

**1203573 [2012] RRTA 415 (14 June 2012)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1203573
<b>DIAC REFERENCE(S):</b>	CLF2011/220571
<b>COUNTRY OF REFERENCE:</b>	Mauritius
<b>TRIBUNAL MEMBER:</b>	Sydelle Muling
<b>DATE:</b>	14 June 2012
<b>PLACE OF DECISION:</b>	Melbourne
<b>DECISION:</b>	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 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 Mauritius, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] December 2011.
3. The delegate refused to grant the visa [in] February 2012, and the applicant 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 *SZFDV 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. 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**

16. 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').
17. '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.
18. 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.

### **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. According to the protection visa application, the applicant is a Mauritian male born on [date deleted: s.431(2)] in Pamplemousses, in Mauritius. He stated that his religion is "Hinduism" The applicant lived in [Town 1], [District 2] from May 1982 to May 2006. The applicant attended [Town 1], [primary] school in [District 2] from December 1990 to January 1995. He also attend [College] in [District 2] from January 1991 to December 1997 and [another] [School] from April 2005 to May 2006. The applicant is fluent in French. He described his occupation before coming to Australia as [cook]. He worked as a [cook] in [hotels] from June 2005 to April 2006. He departed Mauritius for Australia legally from the airport. The applicant travelled to [Country 3] [in] May 2008, departing [in] May 2008. The applicant's father, mother and [sibling] are residing in Mauritius.
21. The applicant claimed that he left his country to study. However, in early 2011 he found that there is continuing political conflict in Mauritius, with no peace and harmony. He is afraid to live there because there is internal conflict amongst different political groups. His family belongs to one of the political parties and he fears for his safety if he returns there. The dispute between the Mauritius Labour Party (MLP), which his family belongs to, and

Mauritian Militant Movement (MMM) with its allies, has been intense since Prime Minister Ramgoolan came to power. He claimed the present internal strife “which never came to media” is putting members of his family, including himself, at risk and he wants to live a peaceful and happy life. The applicant claimed he was not sure of the internal problems as his family did not elaborate and he did not insist.

22. The applicant claimed that he fears for his life there because of the danger generated by the political events in his country. For his own security he does not want to go back to Mauritius. He wants to live a happy life so that is why he prefers to stay in Australia because it is safe and peaceful.
23. The applicant claimed that he believes some of the groups who support and fights for some political groups will harm him because his family supports and identifies with a political group and has done so for many years, and with the trouble he feels he will be involved with it.
24. The applicant did not believe the authorities will provide him protection because they are not always around to see or check if everyone is safe. They do not care about the safety of people. He reiterated to ensure he has a peaceful life, he prefers to stay in Australia where the people and authorities care for each other and ensure people live in safety.
25. [In] February 2012, the delegate of the Minister for Immigration and Citizenship refused to grant the applicant a Protection (Class XA) visa. The applicant subsequently applied to the Tribunal for review of this decision [in] March 2012.
26. The applicant appeared before the Tribunal [in] June 2012 to give evidence and present arguments.
27. The applicant stated that he was born on [date deleted: s.431(2)] in Pamplemousses, in Mauritius. He lived in [Town 1] in [District 2]. He completed high school and has a Certificate [in] Hospitality. He is fluent in [a number of languages]. The applicant stated that he worked in Mauritius as a [cook]]. He worked in three different [hotels]. He started working as soon as he completed his [Certificate]. The applicant stated that he first departed Mauritius for Australia in November 2006. He departed the country legally. He returned to Mauritius in May 2008. He was there for three weeks; two weeks in Mauritius and one week in [Country 3]. The purpose of his trip to Mauritius in May 2008 was to see his mother because she was sick and required surgery. The applicant stated that his mother and father are living where he did in [District 2] and he has one [sibling] who is married and living in a village nearby to his. He is in contact with his family. He also has an aunt and uncle living in the north of Mauritius.
28. The Tribunal asked the applicant why he fears returning to Mauritius. The applicant stated that he fears the groups because it is not safe to walk in the street as the people may attack or something. The Tribunal asked the applicant which groups. He stated political; small groups who support politics. The Tribunal asked the applicant if it is these groups he fears will harm him. He stated he is from a small village and every day he has to walk the same streets so he fears maybe things can happen. The Tribunal asked the applicant why they would want to harm him. He stated because his father supported one of the political groups before. There are always fights between the members of different groups; even he fears that there might be some reason, a political thing, and he does not like this type of thing.

29. The Tribunal asked the applicant if he was a member of any political party or group in Mauritius. The applicant stated no. When asked if his father was a member of a political party, the applicant stated that he supported the Prime Minister's party. The Tribunal asked the applicant the name of the party. He stated it is PTR. When asked what this stood for, he stated Movement of the Social Workers. The applicant stated that only his father was a member of this party. His father has been a member for a long time but he did not know when he became a member. The Tribunal asked the applicant if his father actively supported this party. He stated yes; before elections his father would organise the campaigns for the groups. His father would organise for leaflets to be put in the streets and have posters put up. His father was responsible for these activities in their village. The Tribunal asked the applicant if he did anything to support the party his father was a member of. The applicant stated no; nor did his mother and sister. The Tribunal asked the applicant if his father was politically active in any other way, other than campaigning for this party during elections. The applicant stated that his father only supported the party during elections by campaigning. He was not sure if his father was politically active outside elections because there were always meetings. The Tribunal asked the applicant if he knew what sort of meetings his father attended. He stated that there was village council, the district and the whole of Mauritius. The Tribunal asked the applicant if his father participated in all these different elections or just at the village level. He stated all of them including the general election. The applicant confirmed apart from campaigning during the elections his father did not do anything else to support the party.
30. The Tribunal asked the applicant if his father ever experienced any problems because of his activities in support of this party. The applicant stated sometimes there would be fights between the different groups; that is why he fears returning there. The Tribunal asked the applicant how many times his father was caught up in this fighting. He stated it was not personally his father who was fighting but the other groups who fought. The Tribunal asked the applicant if his father was every involved in any of these fights. He stated that he thought maybe once. The Tribunal asked the applicant if he knew how long, how many years, his father had been politically active. He stated that it was for a long time. He confirmed his father was active for many years and during all that time his father was only caught up in the fighting once, he believed during the previous general election. The applicant stated that at the time there was fighting and his father tried to calm the people down. His father was hurt but not majorly. When asked who the fighting was between, he stated that it was between the MMM and the other group. The applicant reiterated that his father was physically harmed but nothing major. The Tribunal asked the applicant if his father experienced any other problems apart from being involved in that one particular incident. He stated no.
31. The Tribunal asked the applicant if he ever experienced any problems because of his father's political activities before he came to Australia. The applicant stated that he comes from a small village so people know each other; everyone knows him and he could see the people who looked at him and would say that he is from this particular political group; he did not like this thing. The Tribunal asked the applicant what they would say to him. He stated for example, they would say that he was from this particular political group because his father supported the group. He stated that this might make people angry with him. The Tribunal asked the applicant how often this happened. He stated when he met these kind of groups. The Tribunal queried whether it was often or occasionally. He stated that they walk the street because it is small village and in Mauritius everyone is in the street. He confirmed he knew the people who talked about him. He stated that they did not do anything else.

32. The Tribunal asked the applicant if anything else happened to him apart from people recognising him as his father's son and assuming he might support the same political party. The applicant stated no. The Tribunal asked the applicant, since coming to Australia in November 2006, has his family experienced any problems because of his father's political activities. He stated no.
33. The Tribunal put to the applicant, given that his family have not experienced any problems in Mauritius because of his father's association with this particular political party, and the fact he has never experienced any problems himself in the past, why does he believe that if he returns to Mauritius now he will not be safe, particularly given that he was never a supporter of that party or any other political party. The applicant stated because he does not know the mind of the people; they might say he is the son of a member of that group and there has always been a hatred between these groups so he has a fear to go there and walk in the street or even go and play soccer.
34. The Tribunal noted that he claimed in his protection visa application that he is afraid of returning to Mauritius because of the internal conflict amongst the different political groups there and asked the applicant about this conflict. The applicant stated that there is always fighting; people look at others questioning why they support a particular group and talk in a rude way demanding support of their party – he does not want to mix in that. The Tribunal asked the applicant who the conflict is between. He stated the major two groups; the MMM and PTR. The Tribunal noted that in his protection visa application he did not mention the PTR but referred to the MLP. He stated that two groups made a coalition. The Prime Minister was from the PTR and joined the MLP. He confirmed his father was a supporter of the PTR.
35. The Tribunal put to the applicant that the country information does not refer to any conflict between the MMM and MLP or fighting, to the extent which he has submitted in his protection visa application or during the hearing. The Tribunal noted that he has indicated in his protection visa application that this internal strife is never in the media and asked the applicant why. The applicant stated this is because the Prime Minister is the leader and if someone goes against him, he did not think the news would say anything about him. He reiterated these groups fought a lot.
36. The Tribunal noted that the 2011 US Department of State Country Report for Mauritius provides that individuals could criticise the government publicly or privately without reprisal and that the independent media were active and expressed a wide variety of views. The Tribunal put to the applicant that in these circumstances it was difficult to accept the media would not report on any internal strife or fighting between opposing political parties. Given that there is no information regarding this strife and the country information regarding the freedom of speech and the freedom of the media, this raises some doubt that there are these problems in Mauritius, as he claimed. The applicant stated that he just does not like getting involved in these things.
37. The Tribunal put to the applicant that his past experiences in Mauritius, his family's ability to live in Mauritius without any problems or difficulties because of his father's political activities and also the country information which does not refer to any political strife in the country, raises significant doubts in relation to his fear that he will be targeted on his return to Mauritius for persecution because of his father's political profile or a real risk of significant harm because of his father's political association. The applicant stated that he does

not know if something will happen. He might walk in the street and some group will start a fight; that is the only reason he fears to go there.

38. The Tribunal asked the applicant if he is afraid of returning to Mauritius because of his father's political activities or profile and believes he will be seriously harmed for this reason, why did he return there in 2008. The applicant stated that his mother was very sick and had to have surgery; that is why he went to Mauritius. The Tribunal put to the applicant the fact he returned there suggests he does not have a strong subjective fear; if he really did fear serious harm or significant harm, the fact he returned to Mauritius is inconsistent with this alleged fear. The applicant stated that is correct; the first week for the surgery he was there and then for the second week he went to [Country 3] where his uncle was living and working and then just to say goodbye he went back to Mauritius for one week.
39. The Tribunal asked the applicant why he waited until December 2011 to apply for protection. The applicant stated, the first thing, he did not know what to do. He was a bit stressed and confused and reiterated that he did not know what to do. The applicant stated that when he was working he was told by his employer that they would sponsor him to get a working visa but his application was rejected because the owner of the restaurant had no power to support him. He did this two times and both times he was rejected. The Tribunal explained the reason it raised this is the fact that he delayed in applying for protection raises concerns about the genuineness of his claims; if he really did fear returning to Mauritius because he faces persecution it would be expected that he would seek protection a lot sooner. The applicant stated that he did not know what to do. He did not have any clue until some person told him what to do.
40. The Tribunal asked the applicant if there are any other reasons he fears returning to Mauritius other than what he has already discussed, the fighting between political groups and that fact he may be caught up in this because of his father's political activities. The applicant stated that he does not think he can live peacefully there. He will always have the fear that something will happen. The Tribunal asked the applicant what he fears will happen. He stated he may fight or people who hate him will create something, a scene or a fight or stop him with rude language. The Tribunal asked the applicant if there is anything else he would like to say in relation to why he believes he requires protection from Australia, not only in terms of the Convention but also in relation to complementary protection, as the Tribunal explained in the beginning of the hearing. The applicant stated it is not the same here; people are more friendly and everyone helps each other. The applicant questioned the possibility of him some way finishing his studies so he will then be able to receive his certificate and get a good job. The Tribunal explained to the applicant it's role is limited to reviewing the decision made by the delegate in relation to his protection visa application and making a decision in respect to whether he meets the criteria for this particular visa and is unable to assist with any other options which may be available to enable him to complete his studies.

## **FINDINGS AND REASONS**

41. The applicant travelled to Australia on a valid Mauritian passport and states that he is a national of Mauritius. Therefore, for the purposes of the Convention the Tribunal has assessed his claims against Mauritius as his country of nationality.
42. The Tribunal accepts that the applicant's father may have been a member of the Mauritius Labour Party (MLP) or PTr. The Tribunal notes the applicant could not provide any evidence as to when his father became a member of the MLP or how long he has been a



member, other than it being a long time. The Tribunal does not accept the applicant's claim in his protection visa application that his family belongs to the MLP given his oral evidence in the hearing was that only his father was a member of this party and actively supported it. He claimed in the hearing that neither he, his mother or his sister were members of the party or politically active.

43. The Tribunal accepts that the applicant's father actively supported the MLP during elections by campaigning for them within his village. The Tribunal accepts the applicant's father organised for leaflets to be put in the streets and posters put up. The Tribunal notes the applicant's evidence in the hearing that his father only actively supported the MLP during elections by campaigning for them and no other way. The applicant was unclear as to whether his father engaged in any political activities in support of the MLP outside of election periods. Given the applicant's uncertainty in respect to any activities his father may have engaged in apart from campaigning for the MLP during elections, the Tribunal finds that the applicant's father only actively supported the MLP during elections.
44. Although the Tribunal accepts the applicant's father was a member of the MLP and an active supporter of the party during election campaigns, the Tribunal does not accept that there is a real chance the applicant faces persecution if he returns to Mauritius, now or in the reasonably foreseeable future, for reasons of any imputed political opinion based on his father's political opinion or as a member of his father's family. The Tribunal notes the applicant's evidence in the hearing that despite there being fights between opposing political parties, his father was only caught up in such an altercation once in the many years he was politically active. Even during that one occasion, the applicant claimed his father intervened to stop the fighting and was not hurt in a "major" way. Apart from this single incident, the applicant's father did not experience any problems or difficulties because of his political opinion over his long history of active support for the MLP.
45. More significantly, the Tribunal places considerable weight on the fact the applicant claimed in the hearing that he did not experience any problems because of his father's opinion and activities prior to his departure from Mauritius, apart from people in his village looking at him and saying he is from a particular political group, which he did not like. The Tribunal does not accept that the applicant was looked at and assumed to be a member of the MLP and talked about by people in his village. The Tribunal found the applicant's evidence in respect of this alleged treatment to be vague and lacking in detail. He was unable to say when this happened or how often this sort of thing happened apart from when he met these groups. Also, when asked what these people would say, he stated that they would say he is from this particular group. The Tribunal finds it implausible that in a small village where people know each other, as the applicant claimed, that people would believe the applicant was a member of any political party or group given the applicant claimed he was never politically active or supported any group. In any event, even if the Tribunal accepted the applicant's claim that people who he knew talked about him, as he claimed in the hearing, the Tribunal does not accept that such gossip constitutes persecution within the meaning of s.91R(1) of the Act. The Tribunal notes the applicant's evidence that they did not do anything else to him. Nor did he claim that either his father or family members experienced any problems after his departure from Mauritius in November 2006. In light of all the above, the Tribunal finds the applicant's claim that he will be caught up in fighting between opposing political parties to be implausible.
46. The Tribunal has taken into consideration the fact the applicant returned to Mauritius in May 2008. Although the Tribunal accepts the applicant's mother may have been sick and

undergoing surgery, the Tribunal does not accept that if the applicant feared he would be targeted for persecution, he would return even if his mother was unwell. The Tribunal notes the applicant's evidence in the hearing that he stayed in Mauritius for one week for the surgery, then one week in [Country 3] with his uncle which he claimed at the beginning of the hearing was for a holiday, and then a further week in Mauritius to say goodbye. The Tribunal does not accept that if the applicant had a subjective fear of persecution he would have returned to Mauritius at all, let alone gone back there for a week after he had already been there during his mother's operation and spent a week holidaying in [Country 3].

47. The Tribunal also places weight on the applicant's delay in applying for protection. The Tribunal notes the applicant did not apply for protection until December 2011. The Tribunal does not accept the applicant's explanation for this delay, that he did not know what to do any earlier. The Tribunal notes the applicant's evidence in the hearing that he applied twice for two other visas, which were refused, therefore the Tribunal finds the applicant was familiar with the Department of Immigration and would have some idea he could approach them regarding the options available to him to stay in the country. The Tribunal refers to the decision in *Selvadurai v MIEA & Anor* (1994) 34 ALD 346 in which Justice Heerey found that a delay in lodging a refugee application was a legitimate factual argument and an obvious one to take into account in assessing the genuineness, or at least the depth, of the applicant's alleged fear of persecution. Given the applicant's delay in applying for protection until December 2011, the Tribunal does not accept the applicant's fear of persecution is genuine.
48. The Tribunal does not accept the applicant's general claims regarding internal conflict amongst different political groups in Mauritius. The Tribunal found the applicant's evidence regarding this alleged internal strife to be vague, simplistic and lacking in detail. The Tribunal notes the applicant's claim in his protection visa application that he was not actually sure of what these internal problem are. The Tribunal does not accept that if there is in fact some conflict between opposing political parties in Mauritius or that there was any internal strife that the Mauritian or international media would not report such important matters, as the applicant claimed in his protection visa application. As the Tribunal put to the applicant in the hearing, the 2011 US State Department Report on Mauritius provides that individuals could criticise the government publicly or privately without reprisal and the independent media are active and expressed a wide variety of views. In these circumstances, the Tribunal does not accept that the media would not report on any internal strife or fighting between opposing political parties, including the ruling MLP.
49. Given the Tribunal's findings above, it does not accept that the applicant has a subjective fear of persecution if he returns to Mauritius. The Tribunal does not accept that the applicant will be harmed by groups who support and fight for some political groups because his father supports the MLP. The Tribunal accepts the applicant may prefer to stay in Australia because he believes it is safe and peaceful here and he is happy. However, the Tribunal does not accept on the evidence before it that the applicant's safety is at risk if he returns to Mauritius or that he faces a real chance of persecution for a Convention reason, including an imputed political opinion, membership of a particular social group comprising his family or any other reason, now or in the reasonably foreseeable future.

### *Complementary protection obligations*

50. On the basis of the applicant's claim to be a national of Mauritius and his Mauritian passport, the Tribunal finds that Mauritius is the applicant's receiving country for the purposes of s.36(2)(aa).
51. As the Tribunal does not accept that the applicant is a refugee as defined in the Refugees Convention, the Tribunal has considered the alternative criteria in s.36(2)(aa), whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Mauritius, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Act.
52. Having regard to the definition of significant harm in s.36(2A) of the Act as set out under the heading 'relevant law' above, and the findings of the Tribunal above, the Tribunal does not accept that what the applicant might experience upon return to his home in Mauritius will involve a real risk of being arbitrarily deprived of his life; having the death penalty carried out on him; or being subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. As discussed above, the applicant is not a member or supporter of any political party. Although the Tribunal accepts that his father was a member of the MLP and engaged in activities to support this party during elections, the Tribunal has found that neither the applicant's father or the applicant has experienced any problems over the many years his father supported the MLP because of his father's political opinion. Given the applicant has never been involved in politics and expressed his dislike of politics in the hearing and the fact neither the applicant or his father have been targeted in the past because of his father's political opinion, the Tribunal does not accept that there is a real risk of the applicant being arbitrarily deprived of his lived, subjected to the death penalty, tortured or subjected to cruel or inhuman or degrading treatment or punishment. The Tribunal therefore does not accept that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Mauritius that there is a real risk he will suffer significant harm from these groups in his village. The Tribunal is satisfied that the applicant does not meet the alternative provisions in s.36(2)(aa).

### **CONCLUSIONS**

53. 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).
54. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).
55. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

## **DECISION**

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