

071242842 [2007] RRTA 105 (7 June 2007)

DECISION RECORD

RRT CASE NUMBER: 071242842

DIAC REFERENCE(S): CLF2006/142617 & N99/000148

COUNTRY OF REFERENCE: Fiji

TRIBUNAL MEMBER: Ann Duffield

DATE DECISION SIGNED: 7 June 2007

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class AZ) visas under s.65 of the *Migration Act 1958* (the Act).

The applicants, who claim to be citizens of Fiji arrived in Australia and applied to the Department of Immigration and Citizenship for Protection (Class AZ) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by letter. [*Information relating to the eligibility of the RRT review application deleted in accordance with s431 of the Migration Act*].

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 applicants have 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) of the Act, as in force before 1 October 2001, provided that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom 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 Refugees Convention, or the Convention). (Amendments to s.36(2) introduced on 1 October 2001 do not apply to the present applications.)

Further criteria for the grant of a Protection (Class AZ) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994. Under cl.866.211 of Schedule 2 to the Regulations, a criterion to be satisfied at the time of application is that the applicant claims to be a person to whom Australia has protection obligations and either (a) makes specific claims under the Convention or (b) claims to be a member of the same family unit as a person who is an applicant and has made Convention claims. Reflecting s.36(2) of the Act, a criterion to be satisfied at the time of decision is that the Minister is satisfied that the applicant is a person to whom Australia has protection obligations under the Convention: cl.866.221. Clause 866.222 provides an alternative 'time of decision' criterion for an applicant whose application relies on membership of the family and that is that (a) the Minister is satisfied that the applicant is 'a member of the same family unit' as an applicant who has made Convention claims and (b) that person has been granted a protection visa. Thus, under those provisions, family members are derivatively entitled to a protection visa on the alternative basis that they are members of the same family unit as an applicant who is found to be a refugee: *Munkayilar v MIMA* (1998) 49 ALD 588 at 592-593, *Mijoljevic v MIMA* [1999] FCA 834 at [14]-[18], *Dranichnikov v MIMA* (2001) 109 FCR 397 at [22]-[23], *MIMA v Shtjefni* [2001] FCA 1323 at [17]. However, all applicants must satisfy the remaining criteria.

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. These provisions were inserted on 1 October 2001 and apply to all protection visa applications not finalised before that date.

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.

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The applicants appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Fijian and English languages.

The applicants were represented in relation to the review.

Information in the department's file

The first named applicant (herein referred to simply as "the applicant") is an elderly male national of Fiji. He was married many years ago, identifies his religion as a Christian and claims his profession as a tradesman. He arrived in Australia on a valid visitor's visa with his wife, the second-named applicant. He listed a named child as being an Australian resident at the time of his application.

The second-named applicant is an elderly female national of Fiji. She is married to the first named applicant and also identifies her religion as a Christian and claims to be a housewife. She did not make her own claims. The Tribunal swore in the second-named applicant as a potential witness but advised her that it might not take her evidence. The Tribunal also considered the first-named applicant's wish for it to take evidence from a further witness, Person W, who was present at the hearing. The Tribunal took evidence from this witness in the hearing.

Statement attached to original protection visa application

The applicant claimed that the political situation in Fiji was very confusing and volatile and created fear in the minds of the Fijian population because of the coups of 1987. The applicant claimed that the opposition party was contemplating forming a coalition with the Rabuka party to fight the 1999 election result. The applicant claimed that this had brought serious concern in all quarters of the private sectors and the general population at large that the corruption in the

highest level has been compromised and remain unchallenged. The applicant claimed that his main fear was in relation to corruption in the law enforcement authority. The applicant claimed that his fear is that if the political situation becomes violent that the law enforcement would have minimal effectiveness. He claims that he expects the situation to become as it was in 1987 and hence he has taken the step to keep away from Fiji and seek protection in Australia.

The delegate refused the application and notified the applicants of the decision by letter and addressed to the first named applicant. *[Information relating to the eligibility of the RRT review application deleted in accordance with s431 of the Migration Act].*

Application for review

The applicant lodged a review application. In a statement attached to the application, the applicants claimed that they are fearful of recent events in Fiji whereby people are intimidated if they voice their concern about the situation. The applicant claims that there is no money for those that live there and hence it would be a death sentence to send them back. The applicants claim that they wish to remain in Australia to care for their grandchildren and nieces and continue to serve the community.

The applicants also provided the following documents:

- A statutory declaration from Person X and her husband, both Australian citizens, seeking to sponsor their sister, the second-named applicant and her husband, the applicant. Person X claims that there are no family members left in Fiji and that she and her husband have a number of children whom the second-named applicant is very close to, and who almost single-handedly raised herself. The declarant does not claim that the applicants are refugees but seeks grant of a permanent visa to them on “non-remaining relative” (sic) grounds.
- A statutory declaration from Person Y, an Australian citizen, the applicant’s relative, stating that the applicants all but raised her as a child. She claims that sending them back to Fiji would not help their circumstances due to the political climate being unstable and an increasing number of people unemployed. She claims that the applicants have no relative remaining in Fiji and granting the applicants permanent visas would mean a lot to her and her family.
- A statutory declaration from Person W, an Australian citizen and the applicants’ relative who claims to have been raised by the applicants as their own. She claims they were and remain a strong stabilising influence on her life. She claims that returning them to Fiji would mean denying them the opportunity for a better lifestyle here in Australia and further, that they have no relatives remaining in Fiji. She claims that Fiji’s political, social and economic climate and infrastructure is unstable.
- A signed letter from Reverend S stating that the applicant is an active member of a specific church and that he continues to serve the Church as an elder. Rev S states that the applicant has been helping the community by providing them with Christian and spiritual support.
- A signed letter from the Reverend T stating that he has been the applicants’ parish Minister between specific years. Reverend T claims that the applicant is

well-known and liked in the Fijian community. He offers his services freely and teaches the younger members of the community their language and traditions. The Reverend states that the applicant has been a lay preacher since the 1980s and has held other roles in several churches.

- A signed letter from Person D, an office holder in a particular church offering his support for the applicants' permanent residency application. He claims that the applicant is a lay preacher within the church and is a valued member.
- A signed letter from the Reverend Y, an office holder of a particular association supporting the applicants' permanent residency application. He claims that the applicant has been living and working in Australia for many years and is a valued member of the Church and community.

Country information

It is unclear exactly what impact the coup in December 2006 in Fiji will have on ethnic issues in the medium to long term. In the short term, reports contrast the current coup with the previous coups of 1987 and 2000 in that (1) it was not directed against Indo-Fijian power, (2) it has the support of the Indo-Fijian community and (3) there has been no anti-Indian looting of shops up to this point. Early reports also indicate a lessening of the pressure on the Indo-Fijian community from threats of violence.

On 5 December 2006 Fiji's military chief Commodore "Frank" Bainimarama announced in a televised address that he had taken over the running of the country. The following day he installed a caretaker prime minister and sent troops to shut parliament.

A news report states:

While the 1987 and the 2000 coups targeted the Fiji-Indians, the 5 December coup was to put an end to the discriminatory and anti-Fiji Indian policies pursued by Qarase and to promote a pluralistic, multi-cultural society in Fiji.... Unlike the 1987 and 2000 coups when lumpen Fijians went on the rampage looting Fiji-Indian business establishments and homes, last week's transition from democratic governance to military governance was orderly and peaceful. The Indian High Commission in Suva functioned normally right through the troubled week of 4 to 8 December whereas in 1987 it was forced to pack up and leave the country, in spite of coup-master Rabuka having had his training in Indian Army's Staff College in Wellington, Nilgiris. The streets of Suva have never been safer than they are today for people of all people as the army has taken over patrolling from the police. Fear of censorship of the media turned out to be unfounded as the three English dailies in Suva are able to publish articles and comments critical of the military take-over. Muggers and pick-pockets are conspicuous by their absence from the city streets. ... The interim government would "mend the ever widening racial divide that currently besets our multi-cultural nation," said Bainimarama

(Rajappa, Sam 2006, 'Fiji: Ethnic Fijians unhappy: A Different Kind Of Military Coup d'etat', *The Statesman*, 12 December 2006).

An AAP report notes both support for the coup and a desire to leave Fiji by Indo-Fijians who feel they have been discriminated against since 2000:

Brothers Shalesh and Bijendra Prasad are tired of the ethnic divisions they believe are destroying Fiji and are among thousands of Indo-Fijians eager to flee their country

following its fourth coup in 20 years. Like most Indo-Fijians, the Prasads support military commander Frank Bainimarama's seizure of power last Tuesday, but they are desperate to leave. "If you ask the question, three quarters of Indians want to leave Fiji," Bijendra said... Bainimarama's coup contrasts markedly to the 1987 and 2000 uprisings which were ethnically driven in favour of indigenous Fijians and led to an exodus of tens of thousands of Indo-Fijians from the country.

One cause behind Bainimarama's coup was his opposition to Mr Qarase's Qoli Qoli bill which proposes to give native land and sea title to indigenous Fijians. The bill has been fiercely opposed by the country's 350,000 Indo-Fijians who believed they would be driven off land and not allowed to fish.

"Qoli Qoli has Fijians fighting against Fijians," said Shalesh, a Hindu priest.

Even though Qarase insists he has popular support and most analysts believe he would win another election, opinion of the coup is divided by ethnic lines. Most indigenous Fijians disapprove of his actions, although many agree with the cause.

But Bainimarama, an indigenous Fijian, has been enthusiastically embraced by Indo-Fijians. ('Fiji: Indians keen to leave' 2006, *Australian Associated Press*, 11 December)

The *Fiji Sun* reported on the law and order situation following the coup:

Temple attacks and break-ins have vastly declined since the army takeover, owners of Hindu temples and prayer places said yesterday. They believe this is because of military checkpoints and warnings that the army will monitor the situation and people involved in such activities would be punished.

....Mr Chandra said the temple owners lost hope in the police who told them to find their own security and could hardly investigate and punish the culprits. He said the military was doing a fine job maintaining security. ('Fiji: Hindus say temple attacks down under military rule' 2006, *Fiji Sun*, 13 December)

On 3 January 2007, the Fiji Human Rights Commission released a 32-page report which argued the government overthrown in the December 5 coup was not the legitimate and democratically-elected government of Fiji ('Fiji rights report 'justifies' 2006 coup' 2007, *Fiji Times*, 4 January <http://www.fijitimes.com/story.aspx?id=54600>; Fiji Human Rights Commission 2007, *The Assumption of Executive Authority on December 5th 2006 by Commodore J.V. Bainimarama, Commander of the Republic of Fiji Military Forces: Legal, Constitutional and Human Rights Issues*, [http://www.humanrights.org.fj/publications/2007/Investigation Report on Events o 20December 2006](http://www.humanrights.org.fj/publications/2007/Investigation%20Report%20on%20Events%20December%202006).) The report also condemns the discriminatory and ethnically divisive policies of the Qarase government. It states:

Fiji has been quite oblivious to obligations arising out of other relevant treaties and conventions prohibiting systematic and unfair discrimination, such as ICERD which it has ratified. The Qarase Government was involved in massive violations of human rights in Fiji, constituting crimes against humanity, and made serious attempts to impose ethnic cleansing tactics in Fiji. (p.15)

Since it has the constitutional power to ensure security and protect people, the military does not act unlawfully as long as it keeps to this objective. In view of the rampant abuse of power, privilege, illegalities and wastage of wealth of the Qarase regime, as well as its proposed discriminatory legislation which, if enacted, would have constituted a 'crime against humanity' under the International Law Commission's definition, and limited scope for an immediate judicial solution, there appear to be few options remaining to

protect the people of Fiji from an illegal, unconstitutional, anti-human rights, and despotic regime. The Qarase Government relied on majoritarianism, and collaboration with some powerful members of the international community including close neighbours as well as some NGOs, to shield its extensive human rights violations in Fiji from scrutiny (p.31).

On 9 January 2007, Fiji's coup leader, Commodore Frank Bainimarama appointed Mahendra Chaudhry as the new interim finance minister. Chaudhry, who was the first ethnic Indian to become prime minister after his Labour Party won an election in 1999, was overthrown in the 2000 coup ('Mahendra Chaudhry back in Fiji's interim government' 2007, *India eNews*, 9 January <http://www.indiaenews.com/australia/20070109/35137.htm>).

There have been several incidents of arbitrary detention and physical abuse of opponents to the new regime. The *Fiji Times* of 14 January stated:

Interim cabinet ministers are dodging speaking out on the growing number of cases of abuses carried out by Republic of Fiji Military Forces soldiers on the civilian population.

In the latest incident to come to light, a number of women were part of a group taken to the Army Training Group headquarters in Nasinu on New Year's Day, ordered to strip to their undergarments by female military officers and then made to run around the drill square. The group of women and teenagers included a number of men, one of whom was thrown into a drain for running slower than other members of the detained group during a forced drill exercise.

A group member who feared being named said the money raised at a function they were arrested from was also taken by the soldiers. A group member said they believed they were victimized because they hailed from ousted PM Laisenia Qarase's village on Vanuabalavu.

In other attacks by soldiers, former Minister of Labour Kenneth Zinck was arrested by six soldiers from West Motor Inn in Nadi. He was picked up by soldiers for comments he made against the president in which he supported the work of military. He said six soldiers took him to the Namaka police station, made him run around the CAAFI [Civil Aviation Authority] ground beside the station, punched him several times and made him spend the night at the police cell. This was his second arrest.

('Fiji ministers reticent on reports of rights abuses by military' 2007, *Fiji Times*, 14 January)

Site: <http://www.fijilive.com/news/show/news/2007/01/15/fijilive08.html>, Accessed on 16 January 2007

Source: Fijilive
15 January 2007

FIJI: Military to stop interrogations

Interim Prime Minister and army commander Commodore Voreqe Bainimarama and interim Attorney General and Minister for Justice Aiyaz Sayed-Khaiyum

The Fiji military has given assurance that no members of the public shall be taken to any of the military camps around the country unless warranted under the current State of Emergency.

This comes after several complaints and reports have surfaced in the media of military officers picking up people, taking them to the military camp and abusing them physically and verbally.

Interim Justice Minister and Attorney-General Aiyaz Sayed-Khaiyum made the statement at the Queen Elizabeth Barracks following his meeting with the interim Prime Minister and army commander Commodore Voreqe Bainimarama.

"All complaints against members of the public should be directed to the police and if need be, the military will assist the police in conducting their investigations," Sayed-Khaiyum said.

"Any complaints of human rights breaches are to be lodged with the Fiji Human Rights Commission, who will continue to operate as an independent body as provided under the Constitution whilst receiving the full support from the government."

Media reports have surfaced of a group of men and women being forced to strip to their undergarments by female soldiers and forced to run around the drill square at the military camp in Nasinu.

Other complaints include a taxi driver, who is reported to have two broken ribs and a bruised torso after being taken in by soldiers.

The Lautoka Hospital has confirmed treating and discharging a man in his 40s who was brought in by soldiers with visible injuries to his chest.

MAN DIES IN MILITARY CUSTODY

201 words

6 January 2007

The Nelson Mail (NZ)

English

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A man has died in Fijian military custody, in unexplained circumstances.

His death yesterday comes against a backdrop of interrogations of civilians at the Queen Elizabeth Barracks outside Suva.

The death occurred shortly before military commander Commodore Voreqe Bainimarama had himself sworn in as interim prime minister by the reappointed President Josefa Iloilo.

Military spokesman Major Neumi Leweni confirmed that a police investigation was under way but refused to give other details.

Police spokeswoman Sylvia Low said doctors at the military hospital pronounced the man dead when he was taken there by soldiers.

She said police were waiting for the results of an autopsy.

Since the December 5 coup, the military has taken a number of its critics to the barracks and subjected them to interrogation and at times physical pressure.

Non-military sources said a man from Nakaulevu village, west of Suva, was picked up early yesterday morning by the military and taken to the base, and had not been seen since.

It is alleged that the man was previously beaten up by the military over a dispute in which villagers were trying to push an **Indo-Fijian** farmer off leased land in the area..

Evidence at the Tribunal hearing

The Tribunal swore in the applicant and his wife and explained the conduct of the hearing and the requirement on the applicant to satisfy the Tribunal that he was entitled to Australia's protection. The applicant read and understood the definition of "refugee" as set out in the Convention. The Tribunal put to the applicant that the many statutory declarations it received in support of the applicant and his wife did not go to claims of persecution but were letters of support for their permanent residency. The Tribunal asked the applicant if he wished to pursue his claims of persecution or if he were seeking a decision from the Tribunal in order to make a direct appeal to the Minister. The applicant confirmed that he wished to pursue his original claims.

The Tribunal asked the second-named applicant if she had claims that she wished to pursue at the hearing and she claimed that she did not have her own claims but was a dependent upon the first-named applicant. The Tribunal swore in the second-named applicant and informed her that she may not need to take her evidence.

The Tribunal asked the applicant why he believed he would be persecuted if he returned to Fiji. The applicant claimed that he was afraid that the military would persecute him because he was opposed to the coup. The Tribunal asked him if he would speak out publicly against the coup and he claimed that he would. Although he had not been involved in politics in Fiji in the past, he was involved in preaching and very forthright about expressing his opinions. He claimed that he would say things against the military and they would apprehend him. The Tribunal told the applicant that it had seen reports that the military had arrested political opponents but had not seen any reports of arrests of preachers. The applicant claimed that he was aware of some arrests of preachers but was unable to direct the Tribunal to those reports.

The Tribunal asked the applicant if he had a home or family in Fiji and he claimed that he had not and that all his family resided in Australia. He told the Tribunal that the Church would not be able to help me because the members are poor and his position was an unpaid position. He told the Tribunal that he was a tradesman and preached on Sunday, Wednesday and Saturdays. He claimed that relations between the Indian-Fijians and indigenous Fijians were good and he even had some Indian-Fijians attend his church.

The Tribunal asked the applicant of the circumstances surrounding his departure from Fiji and he told the Tribunal that large numbers of people from his community were taken into custody and there was enormous antagonism towards the Indians because of this. He told the Tribunal that

Indian-Fijian members of his congregation had their houses confiscated without compensation. The Tribunal asked the applicant what his response was to those incidents and he claimed that he advocated on their behalf and went to the military and the police. The applicant told the Tribunal that he arranged a protest on a specific day with members of the community and his congregation. He claimed that as a result of this action he was arrested along with many others and detained for several days. Charges were dismissed and he was released. The Tribunal asked the applicant if he was mistreated whilst in detention and he claimed he was not. Asked how long he remained in Fiji after that incident and he claimed that he left a number of years later. Asked by the Tribunal if he was involved in any other such incidents, or if he was arrested or detained again for any reason, the applicant claimed that he was not.

The Tribunal asked the applicant why he left Fiji when he did and he claimed that he was no longer working and was dependent on relatives to survive. He told the Tribunal that his family in Australia asked him to come. The Tribunal asked the applicant if he left because he was being threatened with harm or arrest and he claimed that he was not but he was still fearful that there would be another coup. Asked if he had been harassed by the authorities in any way for his preaching prior to his departure, he claimed that things had cooled. Asked why he thought he would be persecuted if he returned to Fiji now or in the foreseeable future the applicant claimed that he has no job, no home and no future in Fiji. He claimed that he would speak out in public against the injustices that are occurring in Fiji and that the military would apprehend him and persecute him.

The Tribunal received evidence from Person Y, who is now currently an Australian citizen and the applicant's relative. She confirmed that the applicant was not reluctant to put his opinions forward and would voice his opposition to the current political situation if he was returned to Fiji. She expressed her fear that the applicants would have no support and no family to assist them in their old age if they were required to return to Fiji.

The Tribunal also took submissions from the applicant's adviser, Person W, which confirmed the evidence he gave during the hearing as truthful and accurate.

The Tribunal did not take evidence from the second-named applicant as she had no claims of her own. As the Tribunal had taken evidence from another witness and the applicant's adviser which confirmed the truthfulness and accuracy of the applicant's claims, the Tribunal felt that it was unnecessary to take evidence from the second-named applicant.

FINDINGS AND REASONS

The applicant has claimed to be a national of Fiji and of no other country. He travelled on a passport issued in Fiji and he has made claims against no other country. The Tribunal has seen the applicant's passport and is thereby satisfied that he is outside his country of nationality and that his country of nationality is Fiji for the purposes of article 1A(2) of the Convention.

The applicant's claims, as they emerged from the hearing, are essentially that he fears persecution because on the basis of his race, religion, membership of a particular social group and political opinion. He claims that he was the victim of state persecution whilst he lived in Fiji and fears persecution should he return to Fiji in the future. He claims that as an outspoken preacher, he would be targeted.

Arrest and detention

The Tribunal is mindful that the events which the applicant fears happened many years ago and at a particular time in Fiji when law and order and the democratic process were still recovering from the 1987 coup. The applicant claims he was arrested for organising and participating in a protest regarding the confiscation of the homes of some of his Indian-Fijian congregation. He claims that he was detained for several days but also claims he was not mistreated whilst detained. He claims that the charges against him were dismissed and he was released. He claims that he was not subsequently harassed, arrested, detained or harmed by any one in any way since that incident and his departure from Fiji a number of years later. The fact that he was arrested for the reasons claimed is not in itself persecutory. A state has the right to detain for questioning someone it has reason to suspect has broken the law. According to the applicant's account, the charges against him were dismissed. The fact that the applicant was released and the charges dropped indicate a properly functioning judiciary capable of providing the applicant protection from the persecution he claims to have suffered, and to fear.

Political Opinion

The applicant claims that he will be targeted for persecution because he will speak out against the government. Whilst the situation in Fiji is clearly not ideal, and there have been indications that people who speak out against the military or the interim government are subject to certain abuses, the applicant does not have the profile of someone that may be so targeted. He had no political profile in the past, and has not been a member of a political party. There is no evidence in the country information consulted by the Tribunal that lay preachers, or indeed any members of the Church have been targeted by the Military. The Tribunal is not satisfied, on the evidence before it, that even if the applicant did speak out against the interim government that any harm he may suffer would amount to persecution in the relevant sense.

Effective Protection

The applicant claimed that he was fearful of corruption in the law enforcement authorities. He claimed that if the political situation became violent he was afraid that the law enforcement authorities would have minimal effectiveness. The country information above indicates that both the police and the military have suffered from corruption in Fiji. However, it also indicates that the Government has taken a strong stand and encouraged people to complain to the Fiji Human Rights Commission about any human rights breaches by the military or police. The Human Rights Commission is guaranteed by the Constitution and has a record of providing a strong and independent voice against State abuses of power. The country information indicates that the military has and is successfully maintaining law and order. There is no evidence to support the applicant's claim that law enforcement authorities would be ineffective if the political situation became violent, or that if they did become ineffective, that the applicant would suffer persecution as a result.

Humanitarian considerations

The Tribunal is mindful that the applicant and his wife have been residing in Australia for many years. They have integrated strongly and successfully into the local Fijian community and become active church members. The Tribunal is also mindful that all their family members also reside here as permanent residents or citizens. Both the applicant and his wife are elderly and will have no access to the loving support of their family if returned to Fiji. They will have no home, no source of income and be reliant on charity for their survival. Such circumstances, whilst

compelling, do not assist the applicant's claims for a protection visa. The statutory declarations provided to the Tribunal for the most part could support an application for migration by the applicants on other grounds. They may compel the Minister to use his S.417 powers and grant the applicants visas on such grounds.

Having considered the claims both individually and cumulatively, and based on the evidence currently before it, the Tribunal is not satisfied that the applicant suffered past persecution or that he faces a real chance of being persecuted now or in the reasonably foreseeable future if he returns to Fiji in relation to his race, his religion, his nationality, political opinion or membership of a particular social group, or to an alleged, or imputed, race, religion, nationality, political opinion or membership of a particular social. The Tribunal is not satisfied, on the evidence before it, that the applicant has a well-founded fear of persecution.

CONCLUSIONS

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

No specific Convention claims were made by or on behalf of the second-named applicant. The fate of the other applicant's application therefore depends on the outcome of the first named applicant's application. As the first named applicant cannot be granted a protection visa, it follows that the other applicant cannot satisfy the alternative criterion set out in s.36(2)(b) and cannot be granted a protection visa.

DECISION

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

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