

1106467 [2011] RRTA 757 (5 September 2011)

DECISION RECORD

RRT CASE NUMBER: 1106467

DIAC REFERENCE(S): CLF2010/134402

COUNTRY OF REFERENCE: El Salvador

TRIBUNAL MEMBER: Michelle Grau

DATE: 5 September 2011

PLACE OF DECISION: Brisbane

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

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 and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of El Salvador, arrived in Australia [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] [in] August 2010 and applied to the Department of Immigration and Citizenship for the visa [in] October 2010. The delegate decided to refuse to grant the visa [in] May 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention
4. The applicant applied to the Tribunal [in] June 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. 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.
7. Section 36(2)(a) of the Act 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 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. 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.

10. 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 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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

19. The Tribunal has before it the Department's file relating to the applicant. 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.
20. The applicant is a [age deleted: s.431(2)] female from El Salvador who was in a defacto relationship between 1982 and 1995 and had 3 children. According to her application she was born in San Salvador and has resided in San Salvador since then. She received 6 years education between 1976 and 1981. Between 1982 and 1995 she was a housewife. Between 1992 – 1995 and 1999 – 2008 she was employed as an industrial sewing machine operator. Between 1995 and 1999 she was self employed in a grocery store.
21. The applicant claimed she has been persecuted for the last 15 years by her defacto partner. Specifically she claimed:
 - She ran away with him when she was [age] and two months after their first son was born he started to abuse the applicant.
 - She tried to escape a few times without success and her family was not able to help her.
 - She started work in a clothing factory when her youngest daughter was [age] and her partner took control of all the money she earned.
 - When her daughter was [age] he accused the applicant of cheating and bashed the applicant and threw her out of the house and she never saw the children for four years.
 - Through the years her partner has been continually harassing her, chasing her, beating her in front of people. She had to hide from him and move to different places so he could not find her.
 - For many years she looked for help from the authorities but by the time police came the partner was gone and witnesses would not give a statement because they fear revenge
 - She is tired of running and being scared. She is always watching over her shoulder. When waiting for the bus at times her partner comes and harasses her and sometimes assaults her.

- Her children are aware of the violence. Her two sons are happily married and have children. Her daughter lives with her father and is [age]. She lives under her father's rules and is not allowed to go places or to work. If she stays in Australia, one day she will be able to help her daughter.
 - The police have no time for cases like hers as they are involved in the chaos and under siege from drugs and gangs and uncontrollable violence.
 - If she goes back she will have to live running and hiding. A lot of women die from domestic violence.
22. The applicant's brother in his statement said the applicant suffered constant abuse for 12 years. He recalls her coming to his house bruised eyes and crying but he felt incapable of helping her, maybe because he was still very young, but he wanted to kill the partner. Her partner threw her out of the house and the partner would not let her see the children for four years. She saw the eldest when he was [age deleted: s.431(2)] when they arranged a secret meeting. When he and his wife applied to migrate, his sister was under their care but they did not know they could include her.
23. [In] April 2011 the delegate interviewed the applicant who claimed as follows:
- a. She lived with her sister at that address for 9 years. She worked as an industrial sewing machinist
 - b. Her brother and sister in law funded her trip to Australia
 - c. She met [Mr A] in 1982 and had baby and when the baby was 2 months old she tried to visit her mother and he was very rough with her and did not allow her to go. Their relationship broke down in 1995. They were not married. They had 3 children
 - d. When they separated the partner took the children. He did not allow her to keep the children. She had to leave and went back to live with her mother and he stayed in his house with the children.
 - e. Her mother lived about 5 kilometres away. For about 5 years she would try to find a way to see her children but he found out and he hid them or locked them away. In 2001 she used to go the school to see them and they allowed her and they knew where she was so they could come to see her.
 - f. Her children are [ages].
 - g. Her partner was violent and she had to do what he said. She used to go to her mother's house when he was violent every 2 or 3 months.
 - h. One day she came home late from work and the partner did not believe her and was very upset. The children were at her mother's house at that time. He hit her very badly and she still have marks. She went back to her mother's home.

- i. She reported it to the police a number of times but they have more problems with drugs and did not pay much attention to violent cases. The police did not approach her partner or talk to him.
 - j. When asked when was the last time she saw her ex-partner, the applicant said on [date] July he telephoned (he got the number from the daughter) as he knew she was going to Australia and he warned her when she comes he will be like a nightmare to her.
 - k. The daughter is not allowed to go out with friends
 - l. When asked before [date] July when did she last speak to or see him, she said she hadn't seen him as he is with the daughter. He controls her and does not allow her to visit.
 - m. When asked with why [Mr A], who has a new partner, wants to harm the applicant, she said he wants to make her life a nightmare, he says he will not allow her to be happy again.
 - n. She has not approached any support groups about domestic violence.
 - o. She fears returning as he is going to get in my way. She always avoided him and avoided confrontation. He always finds a way to give her a hard time. After that every time he saw he would abuse her and a few times he dragged her by the hair.
 - p. Her older brother is still in El Salvador, and asked he if offers any support, she said she lives with them, her mother and the children.
24. [In] May 2011, the delegate refused the application because she was not satisfied that the applicant was a continuing victim of domestic violence, because she ceased her relationship in 1995 and not seen [Mr A] for a long time and he has remarried with other children; and she has lived at the same place for the last 9 years. The delegate also had credibility concerns. Country information also suggested she could obtain state protection. The delegate was not satisfied that the applicant would face a real chance of serious harm should she return to El Salvador.
25. [In] June 2011 the applicant lodged an application for review of the delegate's decision.
26. The applicant provided further material as follows:
- a. Letter dated [date] July 2011 from community worker in [town] that the applicant had suffered domestic violence and had come to Australia to escape it. She was referred for counselling with [agency].
 - b. A statement signed [date] August 2011 by her children saying they witnessed beatings, maltreatment and humiliations of their mother and that she was thrown out on the street with nothing and for four years they had no news of her.
 - c. A statement signed [date] July 2011 by her sister in El Salvador and sister's family that the applicant was a victim of domestic violence; she lived in

hiding; they gave her all the support they could living with them some days and with girlfriends on other days. The last attack from her husband was in April 2009 when she was standing at a bus stop. He continually looks for her.

Country Information

27. US State Department Report 2011 states:

The law prohibits domestic violence and provides for sentences ranging from one to three years in prison. The law also permits obtaining restraining orders against offenders. Domestic violence was considered socially acceptable by a large portion of the population, and, as with rape, its incidence was underreported.

Violence against women, including domestic violence, was a widespread and serious problem and during the year resulted in the death of 551 women. Laws against domestic violence were not well enforced, and cases were not effectively prosecuted. During the year ISDEMU received 4,732 reports of domestic violence, compared with 6,514 complaints in 2009. The PNC reported 2,852 cases of domestic violence through December. Through July the OAG investigated 661 cases of domestic violence, which resulted in three convictions and 71 cases resolved through mediation.

ISDEMU coordinated with the judicial and executive branches and civil society groups to conduct public awareness campaigns against domestic violence and sexual abuse. The PDDH, OAG, Supreme Court, Public Defender's Office, and PNC collaborated with NGOs and other organizations to combat violence against women through education, increased enforcement of the law and NGO support programs for victims. The Secretariat for Social Inclusion, through ISDEMU, defined policies, programs, and projects on domestic violence and continued to maintain a telephone hotline and a shelter for victims of domestic abuse and child victims of commercial sexual exploitation. The government's efforts to combat domestic violence were minimally effective.

On November 25, the National Assembly passed a comprehensive law targeting all forms of violence, harassment and discrimination against women. The law, which takes effect in November 2011, strengthens penalties for existing crimes, defines new ones not previously penalized, and mandates a public education component and unified statistical methodology. ISDEMU, the government agency charged with promoting the legal rights of women, has responsibility to monitor the law's implementation.

28. According to research from the Immigration and refugee Board of Canada in 2009:¹

The Director of the Family Relations Improvement Program (Programa de Saneamiento de la Relación Familiar) of the Salvadoran Institute for the Development of Women (Instituto Salvadoreño para el Desarrollo de la Mujer, ISDEMU), stated:

a "recognized public institution ... that coordinates governmental and nongovernmental activities" (ILO n.d.), stated that [translation] "the phenomenon of domestic violence persists, but there were significant improvements in 2008." These

¹ Refworld Immigration and Refugee Board of Canada, El Salvador: Domestic violence; recourse and services available to victims (March 2006-July 2009), 17 July 2009, SLV103213.FE, available at: <http://www.unhcr.org/refworld/docid/4a7040bac.html> [accessed 26 August 2011]

improvements include [translation] "an increase in the number of reports filed, in the resources available to victims since 2003, and in public trust in the response from the authorities" (El Salvador 10 July 2009). The Director added that [translation] "two new centres that provide immediate assistance and training to victims of domestic violence opened in 2009" (ibid.). According to the ISDEMU website, 13 centres distributed among the various departments are now in operation (ibid. n.d.a)...

The coordinator of Break the Silence to End Domestic Violence and Sexual Exploitation (Rompiendo el Silencio Frente a la Violencia Intrafamiliar y la explotación sexual), a program run by the Action Network Against Gender-Based Violence in El Salvador (Red de Acción contra la Violencia de Género en El Salvador), stated that since 2006, progress has been made in the area of domestic violence, even though it [translation] "continues to be a serious problem" (El Salvador 14 July 2009). The Coordinator explained that progress as follows:

Legislation such as the act against domestic violence and the penal code are providing increased protection of the rights of female victims of violence; members of various organizations that help abused women are trained and know the law; there was a general increase in the number of reports filed, and the various institutions and organizations now work together. (ibid.)

However, she indicated that resources are more difficult to access in rural areas because the organizations operate mainly in cities...

With 262 stations throughout the country offering services to families, women and children, the PNC is responsible in large part for ensuring that the [translation] "Law Against Intra-Family Violence" is enforced (Instituto CEMUJER 27 Mar. 2006). Victims of domestic abuse can also file complaints with NGOs involved in the field of women's rights (ibid.). "[B]ecause laws are not consistently applied," according to the UN Special Rapporteur, "domestic violence is widespread and tolerated" (UN 20 Dec. 2004, para. 28). Moreover, "[d]omestic violence was considered socially acceptable by a large portion of the population" (US 8 Mar. 2006, Sec. 5).

According to *Country Reports 2005*, "government institutions, such as the PDDH [Office of the Ombudsman for Human Rights (Procuraduría para la defensa de los derechos humanos)], the Attorney General's Office, the Supreme Court, the Public Defender's Office, and the PNC coordinated efforts with NGOs and other organizations to combat violence against women through education, increased enforcement of the law, and NGO support programs for victims" (US 8 Mar. 2006, Sec. 5).

The ISDEMU is a government agency (ibid., Sec. 1.d) whose mandate is to [translation] "formulate and implement the National Policy for Women [Política nacional de la mujer], and to follow up on compliance with that policy" (El Salvador 20 Mar. 2006). ISDEMU also ensures that the national legislation on domestic violence corresponds to international legislation (Sociedad sin violencia 25 Nov. 2005). The National Policy for Women, which defines a strategy for fighting violence against women, is being implemented by the ISDEMU through its Family Relations Improvement Program (Programa de saneamiento de la relación familiar, PSRF) (El Salvador 20 Mar. 2006). The four main objectives of the PSRF are [translation] "prevention, monitoring, research and follow-up" (ibid.). The PSRF's structure is inter-institutional and multidisciplinary and its scope is national, working alongside 14 inter-institutional committees and 50 local networks and NGOs that deal with the problem of violence against women and/or local development with a focus on gender (ibid.). The PSRF works to prevent domestic violence through awareness, education

and communication (ibid.). Through the PSRF, the following resources are available to victims of abuse: [translation] "intervention during the crisis, psychological counselling after the assault, therapeutic support groups (for victims and abusers), social assistance, legal counselling, follow-up on the legal process, and temporary allowances" (ibid.). All services are confidential and offered free of charge (ibid.). Another important ISDEMU initiative involved increasing media awareness of and training on the issue of violence against women, as well as accessing airtime on national radio through which its personnel could raise public awareness (ibid.).

The PSRF operates seven regional offices in Cabañas, Chalatenango, La Paz, La Unión, San Miguel, San Salvador and Santa Ana (El Salvador 2003, 22). Two new offices in Sonsonate and Morazán are scheduled to open in April 2006 (El Salvador n.d.b). The PSRF's main office in San Salvador operates 24 hours a day year round, while its other offices are open 12 hours a day (El Salvador 20 Mar. 2006). All offices have a local emergency hotline (ibid.). The technical team helping victims of domestic violence consists of 90 professionals who are constantly updated on the latest innovations in the field and on legal matters and reforms (ibid.). The PSRF works in collaboration with the PNC's special youth and family services division (ibid.). Only one women's shelter (centre), located in San Salvador, is managed by the ISDEMU (El Salvador 20 Mar. 2006; ibid. n.d.b), yet its free and confidential services are available to the entire country (El Salvador n.d.b). A multidisciplinary team of psychologists, lawyers, social workers and female police officers assists victims (ibid.). According to CEMUJER's director, the city of San Salvador manages various shelters, where CEMUJER personnel train the staff (Instituto CEMUJER 27 Mar. 2006). Information on the number of people who have used the centre managed by the ISDEMU or those managed by the city of San Salvador could not be found among the sources consulted by the Research Directorate.

Instituto CEMUJER, an NGO, manages the Integrated Care Centre for Abused Women and Children (*Clínica de Atención Integral a Mujeres, Niñas y Niños Violentados*) and its services include a confidential telephone line, a public law consultancy (*consultorio jurídico popular*) and support groups (*círculos de reflexión*) (27 Mar. 2006).

29. According to 2009 newspaper press release government campaigns were to improve services for women;

19 May - Four months ago, in the midst of an intense electoral campaigning, President-elect Mauricio Funes announced his ambitious plan to provide health and social services to women throughout El Salvador. The project, Ciudad Mujer, would offer childcare, health programs, prenatal support through the program Madre Feliz, social support for domestic violence, legal advice, economic assistance through microcredit and workshops, and religious activities.

The FMLN presented this project as an initial step towards addressing gender equality and familial well-being. Although these issues are mentioned in Funes's platform, specific plans to overcome them are not included. If fully implemented, Ciudad Mujer would be an important step in the struggle to find gender equality and family support for Salvadoran women. The project calls for fourteen centers, one for each departmental capital in the country. Initially the government will contribute about 1.5 million dollars, an ambitious investment considering the current economic climate.

According to news sources, Vanda Pignato, Funes's wife, will coordinate many aspects of Ciudad Mujer. In early March, Pignato attended the ground-breaking of the

Ciudad Mujer to be constructed in Usulután. Other departments such as La Unión, Santa Ana, and La Libertad have already set aside plots of land for Ciudad Mujer as well.

Women in El Salvador have high expectations for the project. When Funes announced his plans for Ciudad Mujer in February, around two thousand women of diverse economic sectors and professions attended. About a thousand people attended the ground-breaking in Usulután. As one of the first steps to act on campaign promises, the progress of Ciudad Mujer could be an important indicator of an effective Funes's administration capable of social investment despite serious fiscal challenges.²

The Tribunal Hearing

30. The applicant appeared before the Tribunal [in] August 2011 to give evidence and present arguments. The Tribunal also received oral evidence from [name deleted: s.431(2)], the applicant's sister in law who resides in Australia. The Tribunal hearing was conducted with the assistance of an interpreter in the Spanish and English languages.

The applicant's evidence

31. The applicant described her circumstances in El Salvador saying she has worked mostly in factories doing industrial sewing since 1987 except for a few years in her brother's grocery store between 1995 and 1999 and again in his business in 2008 – 2009.
32. She lived with [Mr A] since she as [age deleted: s.431(2)] and had 3 children until they separated in 1995. He was controlling and abusive throughout the relationship and threw her out of the house in 1995 accusing her of an affair, when she arrived home late from work. She did not see her children for four years after. From 1992 she and [Mr A] and the children lived beyond [city deleted: s.431(2)] in the opposite direction of [suburb deleted: s.431(2)]. [Mr A] has remarried some years ago and he still lives at the same place with his wife and the applicant's daughter. The applicant's two sons are married with their own families.
33. The applicant lived with her mother from 1995 until 2000 in [city deleted: s.431(2)] and then lived with a friend in 2000 – 2001 in the outskirts of [city deleted: s.431(2)]. In 2001 she lived with her sister and his family for 9 years in [suburb deleted: s.431(2)], though she sometimes lived at a girlfriend's home to avoid [Mr A]. She rented her own home in August 2009 in Apopa.
34. The applicant described the night [Mr A] threw her out of the house in 1995. He said he would make sure she was never happy. She said he continued to harass her. For instance when she was living at her mother's house, he saw her at the shopping centre on her way to work and grabbed her hair and hit and kicked her. She said she was last harmed by him in April 2010 when she was waiting at the bus stop to go to work, he grabbed her hair and kicked her. No one intervened or wanted to be involved.
35. The applicant said she sometimes called the police but they arrived half an hour later and he had gone and they did nothing as there were no dead bodies and were too busy. The Tribunal asked the applicant to describe the incidents when she called the police. The applicant said she called many times but they only came once.

² <http://voiceselsalvador.wordpress.com/2009/05/19/new-government-launches-ciudad-mujer/>

36. The Tribunal asked about the times she called the police. She said she threatened [Mr A] that she would call the police and he said he would only go to the watchhouse for 2 or 3 days and he would then kill her and the family. She was afraid it would happen.
37. The Tribunal asked the applicant when she actually called the police. The applicant said she could not recall. The Tribunal asked the applicant to try to recall by reference to where she was living at the time. The applicant said she called the police when she was living at her friend's house in Apopa. The Tribunal noted this was between 2000 and 2001 according to her written application. The applicant agreed. She said the police came but [Mr A] had gone. She did not call them again.
38. The Tribunal asked the applicant if she had sought assistance from domestic violence shelters organisations. She said she had not. She only sought assistance to get her children back from family services.
39. The Tribunal noted the harm feared was from [Mr A] and put country information to the applicant about laws outlawing domestic violence, recent improvements in the laws, public education, and police protection, and domestic shelter and counselling help available in El Salvador. The applicant agreed there are such organisations but there is a lot of corruption and with payment of \$25 a case can be won. The Tribunal noted that while state protection was not perfect, laws and protection is offered and has been improved, particularly since 2008. The applicant said she understands that but the government does not care about someone like the applicant and corruption is a reality. She said the improvements might be true but one needs to be there to see the reality. She would like to see change but doubts there is such.
40. She could not relocate anywhere in El Salvador because he could find her. The Tribunal noted that the applicant had not sought to live very far away from [Mr A] and had in fact moved closer to him when she rented a home in Apopa recently. The Tribunal asked how [Mr A] could find the applicant if she moved away from the area. She said he telephoned her in July when she was leaving and threatened her. The Tribunal asked her how he knew her phone number or that she was leaving for Australia. She said her daughter told him. The Tribunal expressed doubt that her daughter would tell her father this. The applicant said her daughter made a mistake and it was an accident for which she apologised. The Tribunal expressed doubts that the applicant could not relocate in El Salvador further away from Apopa or that he could find the applicant. The applicant said he would find her as he could pay someone to find her.
41. The Tribunal asked the applicant about the timing of the last assault. She said it was in April 2010 at the bus stop. She said she told her family about it as she always does. She asked her sister in El Salvador that if she spoke to her brother in Australia to tell them and see if she could come to Australia. They knew everything. They helped her to come to Australia. They said the first step was to obtain a passport, which she did. Then they would apply for a visitor visa for her. The Tribunal asked if she had obtained the passport after the last assault took place. She said she did and then applied for the visitor visa. She did not know how to do either but received help from her sister and sister in law. The Tribunal asked the applicant if she were sure about the timeline of events and clarified that she obtained her passport after the **last** assault. The applicant was sure.
42. The Tribunal pursuant to s424AA procedure noted that at interview she was not sure when she had last seen [Mr A] and the letter from her sister in El Salvador said the last assault was

in April 2009. The Tribunal noted that she obtained her passport in July 2009, which would suggest that her last assault was in 2009 and not in 2010. This was relevant because it indicated she had provided inconsistent information which might lead the Tribunal to doubt her claims about when she was last assaulted or saw [Mr A] and might lead the Tribunal to conclude that not a well-founded fear of persecution given timing of last assault. The Tribunal asked the applicant if she needed to time to respond. The applicant did not seek additional time to respond. The applicant said her sister had made a mistake and it was 2010. The applicant said she was assaulted by [Mr A] on an ongoing basis and the family made a mistake. The hearing was adjourned.

The sister in law's evidence (witness)

43. The witness is married to the applicant's husband and they have lived in Australia since [date]. The witness met the applicant in 1995 or 1996 before she and the applicant's brother came to Australia. The first time she met her applicant had bruises. The applicant was always looking over her shoulder.
44. The witness helped to get the applicant to Australia because of the harm from [Mr A].
45. They did not talk much with her again until last year but remained in contact with the rest of the family. They knew the applicant sometimes lived with the sister in El Salvador but often was not there when they telephoned.
46. She knows the applicant's brother (witness husband) tried to help at the beginning as he was very angry about [Mr A]'s behaviour. But the witness told him he cannot harm [Mr A] as he is still the father of the children who are his nephews. She told him he had to think of the children.
47. The Tribunal asked the witness when the applicant was last assaulted. She said April 2010. She said for a while there was not much trouble but suddenly one day in April 2010 he grabbed her at the bus stop and slapped and punched her. That is when they said they have to get her out. The Tribunal asked if she knew if the applicant had contacted the police. The witness said she had not as by the time they get there he is gone and it would be her word against his and he has job in a hospital so he would be believed and not her. There is not equal rights for women in El Salvador and there is no support for them in the family court. She is scared if the applicant goes back the same will happen and it is not fair. The applicant could not relocate as he could find her.
48. Her sister's had similar problems, one got away from the husband who almost killed her and has remarried and the other is divorced and went to court but could not find her ex-husband to get any help from him for their child.

The applicant's evidence

49. The Tribunal put to the applicant pursuant to s424AA procedure that the witness had two sisters who had similar problems but managed to get away and are still in El Salvador and this might indicate that the applicant could, like them, remain in El Salvador without serious harm if she sought help from authorities. The applicant did not seek additional time to respond and said that her situation was different because [Mr A] was obsessed with her and like a madman.

50. The Tribunal expressed its concerns about the possibility of relocation, whether the harm feared was well-founded if the last assault was in 2009 or not for some time and she had not sought assistance from authorities since 2000; and whether the harm was for Convention reasons. The Tribunal expressed concerns that the applicant might have exaggerated the frequency of attacks, particularly with regard to the last 2 years and that she could seek adequate state protection. The applicant said she was very afraid of an attack and if she returned he could have someone kill her. She pleaded that she could not return to El Salvador as she was in fear for her life. He could easily find her anywhere by employing someone to find her.
51. At interview she made a lot of mistakes and she was nervous and tended to forget a lot of things but today she has corrected those mistakes. She is taking English lessons at the community center and counselling to control her nerves better and asks that her nerves be taken into account She is grateful that she had the opportunity to correct her mistakes. She thinks things will be worse if she returns to El Salvador and has real fear of returning.

FINDINGS AND REASONS

52. The applicant claims to fear persecution from her ex-defacto husband, [Mr A] who was violent and abusive during the marriage. She claims to have been thrown out of their home in 1995 and he prevented her from seeing her children for 4 years. She claims that [Mr A] has continued to harass and assault her after their relationship ended in 1995 because he is obsessed with ensuring she is unhappy. She has lived in fear, hiding from and avoiding him.
53. The Tribunal finds as follows. On the basis of the applicant's passport presented at the hearing the Tribunal is satisfied that the applicant is a citizen of El Salvador who remains in Australia as a non-citizen and has assessed her claims against El Salvador as her country of nationality.
54. The Tribunal accepts that the applicant was subject to abuse and violence from her de facto husband, [Mr A], throughout her defacto relationship and that the defacto relationship ended when she was thrown out the house in 1995; and that he has continued to harass her and assaulted her since then. The Tribunal accepts the applicant's account of the abuse and controlling nature of her defacto husband. The witness, the applicant's children and sister corroborated that the applicant has suffered in this way.
55. While the applicant said she moved around from her family's home to girlfriend's home, the Tribunal finds applicant's main address was at her mother's home between 1995 and 2000 and later at her sister's home for 9 years until she moved into her own rented accommodation before she came to Australia. There was no evidence that the applicant was harmed at these homes but the assaults or harassment took place on the way to her work. The Tribunal does not accept that the applicant lived in hiding as claimed but accepts that she suffered assaults and harassment from [Mr A] from time to time while waiting for the bus or on her way to work and as a result was frightened when travelling to work.
56. However the Tribunal is not satisfied that the applicant's last assault was in April 2010 as claimed by the applicant or the witness. While the applicant claimed that the written statement from her family had made a mistake saying it was April 2009, the Tribunal does not accept this explanation or that she was last assaulted in April 2010 for a number of reasons, and finds that she was last assaulted in April 2009.

57. Firstly, the applicant's family had the opportunity to provide this written statement recently (July 2011) for the Tribunal and it was signed by a number of family members who claimed knowledge of the situation. The applicant agreed that the family were well aware of her situation and had good knowledge of what happened to her throughout her ordeals and so the Tribunal considers they would have taken care to record an accurate statement based on their knowledge. Secondly, at interview the applicant could not say when she last saw her husband and only claimed that he had telephoned her in July 2010 threatening her when he knew she was going to Australia. The Tribunal has considered the applicant was no doubt nervous at interview, but given she could recall a phone call in July 2010, the Tribunal does not accept that she would not also recall that she was last assaulted a couple of months before that. The fact that she did not mention an April 2010 assault then or knowing when she last saw him, indicates to the Tribunal that she had not seen or been assaulted by [Mr A] for some time, and hence could not recall when.
58. Thirdly, her written application did not specify when the last assault occurred but made general claims and that she was tired of being scared, looking over her shoulder and there are times when she is waiting for the bus and [Mr A] is harassing or sometimes assaults her.
59. Fourthly, the applicant said she obtained her passport after the last assault in preparation for applying for a visitor visa to go to Australia. Her passport was issued in July 2009. This is consistent with the assault being in 2009 and not in 2010.
60. The Tribunal accepts that the applicant fears harm from her ex-defacto husband on return to the El Salvador and that there exists a real chance that he may attempt to harm the applicant. Whilst the Tribunal is not satisfied that the applicant's husband would seek to harm the applicant by way of hiring a killer the Tribunal does accept that the applicant is in fear of him and that he may seek to continue to inflict emotional and physical abuse on the applicant.
61. On the basis of the applicant's description of the encounters with her husband the Tribunal finds that the reason for which her husband wishes to harm her is essentially and significantly a personal reason (because she is obsessed with making her unhappy) and not for a Convention reason such as the applicant's religion, political opinion or membership of a particular social group.
62. The issue before the Tribunal is whether the state would selectively withhold protection from the applicant for a Convention reason on her return. The Tribunal notes the applicant's concerns that domestic violence is considered unimportant and the authorities do not provide adequate protection for women who are the victims of such violence.
63. The country information indicates however that a number of government and non-government agencies provide support to women who are subject to domestic violence. More importantly the state has legislated to criminalize domestic violence and has passed comprehensive law targeting all forms of violence, harassment and discrimination against women. They have enacted laws to increase penalties, define new ones not previously penalised. They have improved education and public campaigns and support. The Tribunal has considered that while the applicant is not well educated, she has been employed continuously for many years and has had the support of her family in El Salvador who are aware of the situation. Thus the Tribunal is satisfied on the country information that state protection is available to women in the circumstances of the applicant.

64. The Tribunal does not accept that the applicant belongs to a particular social group that should she seek state protection in the future this protection would be selectively withheld from her because of membership of such a group. As was discussed with the applicant at the hearing the Tribunal accepts that the applicant called the police in 2000 or 2001 and they responded to her call. The Tribunal acknowledges the country information indicates there is a need for greater effectiveness of the police but this has improved considerably since 2008 and continues to improve in 2011 with increased penalties, new offences and increased public awareness and campaigns and training. The Tribunal does not accept that the applicant phoned the police many times or sought assistance as claimed in her written application. At hearing the applicant only described one situation where she called police in 2000 or 2001 and they responded, albeit after [Mr A] had left. She admitted while she threatened [Mr A] with the police, she did not call police after the event in 2000 or 2001 because she was frightened of his threats. Recent country information suggests that the applicant could seek assistance from police, NGOs and other authorities. Further, the Tribunal notes that the applicant is not in a domestic relationship with [Mr A] and has not been since 1995. The Tribunal has considered the applicant's claim of corruption, but having regard to the country information and the applicant's circumstances; the Tribunal is not satisfied that authorities condone such conduct in the circumstances. While no police force can guarantee absolute protection, the Tribunal is not satisfied that the applicant could not seek such protection
65. Having regard to the evidence and country information set out above, the Tribunal is not satisfied that there would be a selective and discriminatory withholding of state protection from the applicant for a Convention reason, including whether due to her status as a single woman. Looking to the reasonably foreseeable future, the Tribunal is not satisfied there is a real chance that the applicant will be denied State protection against violence for reason of being a woman or for any Convention reason.
66. Having considered the applicant's claims singularly and cumulatively, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution for a Convention reason on her return to El Salvador.

CONCLUSION

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

DECISION

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