

1109528 [2012] RRTA 608 (19 July 2012)

DECISION RECORD

RRT CASE NUMBER:	1109528
DIAC REFERENCE(S):	CLF2011/10372
COUNTRY OF REFERENCE:	Singapore
TRIBUNAL MEMBER:	Mila Foster
DATE:	19 July 2012
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.

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 Singapore, applied to the Department of Immigration for the visas on [date deleted under s.431(2) of the Migration Act 1958 as this information may identify the applicant] January 2011.
3. The delegate refused to grant the visas [in] August 2011, and the applicants applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. 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 to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. 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 to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. 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.
7. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Harm from non-state agents may amount to persecution for a Convention reason if the motivation of the non-State actors is Convention-related, and the State is unable to provide adequate protection against the harm. Where the State is complicit in the sense that it encourages, condones or tolerates the harm, the attitude of the State is consistent with the possibility that there is persecution: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [23]. Where the State is willing but not able to provide protection, the fact that the authorities, including the police, and the courts, may not be able to provide an assurance of safety, so as to remove any reasonable basis for fear, does not justify an unwillingness to seek their protection: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [28]. In such cases, a person will not be a victim of persecution, unless it is concluded that the government would not or could not provide citizens in the position of the person with the level of protection which they were entitled to expect according to international standards: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [29]. Harm from non-State actors which is not motivated by a Convention reason may also amount to persecution for a Convention reason if the protection of the State is withheld or denied for a Convention reason.
16. 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.

Complementary protection criterion

17. 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 to 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').
18. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
19. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where 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; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.
20. Under s.36(2B)(b) 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 the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm. That is, the level of protection must be such that the risk of the applicant being significantly harmed is less than a 'real risk'.

Member of the same family unit

21. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Regulations for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include dependent children.

CLAIMS AND EVIDENCE

Visa application

22. The Tribunal has before it the Department's file relating to the applicants' protection visa application. The first named visa applicant applied for the visa on the basis that she was a refugee and the remaining applicants, her children, applied on the basis of that they were members of her family unit.
23. According to information provided in the visa application:
 - a. The first named visa applicant is a [age deleted: s.431(2)] year old national of Singapore; her religion is Hindu.
 - b. The first named visa applicant married [Mr A] [in] 1993 and they separated [in] 2008.
 - c. The other applicants are aged [ages deleted: s.431(2)] respectively. Their father is the first named visa applicant's estranged husband. They too are Singaporean nationals.
 - d. The applicants have travelled outside Singapore numerous times including a number of times to [to a number of countries as well as] and Australia.
 - e. The first named visa applicant has completed 12 years of education which included studies in Australia between March 2009 and January 2010. She had had several positions in Singapore the last as a sales support and operations executive.
 - f. The applicants last entered Australia [in] January 2011 on visitor visas.
24. The first named applicant visa applicant listed 17 reasons for leaving Singapore. In summary she claimed that she had been physically and verbally abused by her estranged husband everyday for many years. She stated he was controlling and he failed to financially support her. She said she had lived in fear and her children were afraid of their father.
25. The first named applicant visa applicant stated that she feared that if she returned to Singapore her estranged husband would continue to be abuse her and may attempt to kill her. She stated that her estranged husband was violent and aggressive, and lost control when he drank. She said that nobody was able to help her as she always ended up at home alone with him. She tried to free herself but her husband refused to give her a divorce

26. In relation to whether the Singaporean authorities can or will protect her, the first named visa applicant stated that if she was given the protection order she had applied for in 2004 when she was bashed up by her estranged husband she would not have had to go to another country and seek help. The court wanted evidence from her, a police report and medical reports, which she was unable to obtain because she was under house arrest by her husband.
27. Various documents were submitted in support of the visa application including the following:
 - a. A statutory declaration made by the first named visa applicant [in] January 2011.
 - b. Certified copies of the applicants' passports.
 - c. Certified copies of the applicants' birth certificates.
 - d. Certified copy of first named visa applicant's marriage certificate.
 - e. Certified copy of a medical complaint of spousal abuse made to the police by the first named visa applicant [in] August 1997. The first named visa applicant claimed that her husband had punched and kicked her. The complaint indicated that the first named visa applicant had injuries to her head, lips, neck and shoulder which were consistent with having been struck with a blunt object such as a fist, and that she claimed that this was not the first assault.
 - f. Certified copy of Family Court documents indicating that a complaint made by the first named visa applicant was to be served upon the Respondent (her husband) [in] September 1997.
 - g. Certified copy of a police record made [in] September 2004 in which the first named visa applicant reported that she was assaulted by her husband [two days earlier in] September 2004 resulting in bruises to her mouth and face, that she had been beaten by her husband for 10 years, and that he behaved aggressively towards their children, and she was making the report to obtain a protection order.
 - h. Certified copy of an interim court order dated [late] September 2004 restraining her husband from committing family violence on the first, second and third named visa applicants.
 - i. Certified copy of a Maintenance Order made by consent [in] October 2004 that [Mr A] pay monthly maintenance for his two children.
 - j. Certified copy of Deed of Separation made [in] June 2010 between the first named visa applicant and her estranged husband stating that they had been living apart since February 2008, that they would continue to do so, the first named visa applicant would have custody care and control of the other applicants, the first named visa applicant was not seeking maintenance from her estranged husband, and at the end of three years from February 2008 either the first named visa applicant or her estranged husband would be at liberty to file for divorce and the other party would give their consent.

- k. Certified copy of a police record dated [in] December 2010 regarding a report made by the first named visa applicant that her estranged husband had telephoned her and questioned her about her whereabouts and asked about her personal life which she viewed as harassment. She stated that when she tried to ignore his questions he shouted and scolded her, and that similar incidents had occurred numerous times in the preceding six months although no assault or threat had taken place. The report was made for “record purpose only”.

28. In her statutory declaration, the first named visa applicant stated amongst other things that:

- a. Her parents had “matched made” her with her estranged husband when she was [age deleted: s.431(2)] years old and they married legally [in] 1993.
- b. She and her husband had one matrimonial home since their marriage.
- c. Her husband was very short tempered, aggressive, violent, jealous, possessive, and physically and verbally abusive, and committed many acts of domestic violence against her including:
 - i. Physical violence such as punching, kicking, slapping, and pulling her hair, throwing objects often when he got drunk.
 - ii. Sexual violence such as forcing her to have sex when she did not want to without regard for her feelings and emotions.
 - iii. Violence against property such as smashing household objects, punching walls, tearing or burning their children’s clothes especially if they were gifts from her parents, siblings or friends.
 - iv. Forced social isolation such as not allowing her to go out without him or to see or communicate with her friends or family.
 - v. Financial abuse such as keeping control of all the bank accounts, refusing to give her enough money needed for ordinary living expenses, preventing her from working when she wanted to, or when he allowed her to work he demanded that she hand over all her wages to him.
 - vi. Verbal abuse for example ridiculing her, putting her down, making abusive, threatening or angry comments, cursing and swearing and calling her names.
 - vii. Psychological/emotional abuse and manipulation to destroy her self-confidence such a threats of violence or other forms of abuse that frightened her, and having weapons which could cause harm such as knives, hockey stick and baseball bat.
 - viii. Spiritual abuse such as ridiculing her religious practice and preventing her from attending her chosen place of worship.

- d. Her oldest daughter and son had witnessed their father's physical and verbal abuse on many occasions. When her husband assaulted her, her children would run towards her which would stop the abuse.
 - e. Her husband was not a responsible or loving father; her children lived in fear and never wanted to be home alone with him or go shopping or travel with him. He restricted them from going to the playground, swimming, playing with the neighbourhood children, or going to their friends' houses.
 - f. Due to the religion and culture she was brought up in she had endured and tolerated her husband's torture.
 - g. On occasions she ran away with her children to her parents' or brother's house for a week; her husband would loiter around to see if she left the house and watch and monitor her movements. She always hid the family violence and problems from her parents and siblings and pretended to be happy with her marriage and loved by her husband.
 - h. She reported her husband to the police on numerous occasions and even brought him to court for family violence. She applied for a protection order in 2004 but it was dismissed due to lack of evidence; she could not afford a lawyer but he had a lawyer. She applied to the Family Court for maintenance but her husband only paid for a couple of months.
 - i. She tolerated the violent actions and threats of her husband for 18 years before she separated from her husband [in] February 2008 to protect her children. Divorce is not practised in her religion or culture and the woman is meant to put up with all the actions and abuse of her husband without complaint.
 - j. When she returned from a weekend holiday in Cairns her estranged husband confronted her aggressively and asked whether she had gone to Cairns to see her boyfriend and threatened to kill her and her boyfriend however she did not have a boyfriend
 - k. During an argument over this issue her husband threatened her and then punched her and left a bruise on her left arm. Her daughter saw the assault and became very afraid of her father. After this event she became very frightened and feared for her life and the welfare and safety of her children so she immediately made arrangements to leave Singapore.
 - l. Her husband was capable of taking action against her and committing continued acts of violence against her and anyone she associated with. Thus her life and the welfare of her children were continually at risk in Singapore.
29. Documents on the Department's file indicate that the first named visa applicant was interviewed by the delegate [in] August 2011 in relation to the visa application however the Department's file do not contain an audio recording or written record of the interview.

Review application

30. The applicants submitted a copy of the delegate's decision with their review application. The Tribunal has had regard to the information in the decision.

31. [In] October 2011, the Tribunal received a written submission from the applicants. The first named visa applicant commented in detail on the delegate's decision and submitted documents including the following:
- a. Articles regarding the prohibition of divorce in Hinduism.
 - b. Medical certificate dated [in] August 1997 regarding a suicide attempt made by the first named visa applicant.
 - c. Reports and articles regarding Singaporean rape laws, shelters for women in Singapore, and a man who murdered his estranged wife after breaching a protection order five times.
 - d. Correspondence sent by the first named visa applicant's lawyers and her husband's lawyers in December 2004 regarding mortgage payments on the matrimonial home.
 - e. A list of the first named visa applicant's employment from 2006 to 2010.
 - f. Statutory declaration made by the second named visa applicant [in] September 2011 regarding her father's violence and her fear of him.
 - g. Family Court Case Card said to indicate that the first named visa applicant and her estranged husband had attended family counselling in September and October 2004.

Tribunal hearings

32. The applicants were invited to appear before the Tribunal [in] February 2012 and again [in] May 2012 following the introduction of the complementary protection criterion. All four applicants attended the hearings however the first named visa applicant gave evidence and presented arguments on her own behalf and on behalf of the other applicants. The following is a summary of the hearings.

First hearing

33. The first named visa applicant informed the Tribunal that she was in the process of making an application in Australia to divorce her estranged husband. The Tribunal questioned this given the first named visa applicant had submitted that divorce was not permitted in the Hindu religion. In response she indicated that she was unable to divorce in Singapore because her family and her estranged husband's family would put them back together. After some questioning the first named visa applicant eventually responded that she did not obtain a divorce in Singapore for reasons of religion and family. She added that even if she had divorced her estranged husband in Singapore he could have harmed her and referred to the article she had sent the Tribunal regarding a man who killed his wife after breaching a protection order six times.
34. The first named visa applicant stated that by divorcing her estranged husband she could stop him living in the matrimonial home. The Tribunal sought to confirm that first named visa applicant's estranged husband was still living in the matrimonial home. At first the first named visa applicant replied that he was but then stated that they sold the matrimonial home, she had another unit in Singapore and he was renting. Questioned further, the first named visa

applicant stated that the matrimonial home was sold in about June (2010). She added that her estranged husband had never made mortgage payments and had not worked for 10 years. She stated that only she made mortgage payments. She referred to the letters sent to her estranged husband in 2004 regarding his non-payment and stated they were forced to sell their home due to mortgage arrears.

35. Asked to explain how she was able to make the mortgage payments if her husband had restricted her ability to work, the first named visa applicant told the Tribunal that she made a down payment for the house and was first owner of the property. She stated that she had not worked continuously since 2004 and had about three jobs which did not last more than 3 or 4 months but later stated that she did not work for more than 6 months. She stated that her husband would allow her to work for a period of time but then would give her trouble and she would quit her job. She stated that a certain proportion of her wages went into a fund and every month the mortgage payment was taken from the fund. She also stated that she sold her jewellery for almost \$50,000 which she used to make payments of \$2000 each month for about year, to “run the family” and pay bills.
36. The Tribunal questioned how the first named visa applicant was able to fund her many overseas trips including several to Australia if her financial situation was as she stated. She responded that her parents supported her and she had the money left over from the sale of her jewellery. She referred to coming to Australia a couple of times to study and because domestic violence is taken very seriously here. The Tribunal questioned why the first named visa applicant did not seek protection on any of her earlier trips to Australia. She replied that the first time she came in 2007 she came alone to study then when she came with her children she brought her estranged husband as well because he knew she was trying to plan something. The Tribunal questioned why the applicant came to Australia with her children and husband given her financial situation and put to her that it did not seem she was trying to get away from her husband. The first named visa applicant replied that she wanted to study and he wanted to come and she could not say no. The Tribunal queried why, if she could not stop her estranged husband from accompanying her, the first named visa applicant used her limited financial resources to come to Australia. She replied that she came to obtain a qualification so that she could then apply for permanent residence. The Tribunal questioned why the first named visa applicant’s estranged husband permitted her to study in Australia. She stated that he toned down a bit after she took him to court and applied for a protection order (in 2004) and thus he said it was okay but only if he came. The Tribunal questioned why her husband agreed to her coming to Australia alone in 2007 to study. The first named visa applicant replied that she came because it was her money and indicated that after a month her estranged husband starting pressuring her and created problems for her so she only studied for a month.
37. Questioned further about her trips to Australia, the first named visa applicant stated that after her first visit in 2007 she returned in 2009 to study and then came back again in November 2010 for one week to find out how to seek protection here.
38. The Tribunal noted that the first named visa applicant had referred in her submission to the Tribunal to a letter that the Department had received from someone regarding her protection visa application and which the delegate had discussed with her at interview. The Tribunal informed the first named visa applicant that there was no such letter on the Department’s file and no recording of the interview with the delegate so the Tribunal had not had regard to the letter or the information she had given the delegate at interview.

39. The Tribunal noted that the second named visa applicant claimed in her statutory declaration that her father had hit her. The first named visa applicant confirmed that her estranged husband had hit their daughter. Asked whether her estranged husband had hit her sons, the first named visa applicant said he had not. Referring to her estranged husband's abuse, the first named visa applicant stated that her daughter had seen a lot and that her sons had seen it a couple of times. Asked whether she believed her estranged husband would harm her children in the future, the first named visa applicant replied that she was not sure; and that if she returned he would have access to children and could get to her through the kids by, for example, taking them and not returning them. She said she did not know how her estranged husband would react towards their children.
40. The Tribunal questioned whether she had read her daughter's statutory declaration and whether the contents were correct. The first named visa applicant replied that whatever her daughter said in the statutory declaration was from her; she just helped her daughter put the words together. The first named visa applicant confirmed, as her daughter had claimed in her statutory declaration, that her estranged husband had been in prison for hitting a taxi driver when he was drunk. She stated that her estranged husband was a heavy drinker and was violent when he drank. She added his brothers were gangsters and had been in prison for five years. She stated that her estranged husband was physically violent, verbally abusive and short tempered even if he was not drunk and she had left the matrimonial house a few times in fear of her life and the lives of her children. She added that he would not leave their home and there was no way for her to get him out of the matrimonial home as he was a co-owner. She referred to the article she had sent the Tribunal which indicated that whilst there were shelters for women in Singapore they only provided temporary accommodation for three months and Singapore was so small her estranged husband would be able to locate her. The first named visa applicant stated that he had found her when she left in 2004 and stayed with her brother and that, as he was entitled to access to their children, she could not avoid him in Singapore. She added that he had taken their children many times and kept the children from her and said he would do something to the children if she did not come back and she would never get to see her children again.
41. In response to being asked whether her parents and siblings could assist her to leave her estranged husband and accommodate her, the first named visa applicant stated that both her brothers supported her financially but could not accommodate her as they each had three children of their own. She said her parents had spent all their savings on her and her children. She added that her family encouraged her to study in Australia to get residency here. She stated that most of the time she did not even call her family because she would have so much trauma afterwards; she said that many times she was unable to make a police report because her estranged husband hit her and kept her in the house, where there was no phone, until her bruises disappeared.
42. In relation to the Deed of Separation, the first named visa applicant stated that her estranged husband only agreed to give her custody of their children under the terms of the deed because she agreed not to seek maintenance for her or the children. She stated that when she had previously applied for a maintenance order her estranged husband only made payments for couple of months. The Tribunal questioned why her estranged husband agreed to the Deed of Separation if he was as controlling of her as she claimed. The first named visa applicant replied that he had to agree as she was going to court and would put up all the cases and charge him for maintenance and he was not paying her for maintenance and he had a previous record for hitting her in 1997 when she sought a protection order so he had a history of many

cases. The Tribunal questioned why her husband would be concerned that she would go to the court and obtain a protection order and thus be willing to legally separate in June 2010 when she had done so in the past and he had continued his behaviour. The first named visa applicant replied that they had sold the matrimonial house and he had nowhere to stay and she had enough money to buy a unit in her own name and he had no choice as he did not have a house. The Tribunal questioned how the first named visa applicant was able to finance the purchase of the unit given her claimed infrequent employment. She replied that she had worked since she was 16 years old and thus had sufficient superannuation to buy another property and had previously sold two other properties from which she earned a profit.

43. The Tribunal noted that the first named visa applicant claimed to have gone to the police many times whereas the documents she submitted indicated that she went to the police in 1997 and 2004. The first named visa applicant responded that they were the only papers she had as many times her estranged husband tried to destroy the evidence; she said they were the papers she kept from him at her parents' place. Asked how many times she went to the police, she said it was a couple of times, then that she went about 5 times, then she said she went a lot of times, every time an incident happened, and then that she may have gone 20 or 30 times. She said that at the end of the day she had to return home and there would be no one to protect her at home.
44. The Tribunal noted that the first named visa applicant claimed that she sought a protection order in 2004 and it was dismissed and that she had submitted documentary evidence of the protection order but not the dismissal. She responded that the order of dismissal was sent to her estranged husband and she was not given the order. She added that her estranged husband had a lawyer and she did not and she did not have enough evidence to show that he had hit her. The first named visa applicant claimed that her estranged husband had come home drunk and beat her badly. Questioned at length about the basis of the dismissal the Tribunal eventually elicited from the first named visa applicant that it was dismissed because she did not present medical evidence that she had been assaulted on that particular occasion in 2004. She gave various reasons for not consulting a doctor. Her first explanation was that her job would be jeopardised if she went to the company doctor. Asked why she did not see another doctor, she stated that nothing happened when she got a medical report in 1997. When the Tribunal questioned this the first named visa applicant indicated that she did not pursue any action against her estranged husband in 1997 because of family pressure and because she would have to return to him. The first named visa applicant stated that she believed the court should have given her a protection order in 2004 on the basis of her estranged husband's history but the court required evidence of the particular incident in 2004. She then stated that her estranged husband restricted her from going anywhere and followed her everywhere so she was not able to get the medical evidence she needed. She felt the authorities had failed to protect her by issuing a protection order to restrain him from harming her.
45. The Tribunal noted that the 2004 order ordered the first named visa applicant's estranged husband not to commit family violence against her and children and restrained him from committing family violence so it seemed she was given immediate protection. She replied it was not a protection order but a letter telling her estranged husband that she had made a complaint. The Tribunal read the order to the first named visa applicant and put to her that it was an interim protection order which indicated that the authorities had acted immediately to try to stop her husband from harming her. She replied that was only until the matter went to court and at the end of the day when the court case was heard in November or December she did not get the protection order. She stated that she sought protection on the basis of the

previous report she had made (in 1997) and added that she did not seek a medical because she had her children around, threats were made by her estranged husband's brothers, and she was not in the right frame of mind at the time. She said she did not plan to get her estranged husband in trouble, it just happened, and as a mother she could only think of her children at the time.

46. The Tribunal put to the first named visa applicant that the harm she had claimed to have been subjected to by her estranged husband and which she feared in the future did not appear Convention related, that is, it did not appear that her estranged husband had harmed her for a Convention reason. The first named visa applicant responded that as a Hindu she was expected to put up with the treatment and her husband knew she would tolerate it because she was Hindu. She stated that a Chinese family would not have told her to stay with her husband. The Tribunal noted that the first named visa applicant had stated that her estranged husband had been violent outside the home which indicated that he behaved in a violent manner in other situations unrelated to religion. In response, the first named visa applicant stated that her estranged husband hit [a taxi driver], went to prison as a result and did not do anything afterwards. She seemed to suggest that he husband did not harm others again because he knew that if he did harm people who were not Hindus he would go to prison. When questioned further the first named visa applicant stated that even after being released from prison, her estranged husband had fights and whilst he did not go to prison he was called to the police station for questioning.
47. The Tribunal put to the first named visa applicant that according to information in sources consulted by the Tribunal, effective state protection was available to the citizens of Singapore as there was a legal system which criminalised domestic violence, an impartial and effective police force and system of justice, and men and women had the same legal rights. The Tribunal also added that it did not appear from the first named visa applicant's evidence that she had been denied protection for a Convention reason. Invited to comment the first named visa applicant stated that she believed that she should have been given a protection order (in 2004) based on her estranged husband's previous record .
48. Asked whether she had any further evidence, the first named visa applicant stated that her estranged husband belonged to a higher caste and always looked down upon her. She then added that she believed her husband would have controlled his drinking and violence if she had been of a different ethnicity and religion. She said a Chinese woman would not tolerate his behaviour and she would have gotten protection in 2004 when she sought it. The Tribunal suggested that the first named visa applicant had changed her evidence and put to her that the information in the sources consulted by the Tribunal indicated that the judicial system in Singapore was impartial and did not indicate that she would be denied protection for reason reasons of ethnicity. The first named visa applicant responded that that there were many religious issues such a Muslims and Hindus not getting employment; she stated that Muslims had their own court where they could obtain a divorce.

Second hearing

49. The first named visa applicant informed the Tribunal that she was unable to obtain a divorce in Australia. She stated that her parents had visited her and told her that her husband had not changed at all and he was unwilling to sign for a divorce. The first named visa applicant also told the Tribunal that she and her daughter had contact with her estranged husband and that he had told her that he had consulted lawyers because she had taken their children to Australia without his permission.

50. The Tribunal explained the new complementary protection criteria and invited the first named visa applicant to give evidence about whether the applicants would be subjected to significant harm in Singapore. The first named visa applicant replied that she would be arbitrarily deprived of her life, tortured, subjected to cruel and inhuman treatment, and punishment, and subjected to degrading treatment or punishment. She stated she had been deprived of all her freedom, and had been tortured in the past and will be in the future because she had taken the children. She would be verbally and physically punished by her estranged husband and degraded because she belonged to a different caste, and she feared death because there had been so many attempts. She stated that her estranged husband had harassed her in December 2010, came to her office and gave her a lot of trouble at work. The first named visa applicant stated that in April 2012 her estranged husband told her brother that she thought she could run away to another country but one day her death would be in his hands.
51. The Tribunal asked the first named visa applicant when she last lived with her estranged husband. She stated that in was in July 2010 in their matrimonial home. She stated that she told him she would not work so that he would sign the Deed of Agreement but once he signed it she went to work as he would not support her. She stated that he abused her every day whilst they lived together by screaming at her and she made many reports. She said she would go to the police but his family intervened and so she did not proceed and he would beat her when she returned home. She said she miscarried two or three times because he kicked her in the abdomen.
52. The Tribunal invited the first named visa applicant to give evidence about the relocation and state protection exceptions. She stated that she could not relocate within Singapore because her husband would find her as Singapore was small and the maximum she could stay in a shelter was three months. In relation to state protection, the first named visa applicant stated that a protection order was no guarantee, her husband may seek access (to the children) and thus she could not stay away from him and he could harm her.
53. The first named visa applicant concluded by stating that she would be persecuted by her husband and her life was in danger and that by coming to Australia she had aggravated him more as she had brought disgrace to him and thus the danger had increased.

Independent evidence

54. The Tribunal has had regard to the following information from other sources in making its decision.
55. The Republic of Singapore is made up of the main island, which is 42 kilometres long by 23 kilometres wide, and 63 surrounding islets. It has a total area of approximately 714 square kilometres. Based on 2011 data, the total population of Singapore is 5.18 million consisting of three major ethnic groups - Chinese (74 per cent), Malay (13 per cent) and Indians (9 per cent). English is the language of administration and commerce and is widely spoken across the island. (Australian Department of Foreign Affairs, *Singapore Country Brief*, May 2012, http://www.dfat.gov.au/geo/singapore/singapore_country_brief.html).
56. The Overseas Security Advisory Council reports that Singapore is amongst the safest countries in the world, the police response to crime incidents is professional and generally effective, and any report involving a criminal incident is handled in accordance with the prescribed regulations. (Overseas Security Advisory Council , *Singapore 2011 Crime and*

Safety Report, 21 July 2011, <https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=11247>.

57. The United States Department of State reported as follows on the various aspects of the judicial and legal system in Singapore:

Civilian authorities maintained effective control over the police force and the armed forces, and the Ministry of Home Affairs and the Corrupt Practices Investigation Bureau had effective mechanisms to investigate and punish abuse and corruption. ...

The constitution provides for an independent judiciary, and the government generally respected judicial independence ...

...

The law provides all defendants with the right to a fair trial, and independent observers viewed the judiciary as generally impartial and independent ... The judicial system generally provides citizens with an efficient judicial process.

...

The constitution states that all persons are equal before the law and entitled to the equal protection of the law, and the government generally respected these provisions in practice; there is no explicit provision granting equal rights to women and minorities. Mindful of the country's history of intercommunal tension, the government took numerous measures to ensure racial, ethnic, religious, and cultural nondiscrimination. Social, economic, and cultural benefits and facilities were available to all citizens regardless of race, religion, or gender.

The government enforced the law against rape, which provides for imprisonment of up to 20 years and caning for offenders. Under the law rape can be committed only by a man, and spousal rape is generally not a crime. However, husbands who force their wives to have intercourse can be prosecuted for other offenses, such as assault. Spousal rape is a criminal offense when the couple is separated, subject to an interim divorce order that has not become final, or subject to a written separation agreement, as well as when a court has issued a protection order against the husband. ...

The law criminalizes domestic violence and intentional harassment. A victim of domestic violence can obtain court orders barring the spouse from the home until the court is satisfied that the spouse has ceased aggressive behavior. ... A 2009 survey by a local NGO found that 9 percent of respondents reported having experienced some form of sexual or physical violence in their lifetime. Several voluntary welfare organizations provided assistance to abused women. During the year there were 2,871 applications for personal protection orders, 54 percent of which were filed by wives for protection against their husbands.

...

Women accounted for 56.8 percent of civil service employees. They enjoyed the same legal rights as men, including civil liberties, employment, commercial activity, and education. ...

Both men and women have the right to initiate divorce proceedings; however, in practice some women faced significant difficulties that prevented them from pursuing

such proceedings. This included the lack of financial resources to obtain legal counsel. ...

...

The Children and Young Persons Act created a juvenile court system and established protective services for children orphaned, abused, "troubled," or with disabilities. The Ministry of Community Development, Youth, and Sports (MCYS) worked closely with the National Council for Social Services to oversee children's welfare cases. ...

...

Ethnic Malays constituted approximately 13 percent of the population. The constitution acknowledges them as the indigenous people of the country and charges the government to support and promote their political, educational, religious, economic, social, cultural, and language interests. The government took steps to encourage greater educational achievement among Malay students. However, ethnic Malays have not reached the educational or socioeconomic levels achieved by the ethnic Chinese majority, the ethnic Indian minority, or the Eurasian community. Malays remained underrepresented at senior corporate levels and, some asserted, in certain sectors of the government and the military. This reflected their historically lower educational and economic levels, but some argued that it also was a result of employment discrimination. Some ethnic Indians also reported that discrimination limited their employment and promotion opportunities. Government guidelines called for eliminating language referring to age, gender, or ethnicity in employment advertisements; restrictive language pertinent to job requirements, such as "Chinese speaker" remained acceptable. These guidelines were generally followed. (United States Department of State, *2010 Human Rights Report: Singapore*, 8 April 2011).

FINDINGS AND REASONS

58. On the basis of their passports and in the absence of any evidence to the contrary, the Tribunal accepts that the applicants are nationals of Singapore.
59. The first named visa applicant claims that she will be seriously and significantly harmed by her estranged husband if she returns to Singapore. Specific protection claims have not been made on behalf of the applicant children however the first and second named visa applicants have indicated that the children fear their father and he has hit the second named visa applicant.
60. The first named visa applicant was not a good witness. Her testimony was generally long winded and vague on many occasions. She seemed intentionally evasive when the Tribunal attempted to obtain specific details about certain matters. Further, aspects of her claims and evidence changed and were not credible. The following are examples of this.
61. The first named visa applicant mentioned at the first hearing that she had come to Australia a couple of times and for the first time in 2007. However, her passport indicates several trips to Australia and information in the delegate's decision record, which she submitted to the Tribunal, states that she has entered Australia a total of nine times and that the first occasion was in 2003. The Tribunal found the first named visa applicant's testimony about her trips to Australia and her explanations for not seeking protection in Australia sooner given her many trips hesitant, vague and intentionally evasive. It did not appear that she was being truthful

about these matters which raises doubts about whether her husband was as controlling and restricted her freedom to the extent that she has claimed.

62. The first named visa applicant told the Tribunal in writing and at hearing that she was only able to work a few months at a time however this is inconsistent with the employment details she gave in her protection visa application which indicate that she has worked in various positions for years at a time. Further, the first named visa applicant emphasised at hearing that her estranged husband had not worked for a decade, had not contributed to the mortgage and restricted her ability to work. If this were true the Tribunal does not find it credible that she could have financed, even with help from her parents and the sale of her jewellery, or would have made so many trips to Australia. It appeared that the first named visa applicant was attempting to present an inaccurate picture of her financial circumstances to the Tribunal to support her claim that her husband failed to financially support her and restricted her ability to work.
63. The Tribunal found the first named visa applicant's testimony regarding why her estranged husband agreed to their Deed of Separation rambling and ultimately unclear. Her testimony about when the matrimonial home was sold, when her estranged husband stopped living in the matrimonial home, and where her estranged husband lived after the sale of the property was vague and evasive. This raises doubts the nature of her relationship with her estranged husband in recent years and whether he has continued to restrict, control and harm her as she claims.
64. The first named visa applicant embellished her claims as she testified. It took much questioning to elicit approximately how many times she reported her estranged husband's violence to the police. At first she stated that she made a couple of reports, then that she made five reports and then that she made between 20 and 30 reports. Further, the first named visa applicant added to her reasons for not reporting some instances of violence to the police during the course of her testimony. Asked why she did not obtain medical evidence for the incident that prompted her to seek a protection order in 2004 she initially stated that she did not want to jeopardise her employment by consulting her company doctor. However, as she was questioned further she added more and more reasons for not doing so. She was most hesitant and vague when asked whether she feared her husband would harm her children in the future yet subsequently stated that she had feared for their lives in the past. The first named visa applicant seemed to be inventing her evidence as she testified which raises doubts about whether there were as many instances of violence as she claims, if and why her 2004 application for protection was unsuccessful, and the extent and nature to which her estranged husband has harmed the applicant children.
65. The flaws in the first named visa applicant's evidence have led the Tribunal to conclude that she was not an entirely truthful witness. The Tribunal believes that while she was subjected to domestic violence by her estranged husband she has invented and exaggerated aspects of her claims.
66. The documentary evidence the first named visa applicant has submitted indicates that she was physically harmed by her estranged husband in 1997 and in 2004. The Tribunal thus accepts that she was harmed on those occasions and that she reported those assaults to the police. Both reports state that the first named visa applicant claimed that there had been other instances of violence and the Tribunal finds that the first named visa applicant was subjected to other instances of domestic violence by her estranged husband. However, due to her vague and changing testimony regarding the number of reports she made, the Tribunal does not

accept that she made 20 or 30 police reports and finds that she made three reports to the police in 1997, 2004 and 2010.

67. The 2010 police report was made the month after the first named visa applicant returned to Singapore from a one week trip to Australia the purpose of which was to determine how to apply for protection. Thus, the timing of that police report as well as the minor nature of the alleged harassment she reported compared to the instances of domestic violence she reported in 1997 and 2004, and the fact she made the report as a record only, lead the Tribunal to conclude that the first named visa applicant made the report to support her protection visa application and not because the first named visa applicant felt at real or increased risk of harm from her estranged husband.
68. On the basis of the Deed of Separation the first named visa applicant and estranged husband entered into in June 2010, the Tribunal finds that her estranged husband no longer wants to be in a marital relationship with her, they have sold their matrimonial home and lived apart since at least mid-2010 including a period of about six months in Singapore, and that the risk of harm to the first named visa applicant has reduced. Further, in these circumstances the Tribunal does not accept that her estranged husband refused to divorce her or that he has threatened her via her brother as she claimed. The Tribunal notes and accepts as credible that the first named visa applicant's estranged husband has been aggravated and indicated he will take legal action because the first named visa applicant took the applicant children from Singapore without his permission for an extended period of time. On the totality of the evidence before it the Tribunal has concluded that the risk of harm the first named visa applicant faces from her estranged husband has been reduced since they have stopped living together.
69. The Tribunal did not find the first named visa applicant's testimony regarding her estranged husband's reasons for harming her credible. The Tribunal accepts that divorce is not generally permitted in the Hindu religion and that the first named visa applicant may have thus been pressured and/or felt unable for many years to divorce her husband. However, her testimony that he harmed her for reasons of religion, ethnicity and her caste seemed speculative and mere afterthoughts. The evidence before the Tribunal indicates that her estranged husband expressed himself aggressively and violently in non-domestic settings and thus that a Convention reason or reasons were not an essential and significant motivation for the harm he inflicted upon the first named visa applicant or the other applicants.
70. Irrespective of the motivation of the first named visa applicant's estranged husband, the information from the sources consulted by the Tribunal indicate that the law in Singapore criminalises domestic violence, Singapore has an impartial and effective judiciary and legal system, and an effective police force. The first named visa applicant has provided reports concerning the limits of state protection with respect to victims of domestic violence including a report about a husband who breached a domestic violence order several times before killing his wife. However, no state can guarantee its citizens will be safe from violence at all times. On the basis of the information in the sources consulted by the Tribunal, the Tribunal finds that the Singaporean authorities can and do provide adequate and effective state protection to its citizens which meets international standards.
71. Furthermore, the information does not suggest that the Singaporean authorities withhold protection from its citizens for any of the Convention reasons. The Tribunal notes that in response to being invited to comment upon whether she was denied state protection for a Convention reason at the first hearing, the first named visa applicant did not indicate that she

was nor had her testimony suggested that she had been. However, at the conclusion of the hearing she asserted without any apparent basis that she would have been given a protection order in 2004 if she was of Chinese ethnicity. The Tribunal rejects this as the information in the sources consulted by the Tribunal does not indicate that the authorities deny protection on the basis of ethnicity or for any Convention reason. Further, the first named visa applicant had stated up to that point that she was not granted the order because she did not bring the relevant evidence.

72. The Tribunal thus finds that if the first named visa applicant returns to Singapore, the authorities in Singapore would provide her with adequate and effective protection against harm from her estranged husband in the reasonably foreseeable future. Thus, the Tribunal finds that the first named visa applicant does not have a well-founded fear of Convention related persecution in Singapore. The first named visa applicant is not a refugee and does not meet the refugee criterion in s.36(2)(a).
73. Specific claims have not been made that the applicant children are refugees although the first named visa applicant indicated that she feared her estranged husband may harm her children and the second named visa applicant stated in her statutory declaration that she feared her father. As adequate and effective state protection is available in Singapore, and the evidence before the Tribunal does not suggest that the state protection would be withheld from the applicant children for a Convention reason, the Tribunal finds that the second, third and fourth named applicants do not have a well-founded fear of Convention related persecution in Singapore. Hence, they are not refugees and do not meet the refugee criterion in s.36(2)(a).
74. As the Tribunal has found that the applicants do not meet the refugee criterion, it has considered the complementary protection criterion. In light of the state protection available to the applicants in Singapore and the reduced risk of harm from [Mr A] the Tribunal is satisfied that they could obtain from the authorities in Singapore, protection such that there would not be a real risk that they will suffer significant harm. Thus, the Tribunal finds that there are not substantial grounds for believing that as a necessary and foreseeable consequence of the applicants being removed from Australia to Singapore there is a real risk that they will suffer significant harm. Hence the applicants do not meet the complementary protection criterion in s.36(2)(aa).
75. Finally, as none of the applicants has met either protection criteria, the Tribunal finds that they do not meet the family unit criteria in s.36(2)(b) and(c).

CONCLUSIONS

76. The Tribunal is not satisfied that any of the applicants is a person to whom Australia has protection obligations. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) or (aa) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b) or (c). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

DECISION

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