

060562872 [2007] RRTA 20 (11 January 2007)

DECISION RECORD

RRT CASE NUMBER: 060562872

DIMA REFERENCE(S): CLF2006/028689 CLF2006/28689 UNKNOWN

COUNTRY OF REFERENCE: Burma (Myanmar)

TRIBUNAL MEMBER: Mila Males

DATE DECISION SIGNED: 11 January 2007

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XC) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

The applicant, who claims to be a citizen of Burma (Myanmar). He applied to the Department of Immigration and Multicultural Affairs for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by post.

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

The applicant applied to the Tribunal for review of the delegate's decision.

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

RELEVANT LAW

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

Section 36(2)(a) of the Act provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Convention). 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'

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.

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.

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.

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

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

SUR PLACE – BAD FAITH

It is generally accepted that a person can acquire refugee status *sur place* where he or she has a well-founded fear of persecution as a consequence of events that have happened since he or she left his or her country. However this is subject to s.91R(3) of the Act which provides that any conduct engaged in by the applicant in Australia must be disregarded in determining whether he or she has a well-founded fear of being persecuted for one or more of the Convention reasons unless the applicant satisfies the decision maker that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee within the meaning of the Convention.

CLAIMS AND EVIDENCE

The Tribunal has considered the following claims and evidence in making its decision.

Transit visa application

The Tribunal obtained the Australian transit visa application the applicant made for the transit visa he was granted and used to enter Australia.

Protection visa application

The Department's file CLF2006/028689 contains the applicant's protection visa application and the delegate's decision. The Tribunal has had regard to the material referred to in the delegate's decision.

According to the protection visa application the applicant is a Burmese national who has also been known by another name. He is a Christian and belongs to the Shan ethnic group. He has had a number of years of education and was employed before departing for Australia. His wife and child reside in Burma.

Submitted with the application were a copy of a Burmese passport issued in his name, a statement made by the applicant in support of his application, translations of two Burmese Family Members Lists (or household lists), an English translation of a Burmese Citizenship Scrutiny Card (or identity card) and what appears to be another Burmese Citizenship Scrutiny Card for which no translation was provided. The protection visa application indicated that one of the Family Members Lists and one of the Citizenship Scrutiny Cards were false and the others were genuine. However, no indication was given as to which were genuine and which were false.

In the written statement the applicant stated:

- He was born in the Shan state.
- He was involved in a student uprising and joined the Student's Organisation.

- After the military took over on 18 September 1988, he and few others went to another town and joined an organisation. They went into hiding but several days later they left because they were mistreated.
- He returned to his home town and was detained by the authorities on suspicion of being an agent of the organisation and a student activist. He was tortured. He was forced to listen to sermons by Buddhist monks because he was a Christian.
- Several weeks later he was released after he signed an undertaking not to take part in any anti-government activities.
- He had to report to the authorities regularly, was questioned many times and watched by the military intelligence (MI). He could not travel outside the town without their permission.
- Because he was being watched he could not get a job or study. Friends helped him get work which enabled him to support his family.
- A few years later he could move a little freely. He came under the employment of a Shan State Army (SSA) officer. They became good friends.
- Due to the influence of the officer he was allowed to move freely.
- Later he was summoned by the MI and interrogated about his activities for the officer and threatened with torture. He told them what he knew about the officer. Eventually he told the officer what he had revealed to MI. As his life was in danger. The officer gave him money to travel and stay with a friend. The officer promised to provide for him and he was able to stay with the friend for a long period of time.
- Later on, he moved to another city and came into contact with a church. He paid an official to obtain a new identity card.
- He was in constant fear of the authorities finding him. He took the chance to travel overseas when the opportunity arose. He paid an agent to obtain a passport using his false identity card and a false household list.
- He was seeking protection because of the injustices he had suffered. He was hounded and nearly killed and faced danger from the authorities.

The Department's file contains further information submitted by the applicant which included another statement and general information about Burma.

In the statement the applicant claimed:

- He had obtained several identity cards to protect himself from the MI.
- He obtained the first one when he left his home town to get away from the MI and SSA who would kill him if they knew he had provided information to the MI.
- He obtained another identity card in a false name so that he could move around.

- He bought a passport in the false name in case he needed to get out of the country.
- He was aware that the SSA and the officer were involved in illegal activities and bribery of government officials. He worked for the officer. That was when he was picked up by the MI and questioned about the movements of the SSA. He was questioned several times. He knew he would be killed by the SSA if they found out.
- The officer paid for him to get away and supported him for a long time. He needed several identity cards and passport in the false name to protect himself.

Review application

The applicant did not submit any additional evidence or material with his review application.

Documents submitted to Tribunal prior to hearing

The applicant submitted the following documents to the Tribunal:

- A statement from the applicant which was virtually identical to the one he had submitted with his protection visa application.
- A submission from the applicant in support of his case.
- Country information about Burma from Amnesty International. It refers to the displacement of citizens by the Burmese army since 1996 in an attempt to break up any links with the SSA.
- Articles about the Shan state.
- Another copy of the Burmese passport issued in the applicant's real name which the applicant had submitted with his protection visa application, copies of two documents which appeared to be in Burmese which the applicant claimed were a false identity card and false household registration document.
- Copy of what the applicant claimed was a Burmese identity card issued to him. (The applicant referred to another household registration document issued to him but that was not submitted).
- Copies of a Burmese passport issued in the applicant's false name, an English translation of a Burmese Household Members List which referred to this person, and an English translation of a Burmese National Registration Card in this name.
- Copy of the minutes of a meeting, apparently of a Burmese group.

Tribunal hearing

The applicant appeared before the Tribunal to give evidence and present arguments.

True and correct information

The applicant stated that the contents of his protection visa application and the information he had submitted to the Tribunal were true and correct.

Residence in Burma

The applicant told the Tribunal that he had not had a permanent residential address in Burma for many years. He said he moved around and did not stay in one place for more than one year. He said that during his last year in Burma he was in hiding and stayed at friend's place. His wife and child were living in his wife's home village.

The Tribunal asked who had employed him before he departed for Australia. The applicant stated that a church gave him a job assisting the church. During that time he lived in the church compound. The Tribunal noted the applicant had earlier testified that he had not lived anywhere for more than one year. The applicant responded that he did not live in the church compound for the entire period but that he went to the church when he was needed and stayed overnight if necessary. The applicant stated that in the last year before departing Burma he worked in a different occupation.

Asked about his employment prior to working for the church, the applicant stated that he was employed by a SSA officer for several years.

Identity, passports and other documents

The applicant confirmed his identity. He testified that the passport in his name was genuine although he had used a false household list and false identity card to obtain the passport. He stated that the visas in the passport were issued to him and the stamps in the passport indicated places he had been to. He stated that the passport issued in the false name contained a photograph of him.

The applicant stated that the household list and identity card which indicated he was born in the Shan state, he is a Shan and Christian were genuine.

He told the Tribunal that his another name was given to him by his wife's family when they married.

Reason for coming to Australia

The applicant said he came to Australia because he could not stay in Burma. He said the MI were looking for him everywhere, he had no security and the police had also often looked for him. He confirmed that when he had applied for an Australian transit visa his intention was to come to Australia to seek protection. The applicant described how he applied for and obtained a visa to another country to attend a conference and then used that to obtain an Australia transit visa.

The applicant's home town

The applicant confirmed that he was born in a town of Shan state and said he had lived there until the mid 1990s. He described some features in his home town.

Christianity

The Tribunal put to the applicant that according to information it had most Shan people were Buddhist. [Information about the applicant deleted: s.431] Asked what it meant to be a Christian the applicant replied that Jesus Christ sacrificed his life on the cross to redeem people from their sins.

1988 student protests

The applicant confirmed that he had been involved in student protests in 1988. He said this was relevant to his claim that he was a refugee because he would be harmed because of that activity. Asked why the authorities would be concerned about activities he had participated in 1988, the applicant replied that the authorities would be interested because he had also been involved with the SSA. The Tribunal put to the applicant that his 1988 activities were long ago and according to information it had the Burmese authorities were no longer interested in persons who had been involved in the 1988 student protests. The applicant replied that the main thing was that he was with the SSA.

Claims related to SSA

The applicant confirmed that he was employed by a SSA official. He stated he was not a member of the SSA and took the job because he could not get other employment. When the Tribunal sought to confirm that he was not involved with the SSA as a political activist or on a political level the applicant replied that because he was Shan he was a little interested in knowing what the SSA were doing. The Tribunal suggested that he could have found that out without working for them. The applicant replied that no one can just join at anytime and repeated that he wanted to find out what they were doing. Questioned further about this the applicant finally said that he only did odd jobs for the officer.

The applicant was asked to tell the Tribunal about the SSA. Initially he responded that he and the officer lived in same town. Asked again to tell the Tribunal about the SSA, the applicant replied that they ran exporting business. The Tribunal told the applicant that it wanted to know whether, for example, the SSA was a political party, how many members it had, where it operated, or what its objectives were. The applicant testified that it was not a political party; that it was fighting against the military government. The applicant then stated that the Shan state was divided into northern and southern Shan states and the SSA also had headquarters in the southern Shan state. He said that after a ceasefire was agreed to the SSA opened headquarters in a different location.

The Tribunal questioned why the Burmese authorities would persecute him because of his past connection with the SSA when he had not been associated with the SSA for many years. The applicant responded that they would do so because he knew what the SSA had been doing. The Tribunal noted that he knew about their activities at that time and questioned what further information he could provide the authorities in the future. The applicant responded that the SSA were involved in illegal activities. The Tribunal again questioned what further information he could provide given that related to activities many years ago he had not been associated with the SSA since then. The applicant replied that he knew the whole "inside story" about the officer but had not revealed it because the officer had been good to him and his family. Asked what information he had which the MI could not obtain from anyone else

and thus would have led them to pursue him all over Burma and continue to pursue in the future, the applicant said that he had information about the illegal activities which only he and the officer knew about. He claimed that the officer asked him to do odd jobs and pay bribes. Asked how the authorities could pursue him about the illegal activities if only he and the officer knew about it, the applicant replied that they had an understanding with the MI but he was questioned by intelligence officers. He said he only told them about the illegal activities but they said that had “received reports” and asked him tell the truth.

Asked why he feared the SSA, the applicant stated that they would kill him if he went into their territory. Asked why the SSA would harm him, the applicant responded that they were not the ones who would kill him but someone would make sure he would not open his mouth. The Tribunal noted that he had claimed in his written statements that he was in danger from the SSA and asked whether he would be persecuted by the SSA if he returned to Burma. The applicant responded that he no longer trusted the officer. Although the officer tried to protect him at first, he would probably want to get rid of him to protect his family and himself. Asked whether he was claiming the officer would kill him, the applicant replied that even if he did not do it himself he would get his underlings to do it. The Tribunal questioned why, if the officer had not done so in the past he would kill him in the future. The applicant stated that he did not stay in one place for long. Asked if anyone else within the SSA wanted to harm him, the applicant responded that the illegal activities became known to the whole SSA battalion and he was blamed.

The Tribunal put to the applicant that even if what he had claimed were true it did not seem he faced harm for one or more of the 5 Convention grounds. It put to him that according to his evidence the authorities were pursuing him to get information about the SSA’s illegal and criminal activities; the officer wanted to harm him to protect himself and family, and the SSA would harm him because they blamed him for the officer’s involvement in illegal activities. It put to him that none of these reasons were Convention related. The applicant asked the Tribunal to think of something because it was impossible for him to return. He said that he would go to gaol if he returned and be killed if he tried to go underground. He said he had a child who he had not been able to do anything for the child and he had not seen his family since his child was born. He stated that the crimes attributed to him were growing day by day and he had identity cards which were not genuine.

Fraudulent documents

The Tribunal put to the applicant that if action was taken against him because he had engaged in fraud to obtain fake documents that it would not seem to amount to harm for a Convention reason. The applicant replied that he also wanted the Tribunal to consider the activities he had engaged in Australia here.

Activities in Australia

The applicant told the Tribunal that he did not engage in activities in Australia to strengthen his case. Asked why he had engaged in those activities when he had not engaged in any political activities since 1988, the applicant replied that he had engaged in political activities in the past. Asked how long he continued those activities, he said he was not politically active after the MI interrogated him. Asked to clarify when that was, the applicant said that he stopped his political activities for while but after the MI stopped being suspicious of him he got in contact with the underground. Asked whether he continued his political activities while

he worked for the SSA, the applicant stated that he only did odd jobs. Asked if that meant he had stopped his political activities, the applicant replied that he would have been gaoled him if he had engaged in political activity. Eventually the applicant confirmed that he had stopped his political activities because he would have been sent to gaol.

The Tribunal questioned why the applicant had engaged in activities in Australia if he thought they may cause problems for him if returned to Burma particularly as his protection visa application had not been decided and thus he may have to return to Burma. The applicant replied that he did so because of his losses and feeling of discontentment, because he had to live in hiding in Burma, was separated from his family and had not seen his parents since he left his home town.

Asked whether he had become involved in the activities before or after his protection visa application was refused by the Minister's delegate, the applicant responded that it had been a short period of time since he had arrived and he did not have any contacts. He said he tried to contact groups as soon as he made his application and as he was personally involved in the 1988 protests, he wanted to take part in the anniversary commemoration.

Other harmed feared

Asked if there were any other reasons why he would be persecuted in Burma which had not been dealt with at the hearing, the applicant said he might be persecuted because of his passport. Asked to explain how this would result in him being persecuted for a Convention reason the applicant provided no explanation.

Concluding evidence

Asked if he had any other evidence, the applicant asked the Tribunal to think about his wife and child who he had not seen for a long time and would not be able to see if he returned to Burma.

Documents received after hearing

The Tribunal received a statutory declaration sworn by the applicant and a submission in support of his case.

In the statutory declaration he stated, amongst other things, that the MI and police would show him no mercy and that he was known as a Shan rebel.

In the submission he stated that he had difficulties answering questions at the hearing because he was a slow speaker and found it difficult to speak out, he was worried about his mother who was not well, he could not sleep and thus was unable to recall certain matters, he had a fear of authority, he was anxious about his family's security, the interpreter and Member cut him off at the hearing which disrupted his thoughts, and he had trouble recalling some matters because so many things had happened to him and his life had not been easy. The Tribunal has taken these matters into account in assessing the applicant's oral evidence. In relation to the claim that the interpreter and Tribunal interrupted the applicant in the course of the hearing, the applicant may have felt this disrupted his thought processes however the applicant was asked at the beginning of the hearing to break up his sentences whilst giving his testimony to enable the interpreter to interpret accurately. Further, where the interpreter

cut in during the applicant's testimony because he was not pausing or the Tribunal indicated he should pause for the interpreter, the Tribunal did all it could to ensure that the applicant was able to continue with his evidence. The Tribunal believes the applicant was given a genuine and proper opportunity to give evidence and present arguments at the hearing. The applicant also provided additional information in his submission about his religion, the SSA, and his duties and activities with the SSA which the Tribunal has taken into account. At the conclusion of the submission he claimed that he had lived his life in opposition to the government but had suppressed his political opinion because he feared persecution.

Independent evidence

The Tribunal has had regard to the following information from other sources in making its decision.

1988 demonstrations

Numerous student-led, largely peaceful, anti-government demonstrations took place in Burma during 1988 calling for free elections and the introduction of multi-party parliamentary democracy as well as the restoration of civil and political freedoms. The government was brutal in its attempts to suppress the demonstrations, arresting, detaining and killing protesters. (Lintner B., *Outrage: Burma's Struggle for Democracy*, 2nd Ed., White Lotus, 1990, pp.192-201; *The Far East Asia and Australasia 2003 – Myanmar (Burma)*, 34th Ed., Europa Publication 2003, pp.862-863). In April 1992 the Burmese government began to release political prisoners from the late 1980s under Declaration No.11/92 which stipulated that detainees who posed no threat to state security would be released (Human Rights Watch, *Human Rights Watch World Report 1993 – Burma*, p.154).

Current attitude towards 1988 demonstrators

The Australian Department of Foreign Affairs (DFAT) has consistently reported that persons do not face harm because of their past participation in the 1988 pro-democracy movement:

Activists from the period of the 1988 pro-democracy uprising would be treated no differently from the broader population nor face persecution or discrimination today unless (underline one) they have continued to be and are known to be still actively working in opposition to the government. Even then, the level of activity would be taken into account. (DIMIA Country Information Service, *Country Information Report No. 55/00 - Human Rights Update*, (sourced from DFAT advice of 28 January 2000), 7 February 2000 (CISNET Burma CX39784))

In considering the question of censure or punishment of those involved in the 1988 disturbances it should be noted that hundreds of thousands participated in these demonstrations all over the country. Participants ranged from school children to officers from government departments, the police and members of the military who all marched under their organisations banner.

For those who were involved in a "minor way" in marches and associated activities there appear to have been few or no subsequent difficulties. (DIMIA Country Information Service, *RRT - Request for Information* (sourced from DFAT advice of 20 June 1994) *20 June 1994* (CISNET Burma CX7940))

Many thousands of Burmese took part in 1988 pro-democracy movement. The vast majority have experienced no harassment since. Persons who took part in protest marches or in hunger strikes, or who had shown support for the demonstrators by providing food or money were not usually imprisoned or subsequently harassed unless they had participated in more serious activities such as giving anti-government speeches or making contact with illegal organisations. Many people were interrogated and presumably are on file with the intelligence agencies, but this has rarely been the basis for further harassment unless the person continues to participate in anti-government activities (you will be aware that the definition of anti-government activities can be very broad). Records appear to be kept in case further evidence against the person in question arises. (DIMIA Country Information Service, *Myanmar: Request for Information: Refugees: Burma Profile* (sourced from DFAT advice of 1 February 1994) 1 February 1995 (CISNET Burma CX9957)).

The Tribunal did not find any more recent evidence to suggest that the Burmese authorities have acquired a renewed interest in persons who were involved in the 1988 protests.

Shan ethnic group

Half of the population of the Shan state in Burma are ethnic Shan who are Buddhists (M. Simth, *Burma (Myanmar): The Time for Change*, Minority Rights Group International, May 2002, p. 19).

[Information about the applicant's home town deleted: s.431]

Shan State Army

The Tribunal obtained the following, not entirely consistent, information about the Shan State Army from various sources:

- The Shan State Army is a leading Shan party which is or was part of a 9 party alliance of ethnic minority forces called the National Democratic Front. It entered into a ceasefire agreement with the government in 1989. The Shan State Army (South) is an armed ethnic group which was formed in 1996 and which had not entered a ceasefire agreement with the government. Many of the ceasefire groups have been accused of engaging in the drug trade. (M. Simth, *Burma (Myanmar): The Time for Change*, Minority Rights Group International, May 2002, pp. 19, 38).
- The first ceasefire agreements between the government and Shan ethnic groups were signed in 1989. The agreements granted the groups business concessions, particularly in logging, and tax collection autonomy. One of the two arms of the Shan State Army, the Shan State Army (South), continues to hold out against government pressure to disarm. An 800-strong brigade of the other arm of the Shan State Army, the Shan State Army (North), abandoned their base in September 2005 (Aung Lwin Oo, "Uncertainty Reigns in Shan State", <http://www.irrawaddy.org/aviewer.asp?a=5169&z=102>, The Irrawaddy, November 2005)
- The Shan State Army is an insurgent group which was organised as the military wing of the Shan State Progressive Party. Whilst the SSA-North concluded a peace

agreement with the Burmese regime, the SSA-South remained opposed to the government. (A.S. Banks, T.C. Miller & W.R. Overstreet (eds), *Political Handbook of the World: 2005-2006*, CQ Press, Washington, 2006, p.805).

- The Shan State Army - North was effectively abolished in 2005 after it surrendered to the Burmese government although some units joined the Shan State Army – South which has not signed any agreements and is still engaged in guerrilla warfare against the Burma Army. (Wikipedia online encyclopaedia, <http://en.wikipedia.org/wiki/Shan>).

FINDINGS AND REASONS

The applicant claims he is a national of Burma. He gave his oral evidence with the assistance of a Burmese interpreter without any apparent language problems. He has presented what he claims were some fraudulently obtained and some genuine Burmese documents including passports, identity cards and household lists. There is nothing in the evidence before the Tribunal to indicate that the applicant is a national of any country other than Burma. Thus, the Tribunal accepts that the applicant is a national of Burma.

The applicant claims he is Shan and a Christian. He demonstrated a knowledge of Shan state which indicated that he had lived there. Further, he was able to explain how he came to be Christian. Thus, the Tribunal is prepared to accept that the applicant is a Shan Christian originally from Shan state.

The independent evidence indicates that numerous student-led protests occurred throughout Burma in 1988. According to his protection visa application the applicant completed his education prior to the student protests. Thus, it seems he was not a student at the time of the protests. However, the independent evidence indicates that whilst the protests were student led many Burmese citizens participated. It is plausible that the applicant was involved in the protests, joined a student organisation and engaged in political activities that year. Thus, the Tribunal accepts those claims. The applicant claims to fear harm because of his involvement in the 1988 protests and student organisation. Information from DFAT over the course of a number of years indicates that the Burmese authorities no longer have an adverse interest in those involved in the 1988 pro-democracy movement. Thus, the Tribunal finds that the applicant faces no risk of harm in the future due to those activities if he returns to Burma.

At the hearing the applicant claimed that he continued his political activities after 1988 however it took much probing by the Tribunal to elicit from him exactly when he allegedly resumed those activities and how long they continued. Eventually he stated that he ceased his political activities in the early 1990s. The Tribunal has taken into account the comments the applicant made in his post hearing submissions about the difficulties he says he experienced answering the Tribunal's questions at the hearing. Even so it seemed to the Tribunal that the applicant was being intentionally evasive when he was being asked about his political activities after 1988. Further, none of the detailed written evidence the applicant has provided to the Tribunal either before or after the hearing mentions any political activity between 1988 and the time he finished his political activities. Thus, the Tribunal does not accept that the applicant engaged in any political activity in Burma after the 1988 protests.

The Tribunal found only limited and somewhat conflicting information in the sources it consulted about the SSA. Nevertheless, the oral evidence the applicant gave about the SSA seemed broadly consistent with the independent information which indicates that the SSA is

or was an armed insurgent Shan group and may have been involved in illegal activities. Thus, the Tribunal accepts that the applicant worked for an officer of the SSA for a period of time. It is prepared to accept that during the course of that employment the applicant came to know that the SSA was engaging in illegal activities and that the officer was involved in the illegal activities.

In the statutory declaration the applicant submitted after the hearing, he claims he was viewed as a Shan rebel. He also claims in his written evidence to the Tribunal that he supported the SSA and agree to follow the SSA's rules. However, he testified at the hearing that he was not a member of the SSA. Further, his written evidence indicates that he was involved in the SSA's illegal activities not their political activities. He confirmed at the hearing that he did not engage in any political activities during his employment with the SSA. Further, the applicant has not been associated with the SSA nor any member of the SSA for many years. Thus, the Tribunal finds that the applicant is not nor will be viewed as a Shan rebel or Shan supporter by the Burmese authorities nor would the Burmese authorities impute him with an anti-government or adverse political opinion because of his past association with the SSA.

The applicant claims that he fears being persecuted by the authorities if he returns to Burma. In his post-hearing statutory declaration he claims he would be arrested as soon as he returned to Burma. He claims the authorities would target him because of his knowledge of the illegal activities of the SSA and the officer. However, the Tribunal does not consider it plausible that the authorities would seek to persecute the applicant to obtain information about activities that occurred many years ago. Further, the applicant had not been harmed by the Burmese authorities since he left his home town. Thus, the Tribunal finds that there is not a real chance that the applicant will be persecuted in the reasonably foreseeable future by the Burmese authorities because of his knowledge of the activities of the SSA and the officer.

The applicant's written evidence to the Tribunal indicated that he feared being persecuted by the SSA. At the hearing he claimed that the officer or someone acting on his instructions would kill him if he returned to Burma to protect the officer and his family. The Tribunal considers this claim far-fetched. The officer allegedly helped the applicant escape from his home town and supported him for some time whilst he was in hiding even though the officer knew that the applicant had provided information to the MI. The applicant testified that he no longer trusted the officer but offered no explanation as to why he could not trust the person who in the past had helped him escape the authorities. Further, the applicant has had no contact with the officer, anyone sent by him or any member of the SSA for many years. Thus, there seems to be no reasonably basis for the applicant's assertion that the officer could no longer be trusted or to conclude that the officer's attitude towards him had changed in any way. Nor has the applicant indicated that there have been any developments that would give the slightest indication that the officer would want to kill him now or in the reasonably foreseeable future. Thus, the Tribunal does not accept that the officer or anyone acting on his behalf will harm the applicant in any way in the reasonably foreseeable future.

The applicant was vague about how else he might be harmed by the SSA, merely testifying that the whole SSA battalion blamed him for the officer's illegal activities. He did not expand any further upon the risk of harm he feared from the SSA in his post hearing documents. Further, he has not been harmed by any member of the SSA since he ceased his employment with them. The Tribunal is thus not satisfied that the applicant fears any other persecution from anyone else within the SSA in the reasonably foreseeable future.

The applicant claims that he would face harm in Burma because he had obtained fake documents. If this was discovered by the Burmese authorities he may face some sanctions for the fraud he committed but this does not prima facie amount to persecution for one or more of the Convention grounds nor could the applicant explain how it could be Convention related. Thus, the Tribunal finds that any harm the applicant may face for fraudulently obtaining passports, identity cards and household lists would not amount to Convention related harm.

In his post hearing submission the applicant claimed that he suppressed his political opinion in Burma because he feared persecution. In the written evidence he presented to the Tribunal he stated that he had been anti-government nearly his whole life and had engaged in anti-regime activities here in Australia because he could express himself without fear. Despite this at the time of the hearing his activities here had been very limited – he provided evidence that he had attended a meeting of a Burmese group and a demonstration. Further, both of these occurred after he lodged his review application. The reasons the applicant gave at the hearing for engaging in these activities did not relate to a desire to express the political opinion he claims he has suppressed for years. If the applicant had been anti-government nearly his whole life but had to suppress expression of his political opinion in Burma because he feared persecution then the Tribunal expects this would have been at least one of the reasons he had engaged in political activity here. Thus, the Tribunal is not satisfied that the applicant engaged in these activities in Australia other than for the sole purpose of strengthening his refugee application. Therefore, pursuant to s.91R(3) of Act it has disregarded that conduct in assessing whether the applicant has a well-founded fear of persecution in Burma. Further, the fact that the applicant only engaged in political activity here after his lodged his review application and did not indicate that one of the reasons he had engaged in that activity was to express his previously suppressed political opinion leads the Tribunal to conclude that he had not suppressed his political opinion in Burma as he claims. The Tribunal thus finds that even if the applicant continued to hold a political opinion after 1988 he has not suppressed expression of that opinion because he feared persecution and has no desire to express it in the future if he returns to Burma.

In his written submission the applicant stated that although there was religious freedom in Burma he felt discriminated against in relation to his religion whilst working with the SSA as they were mostly Buddhist. He said however that he could fully and openly participate as a Christian in the city. He gave no indication at the hearing that he feared any persecution in Burma for reasons of religion even though he was invited to provide all the reasons he believed he might be persecuted if he returned to Burma. In his post hearing submission he stated that there was no visible discrimination against Christianity in Burma but he was treated harshly for his religion in prison. The applicant's period of imprisonment was many years ago. Thus, the evidence and material before the Tribunal does not indicate that the applicant either fears persecution nor is there a real chance that he will be persecuted for reasons of religion in Burma.

Taking all the above matters into account cumulatively, the Tribunal finds that there is not a real chance that the applicant will be persecuted for reasons of political opinion, religion or any other Convention ground in the reasonably foreseeable future if he returns to Burma. Thus, the Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention reason in Burma.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2) for a protection visa.

DECISION

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant.

Sealing Officer's I.D. PRRRNP