher

DATE: 9 August 2013

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.

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 dependent.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Malaysia, applied to the Department of Immigration for the visas on 7 December 2012 and the delegate refused to grant the visas on 21 February 2013.
3. The applicants appeared before the Tribunal on 1 August 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
4. The applicants were represented in relation to the review by their registered migration agent.

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. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – to the extent that they are relevant to the decision under consideration.
9. The main issues in this case are whether the applicant's claims are true, whether, in any case, they give rise to a real chance of Convention persecution or a real risk of serious harm in Malaysia in the reasonably foreseeable future, and whether the harm feared could reasonably be avoided by relocating to a different part of Malaysia. The Tribunal also had

some concerns about the applicants' family structure and relationship, scant details of which were provided before the Tribunal hearing. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

Background and Claims

10. The applicants' background and protection claims are outlined only briefly in the protection visa application, which indicates that they are a de facto couple from Malaysia, of Chinese ethnicity. Only the first-named applicant ("the applicant") has made any protection claims, and these are based on his religion, namely his membership of the Yi Guan Dao sect (the second named applicant claimed no religious affiliation in her own application form). He states that the local religious and council authorities harassed him and threatened him with a jail term if he continued to pray to his Yi Guan Dao deities. The council issued him with a fine notice and pulled down his altars. One of the officers kicked and yelled at him, calling them kafirs [an offensive Muslim term for non-Muslims] and an affront to Islam. He lived under constant fear of being harmed and persecuted, and even his father threatened to kick him out of home if he didn't give in. The state will not protect him and he fears being harmed and possibly raped. The administration will use laws to restrict or curtail his freedom. He risks harm and systematic discrimination.
11. The protection visa application was refused without the applicant having been interviewed. The delegate noted that the applicant had failed to provide any detailed information with respect to the claimed violence and threats, nor any corroborating information or evidence of religious persecution of Yi Guan Dao or of his claimed involvement in that sect. Furthermore, the applicant failed to contact the Department to arrange an interview despite having been invited to do so in the letter acknowledging his application. The delegate therefore did not consider the applicant's claims to be credible or genuine, and concluded on that basis that he was not a person with respect to whom Australia has protection obligations.

Review Application

12. A submission was provided in support of the review application setting out the applicant's claims in more detail, including the following:
 - The applicant first joined Yi Guan Dao in 1998;
 - He is now able to practise his religion freely and attends a temple in [suburb];
 - At home he was harassed for erecting a temple on his private property, the local authorities telling him that they would not tolerate kafir behaviour which provokes the Muslims and is against the national interest. [In] May 2009 local officials came to the applicant's home (owned by his mother) asking that the Maitreya idol he had erected be taken down, as it was displayed too prominently in the front courtyard. In doing so the local authorities acted illegally and discriminated against him on the basis of his religion, using the local planning laws against him selectively;
 - The council officer was accompanied by a neighbour who is also a kadi (religious judge) from a nearby mosque;
 - The applicant relocated to Thailand to 'get out of harm's way' for a time, but there was danger from Muslim insurgents there as well;

- If they return to Malaysia the applicants will suffer religious persecution in circumstances where the state will not protect them.

13. The submission was accompanied by the following supporting documents:

- A document partly in English and partly in pinyin headed *Acquired Dao Card*, said to evidence the applicant's membership of Yi Guan Dao since 1998;
- Photos showing the applicant in company with other adherents at the [suburb] Yi Guan Dao temple;
- RRT country advice MYS38719, dated 18 May 2011, which relevantly includes the following [footnotes omitted, applicant's emphasis]:

1. Please give a summary of the tenets of the Yin Guan Dao faith.

The Tian Dao or Yiguan Dao sect "was founded in Shandong province in the 1920's by Zhang Tianran (Zhang Guangbi, 1889–1947)." The sect "is rooted in an older sectarian tradition" which was active in the Ming and Qing dynasties. Roughly translated, the meaning of yiguan dao is "unity way" or "the way of pervading unity." It "claims it unites 'the world's five great religions': Buddhism, Taoism, Confucianism, Islam, and Christianity. Scriptures from all these religions are believed to be sacred texts, but the current followers of the five religions are believed to be misguided. Initiates are told they are fortunate for they have just received the dao or 'way,' which supersedes all previous religions. Religions merely urge humans to be good; the dao, on the other hand, allows believers to escape from the cycle of death and rebirth (rein-carnation) and reach nirvana."

According to an assistant professor of history at the National University of Singapore who provided information on the Tian Dao to the Immigration and Refugee Board of Canada in September 2003:

Tiandao is fundamentally syncretist, which means that it views all religions as being part of its own lineage. Thus, it traces its own founding to include the major figures of world religions, including the Buddha, Confucius, Mohammed and Jesus Christ. Each of these was said to have revealed part of a larger truth in a preordained plan for universal salvation. This process would eventually lead up to the revelation of Tiandao, alternately known as Yiguandao (the Way of Penetrating Unity), the latter name emphasizing the idea that the teaching already existed in the guise of other religions before it was formally revealed to the world.

Key teachings of the sect include belief in an imminent apocalypse and the advent of a saviour who would open a path of salvation during this period. It was believed that Zhang Tianran was an incarnation of the Living Buddha Jigong, who had been sent by the Eternal Mother Wuji Laomu to transmit the Dao to humans, who were her lost and confused children. Those who received the Dao in the initiation ritual would be among the saved and be assured to return to the Mother's paradise. Members of Yiguan Dao worship all gods, a syncretism that is typical of Chinese religion. Yiguan Dao is different to popular religion primarily through "its focus on the Maitreya Buddha and in its belief in the Venerable Heavenly Mother."

Yiguan Dao is reported to operate secretly, with its members discreet in seeking converts, its temples in ordinary homes and only initiated members attending ceremonies. Initiation into the sect "involves receiving the secret three treasures: a mantra, a hand position, and the symbolic opening of a door in the body so the soul may depart from the proper exit and not from one of the body's other orifices. After initiation, new members are taught the three treasures meaning, which is the core secret of the sect."

A professor of history at Washington University in St. Louis, Missouri provided the following information on the Tian Dao initiation sequence in September 2001:

The Yiguandao initiation sequence is called "Seeking the Way" (qiu dao). It is typically performed after the Welcoming the Spirits (ying shen) rituals and is performed under the

guidance of a dianchuanshi. It consists of the applicant performing a number of offerings (of incense, xian) and kowtows (bowing and touching the head to the ground, ketou) before the altar, stating his or her name and asking for the way, and then kneeling. The dianchuanshi then instructs the initiate in the "Three Treasures," including opening of the Dark Gate through touching the forehead.

Yiguan Dao is reported to borrow much of its belief and ritual from popular religion. Its religious activities include morning and evening prayer sessions. Only the most devout attend them every day, with believers expected to attend at least on the full and new moon. The ceremonies "involve group kowtowing to a long list of gods."

Spirit writing is used by the Yiguan Dao "to receive encouragement and direction from deities." Three trained children are selected to represent heaven, humankind and earth. The child who represents heaven holds a hoop with a wooden stylus attached and writes on a board covered in sand, the "characters said to have the calligraphy not of the child but of the god who descends on the child and makes him or her write." The child who represents humankind reads the characters aloud and moves a rake to erase them from the sand. The child who represents earth writes the message on paper. The message is typically in doggerel rhyme and encourages followers to work for the dao.

A PhD dissertation dated July 1997 by Soo Khin Wah, now an Associate Professor in the Department of Chinese Studies at the University of Malaya, provides a detailed history of the Yiguan Dao or Unity Sect and its organisation, teachings and rituals.

RRT research responses dated 8 January 2010 and 19 February 2003 provide further information on the tenets of the Yiguan Dao religion.

2. Are there reports of this faith being practised by Malaysians of Chinese ethnicity and if so, are there any reports of proponents of this faith being harmed or mistreated because of their faith?

The PhD dissertation dated July 1997 by Soo Khin Wah provides information on the development of the Yiguan Dao or Unity Sect in Peninsular Malaysia. The first Unity Sect Fotang (Buddha hall) in Peninsular Malaysia was set up by Lu Wende in Kuala Lumpur in 1948. The sect initially made little progress and by 1966, only four Fotang had been established. In 1978, an elder of the Fayi Chongde branch of the Unity Sect visited Malaysia to set up two family shrines. The visit led to the establishment of a Fayi Chongde Fotang in Peninsular Malaysia. Another sub-branch of the Fayi branch and the Changzhou branch of the Unity Sect also set up Fotangs in Malaysia.

The spread of the Unity Sect caused tensions with existing Chinese religious bodies, particularly the Malaysian Buddhist Association (MBA), the umbrella organisation for nearly all Mahayana Buddhist associations in Malaysia. With respect to ethnic Chinese religious affiliation, the government saw the MBA as representing the ethnic Chinese collectively, and the increased popularity of the Unity Sect threatened the existing interests of the MBA and other Chinese Buddhist associations. Following the expulsion of 12 Taiwanese Unity Sect members from Singapore in July 1981, the Johore State Police head office instructed police to investigate the sect's activities. On 17 August 1981, the MBA chairman speaking at a Buddhist Studies Seminar accused the Unity Sect of being heretical and maintaining only a façade of Buddhism. While its membership grew, the Unity Sect continued to face adverse press reports from minor local Chinese media.

In September 1993, the press reported that the sect was causing problems in the family of Mr. Yan Cailin in Johore. By November 1993, Yan Cailin had organised a Committee of Justice and Anti-heretical Sects to combat the sect and called on those who opposed the Unity Sect to provide testimonies revealing the sect's misdeeds. On 27 November 1993, the door of a Fotang in Lingga New Village, Muar, was defaced with black paint and eggs were thrown at the building. On 8 January 1994, a wagon in Muar was burned. Press reports on campaigns against the Unity Sect ended in early 1994, with the violence, which involved

legal prosecutions at later stages of its development, possibly causing the press to be more cautious.

The initial stage of the Unity Sect's development in Peninsular Malaysia usually began with a family shrine set up in a member's house. With the growth in membership, public halls were developed as bigger congregational sites and the number of family shrines also grew. Training programmes were developed and by 1997 many Unity Sect branches in Peninsular Malaysia had introduced a complete set of sectarian education programmes. The Unity Sect is reported to have sought links to political figures in Malaysia to authenticate their legitimacy.

The Unity Sect is reported to have flexibility in organising its activities and has had success in recruiting young members. It has a congregational nature, stressing ethical living and spiritual self-discipline. The sect's organisations in Peninsular Malaysia also provide a variety of recreational and skill-learning activities. According to Soo Khin Wah:

That the Unity Sect has proselytized successfully in Peninsular Malaysia in the recent two decades is indicated by its capability to offer a more defined world view, and to cater for everyday interests of young members. The Chinese traditional world view and morality values propagated by the sect also turned out to be an asset, especially during the early 1970s and 1980s, when the local Chinese community felt that their ethnic identity was threatened by the increasing Islamic resurgence and government policies coloured by strong Malay nationalist overtones. These qualities possessed by the sect at that point were found particularly relevant to their identity quest, and hence helped the sect to successfully recruit those who made sense out of this religious symbolism.

In September 2001, Soo Khin Wah reported that there were "two (out of five) major overseas Faye Chongde sub-branch's 'religious domains' in Peninsular Malaysia, namely the Kuala Lumpur Faye Chongde [KLFC] Cultural and Educational Center (Jilongpo Chongde Wenjiao Yanxi Hui) located at the Federal capital city of Malaysia, and the Chongde Daoyuan (Chongde Sanctuary of the Dao) of Alor Setar, in the northern state of Kedah." The KLFC religious domain was in charge of 51 public halls covering a wide geographical area. Since the early 1990's, it had been actively involved in organising various social-cultural activities, such as public talks by guest speakers from Taiwan, music nights, charitable medical services, blood donations, and visits to old people's homes and orphanages. The Chongde Daoyuan religious domain covered 34 public halls.

14. The submission also refers to an attached "*googled*" news cutting which said that the permit to set up non Muslim prayer houses such temple and church were rarely given by the local governments and non Muslim faithful had to organize their prayers session in shop houses which were then registered as business premises under the local government act.

The Applicants' Family Details and Relationship

15. The applicant explained that before coming to Australia, and with the exception of a few years spent working in [Country 1], he had resided in the one family home since he was born, his family having resided there for more than 30 years. In addition to his parents, the applicant had [details of siblings deleted], and then his father died around four years ago, before the problem with the shrine had occurred.
16. He met the second named applicant in April 2009; in the course of his work as a salesman he delivered goods to the store where she worked, and they began a relationship. Her family comprises herself, her parents, [details of siblings deleted]. Although they have not married, their respective families know about and approve of the relationship, and while they have not set up their own home they generally stay together at one or other of the two family homes, and here in Australia they cohabit, but haven't married. In fact they have had a few problems, but at present they are together. She doesn't share his religious conviction, but

that is not a problem for him as he sees no reason why two people have to follow the same religion in order to stay together.

17. The Tribunal indicated to the applicant that it was satisfied with and accept his account of his family background and the nature of his relationship with the second named applicant.

Genuineness of Claims - Real Chance of Religious Persecution

Evidence at the Tribunal Hearing

18. Asked how he became involved in Yi Guan Dao, the applicant explained that when he was still at school a friend introduced him, and he gradually became an adherent. He is the only member of his family who follows this religion, which is important to him because after some time he came to realise how positive it is, how it teaches you how to behave as a good person.
19. Up until January 2009 he had practised his religion at the homes of other adherents, and never had any problems doing so, but the area leader asked him to erect a shrine in his own front yard. There was insufficient room inside the house, and in any case it should be in front of the house if possible. The applicant conceded that if the area leader had not build the shrine he would not have done so, but he just followed what the other worshippers did.
20. [In] May 2009, they were practising rituals at his home when a group of Malays rushed in and knocked over their holy table, and abused them, calling them Chinese pigs, and demanding to know what they were worshipping. There were some government officials who warned them that if they didn't dismantle the shrine and stop worshipping in the front yard they would be find, and the shrine would be forcibly removed. The applicant clarified the written claims by confirming that he himself dismantled the shrine, albeit out of fear. He clarified that it was his mother, not his father, who had threatened to kick him out of home if he did not comply, as his father had already died at this time. His mother had reminded the applicant of the anti-Chinese sentiment which had flared up in the past and impressed upon him the danger of provoking such a response.
21. Asked how he had practised his religion after this incident, the applicant indicated that he did so at the homes of other adherents. , although not without some trepidation as he was concerned that the problems he had experienced at his own home might follow him to other places.
22. Asked whether he was aware of any similar incidents, the applicant said that the same thing had happened to a friend of his who lived a few blocks away, and he had also heard of one other incident but didn't know where it happened.
23. The Tribunal observed that before the incident the applicant appeared to have practised his religion without impediment for some 11 years, to which he responded by seeking to downplay the level of commitment he had shown in his earlier years, asserting that he hadn't started formal worship until 2008 when he re-engaged and discovered just how good it was.
24. The Tribunal observed that the RRT country report submitted in support of the application did not suggest that Yi Guan Dao worshippers were prevented from practising their religion in Malaysia, noting that the only problems described in the report involved

Chinese Buddhists rather than Muslims, and nor did the report suggest, for example, that in-home worship was an integral requirement, noting that...

[w]ith the growth in membership, public halls were developed as bigger congregational sites and the number of family shrines also grew. Training programmes were developed and by 1997 many Unity Sect branches in Peninsular Malaysia had introduced a complete set of sectarian education programmes.

25. By way of reply, the applicant first noted that (Muslim) Malays take precedence, and if, for example you wanted to become romantically involved with a Malay person you had to join her religion. He also reiterated that worshipping in the home is important, ideally outdoors because of the space required. The Tribunal questioned how much space was required given he was the only Yi Guan Dao adherent in his family, to which the applicant replied that sometimes other people would join him. The Tribunal also pointed out that the photos the applicant had submitted in support of his application indicated that in Australia he was worshipping at what was obviously an indoor facility and also a public place rather than a private home. The applicant replied that he is not able to worship in that way in Malaysia because they are discriminated against, and that in any case when he set up the shrine in his home he had only done what he was commanded to.
26. The applicant was asked the purpose of his trip to Thailand. However, contrary to assertion in the submission made on his behalf, the applicant said he had simply gone there to visit a temple.
27. The applicant was asked whether the problems he had experienced were not simply localised ones arising from the objections of a particularly fractious Muslim neighbour, which could not reasonably be avoided by him relocating to another area, perhaps to a Chinese neighbourhood, and noted that if had had not taken any steps to do so then this too might suggest that the threat he faced was not very serious. He replied by explaining that he had tried to move to Kuala Lumpur but things there are the same, and they can't get permission to practise their religion in the open air.
28. The Tribunal also asked the applicant about the delay of some two months between him being granted an Australian visa and leaving Malaysia, noting that his failure to depart more promptly raised questions about the seriousness of the threat he faced. The applicant responded by reiterating that he had visited Kuala Lumpur and there too people had been forced underground and had to worship in a private house.
29. The Tribunal pointed out to the applicant's representative that an attachment was missing from his submission. He pointed out that the issue he had sought to illustrate was that although Sharia law applies only to Muslims, the local authorities use other laws such as planning laws to discriminate against and thereby impose their standards on non-Muslims as well. He sought and was granted an additional seven days to provide additional information responding to the issues raised.

Post Hearing Submission

30. In a post hearing submission the applicant's representative contended that the delay in the applicant departing Malaysia was not unreasonable given that he could not begin planning the trip until he obtained a visa, and that as he needed to get a return ticket so as not to look suspicious, it was cheaper to get one which was not departing for a few months.

31. With respect to the restrictions on religious freedom in Malaysia, the submission cites various pieces of country information. An extract on Malaysia taken from the Rutherford Institute's *Handbook on Religious Liberty Around the World* was submitted, although given that the most recent citation contained in it dates from 1994 the Tribunal considers it to be of limited relevance to the question of religious persecution in Malaysia now or in the reasonably foreseeable future. This document is the source of claims relating to the strict building approval process non-Islamic places of worship are subject to, and notes, for example, that in Johore in 1992 all building applications including churches were subject to approval by seven state agencies, including the Islamic Affairs Department, and that land zoning policies in Malaysia's major cities allow government approved mosques to be built at the ratio of one structure for every 800 Muslim worshippers, whereas the ratio for non-Muslims was 1:4000. A more recent report, published on 23 September 2010 by Mission Network News, describes an incident in which local authorities halted the construction of a Church in Kelantan despite more than half the village population being Christian converts. However, the article also notes that religious tolerance depends on your ethnicity, with a commentator stating that:

[i]t is not uncommon for an ethnic Chinese person to be a Christian. So that is thought to be acceptable. It is much less common for an ethnic Malay person to be a Christian. They are thought culturally to be Muslims. Typically you see a harsh response from that.

32. The Tribunal was also provided with the following pictures said to support the applicant's claims:

- A photo said to depict the applicant's home some 100m away from a local mosque;
- An infringement notice (with unauthorised translation) dated [in] October 2009 relating to another Yi Guan Dao follower and Tribunal applicant said to have breached local planning laws in the same [district], by *setting up praying idols...without permission from the council*;
- a photo of what appears to be a Malaysian security officer destroying a Hindu Shrine with a sledgehammer, attached to an email sent to the applicant's representative in December 2012 with the title *photo of city council smash a India temple*; and
- A photo of a Methodist church located at a shopfront in Pandan Indah, Kuala Lumpur. The submission points out that in order to operate in such a public fashion this church had to set itself up as a business.

Assessment

33. The Tribunal accepts that applicant is a Yi Guan Dao adherent, and that he was prevented from practising his religion by utilising a prominent shrine he had erected in the front yard of his family home. The Tribunal accepts that the applicant was told to dismantle the shrine or risk prosecution for breach of the local planning laws, being subjected to offensive verbal abuse in the process, and that he did dismantle the shrine in fear of the consequences if he refused. The Tribunal also acknowledges that there is entrenched discrimination in Malaysia favouring the ethnic Malay population and the Islamic religion, which can manifest itself in the inconsistent application or enforcement of local planning laws.

34. However, in the present case this treatment has only extended as far as requiring the applicant to remove an outdoor shrine erected without authorisation. While this action may well have involved a discriminatory application of the local planning laws it did not, in the

view of the Tribunal, constitute such serious harm as to amount to persecution in all the circumstances. In response to this action the applicant reverted to the mode of religious practice he had employed before he built a shrine in the first place. In other words, he just went elsewhere to worship as he had formerly done, and despite some apprehension about the possible consequences, he continued to do so without incident for three more years before coming to Australia. Indeed at the Tribunal hearing the applicant conceded that he would not even have erected the shrine in the first place if he had not been asked to do so by his area leader. The applicant later asserted that he had been *commanded* to erect the shrine, but the Tribunal does not accept this given that he had earlier volunteered that he was simply asked to build it. Bearing in mind both the country information extracted above at [24] and also the evidence showing that in Australia the applicant has worshipped at a public indoor temple in [suburb], the Tribunal does not accept that preventing the applicant from worshipping at an outdoor shrine in the front yard of his own home in Malaysia amounts to a significant imposition on his right to practise his religion, let alone a *persecutory* curtailment of that fundamental right of the sort envisaged in *S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473. Furthermore, in light of that country information at [13] indicating that as the Yi Guan Dao religion became more firmly established in Malaysia they developed public halls as congregational sites, the Tribunal does not accept the applicant's contention that he is unable to worship in Malaysia in the same way as he has been doing in Australia.

35. In any event, the applicant has only provided specific evidence of only two localised examples of such conduct in connection with Yi Guan Dao shrines, both dating from 2009. Given that the country information does not suggest that Yi Guan Dao followers generally experience any problems practising their religion in Malaysia, then even if the Tribunal were to accept that the applicant were facing a real chance of religious persecution in his local district, which it does not, it would nevertheless find that it would be reasonably open to him to relocate to another part of Malaysia where he would not face such a risk, bearing in mind his youth and employment history, which includes some years spent working in [Country 1].

36. Consequently, and on the evidence before it, the Tribunal is not satisfied that the applicant has a well-founded fear of being persecuted in Malaysia for the Convention reason of his religion, or indeed for any other Convention reason such as his Chinese ethnicity, in the reasonably foreseeable future. The Tribunal therefore finds that he does not meet the requirements of s.36(2)(a).

Real Risk of Significant Harm

37. The applicant confirmed at the hearing that apart from the religious issues discussed above he had experienced no other problems in Malaysia and had no other concerns about returning there. Consequently, the Tribunal is not satisfied on the claims and evidence before it that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Malaysia, there is a real risk that he will suffer significant harm. He therefore does not meet the requirements of s.36(2)(aa).

CONCLUSION

38. For the reasons given above the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations. The second named applicant has made no protection claims in her own right, and there is no suggestion that either applicant

satisfies s.36(2)(b) or (c) 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 applicants do not satisfy the criterion in s.36(2).

DECISION

39. The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.