

**0800435 [2008] RRTA 167 (6 May 2008)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0800435  
**DIAC REFERENCE(S):** CLF2007/155436

**RRT CASE NUMBER:** 0800437  
**DIAC REFERENCE(S):** CLF2007/155511

**COUNTRY OF REFERENCE:** Peru  
**TRIBUNAL MEMBER:** Luke Hardy  
**DATE DECISIONS SIGNED:** 6 May 2008  
**PLACE OF DECISION:** Sydney

**DECISIONS:** The Tribunal affirms the decisions not to grant the respective Applicants Protection (Class XA) visas.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. These are separate applications for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the two Applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The two Applicants are related They are citizens of Peru. They are the children of protection visa applicants whose protection visa applications were decided by the Tribunal , differently constituted. The Tribunal in the parents' case found that they were not entitled to protection visas and affirmed the delegate's decision in their case. The Applicants' parents did not seek judicial review.
3. Both Applicants arrived in Australia and applied separately to the Department of Immigration and Citizenship for Protection (Class XA) visas, the delegate decided in each case to refuse to grant the visas for which the respective Applicants applied. The delegate notified each Applicant of the respective decisions, and of their review rights, in separate letters
4. The delegate refused each visa application on the basis that the respective Applicants were not persons to whom Australia had protection obligations under the Refugees Convention.
5. The Applicants applied separately to the Tribunal for review of the delegate's respective decisions.
6. The Tribunal finds that the delegate's decisions are RRT-reviewable decisions under s.411(1)(c) of the Act. The Tribunal finds that the respective Applicants have made valid applications for review under s.412 of the Act.
7. Reviewing the papers after constitution, the presently-constituted Tribunal perceived common claims, based on a shared link between each Applicant and their father. The Tribunal considered it appropriate to conduct hearings concurrently, so that the Applicants could have the opportunity of hearing each other's evidence and adding to it, and also that they might each hear relevant issues, common to both cases, being raised by the Tribunal in the same way.
8. 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 Spanish and English languages.
9. The Applicants are represented in relation to their review applications Their adviser attended the joint hearing and submitted material to the Tribunal before and after the hearing

### **RELEVANT LAW**

10. 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.

11. 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).
12. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of ‘refugee’**

13. 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.
14. 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.
15. 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.
16. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
17. 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.
18. 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.

19. 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.
20. 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.
21. 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.
22. 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**

23. The Tribunal has before it the Department’s files relating respectively to the Applicants. The Tribunal also has had regard to the material referred to in the delegate’s decisions, and other material available to it from a range of sources.
24. As discussed below, the Tribunal duly disclosed to the Applicants relevant facts in the case of their parents and relevant findings of the Tribunal in that case.
25. The Applicants claim fear of persecution in Peru owing to their father’s perceived status as a witness to criminal excesses of the regime of former president Alberto Fujimori.
26. In more general terms, with specific reference to the Convention, the Applicants claim fear of persecution in Peru for reasons of imputed “political opinion”, as persons close to their father, and for reasons of “membership of a particular social group” defined as “members of the family of which their father is the head”.
27. By way of background, the Applicants’ father was an official of an organisation in Peru until the early 1990’s. Amongst other claims, he said he arrived at the home of a colleague to find him shot dead and a group of armed and masked paramilitaries fleeing the scene. At the time he made no official statement about the incident, but later received pressure and threats from various persons aimed at intimidating him into silence, particularly after Fujimori lost power and he and his cronies faced a Truth and Justice Commission. He claimed it was rumoured he might give evidence against Fujimori and his cronies, and that he might even give evidence

about the assassination. He claimed that his child was attacked when they were in his car. He claimed this and other acts of intimidation were reported to the police. He provided evidence of such reports to the other Tribunal, which ultimately found that his claimed fear of persecution was not Convention-related because:

The Applicant is being threatened not for reasons of his membership of any 'particular social group' for the purposes of the Convention such as 'informers' but because people fear the consequences if he gives particular evidence to the Truth Commission. That is, the reasons for the feared persecution are purely individual. There is no suggestion that any of the other four Convention reasons is relevant. I note, in particular, that there is no suggestion that the people making the threats against the Applicant would have perceived him as manifesting a political opinion if, as rumoured, he had given evidence to the Truth Commission. I do not accept, therefore, that one or more of the five Convention reasons is the essential and significant reason for the persecution which the Applicant fears ... as is required by paragraph 91R(1)(a) of the Act.

28. At the hearing, the Applicants said they were aware that their parents' protection visa application had been unsuccessful. The Applicants' adviser stated on their behalf that their parents were currently being processed for residence in Australia as "aged parents" following submissions to the Minister on "humanitarian grounds" that included their concerns about their father being intimidated.
29. The Applicants both claimed to the Tribunal that they live in fear of persecution similar to that which their father faced in Peru because he is a potential witness against the killers of his colleague. One of the Applicants claimed that they were intimidated and that the persons who threatened them on that occasion said to them, "Tell [the father] to keep quiet."
30. The Tribunal put to the Applicants that, because their father was evidently seeking to reside in Australia, one might form the view that he has no intention of returning to Peru or of giving testimony in Peru against either Fujimori or his apparatus. The Tribunal put to the Applicants that since their father was in effect complying with the persons who had threatened him, one might form the view that those persons would not perpetrate the harm they threatened. The Tribunal put to the Applicants that the potential impact of this on their own protection visa applications was that the chance of them facing harm might be regarded as remote.
31. Responding to this, one of the Applicants said it was true that their father has no intention of giving testimony against the Fujimori regime or its apparatus. The Applicant said if he does not return to Peru he will not give testimony there. The Applicant said that they nevertheless received an anonymous telephone call before the Applicants came to Australia, the caller telling the Applicant that if their father opened his mouth (*i.e.*, if he ever tried to give testimony against Fujimori and/or the paramilitary) the Applicants would suffer.
32. The Tribunal put to the Applicants that if their father had no intention of giving testimony against the Fujimori regime, one might form the view that he is helping to protect them from the harm they claim to fear. The first applicant did not comment on this, but the other Applicant said they were nevertheless in a "mortifying situation" because they know the criminals involved in the matter. The other Applicant said they have no-one to protect them, and only their father.
33. The Tribunal notes that s.91S of the Act states:

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of being persecuted for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol; and
- (b) disregard any fear of persecution, or any persecution, that:
  - (i) the first person has ever experienced; or
  - (ii) any other member or former member (whether alive or dead) of the family has ever experienced;where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

34. The potential implications of applying s.91S in the present cases appears, essentially, to be that the Tribunal needs to be satisfied that the persecution feared by the father of the two Applicants is persecution for one or more of the five reasons identified in Article 1A(2) of the Convention. Essentially, the process of considering the Applicants' claim to protection on grounds of "membership of a particular social group", being grounds of their membership of the father's family, must involve determining whether or not the father's own fear of persecution is "for reasons of race, religion, nationality membership of a particular social group or political opinion".
35. The Tribunal put to the Applicants at the hearing that although the Tribunal in their father's case accepted as fact the events and circumstances described in his protection visa review application, the Tribunal had come to conclusion that his fear of persecution was a fear of persecution that was unrelated to the Convention. The Tribunal undertook to explain this in writing and invite comments in writing.

#### **INVITATION TO COMMENT ON OR RESPOND TO INFORMATION IN WRITING**

I am writing about your application for review of a decision on a Protection (Class XA) visa.

You are invited to comment on or respond to information that the Tribunal considers would, subject to any comments or response you make, be the reason, or a part of the reason, for affirming the decision that is under review.

The particulars of the information are:

- Your father and mother previously applied for protection visas. Their claims were considered and determined by the RRT on [date] (RRT case [number]). The Tribunal found that they do not have well founded fear of Convention-related persecution. In particular, the Tribunal found that the harm your father claimed to fear was individual harm, directed at him for reasons of his stated (or perceived) intention to give evidence against some individual criminals. The Tribunal acknowledged a political background to your father's claims but found that his fear was not Convention-related.
- At the [date] hearing, the Tribunal was informed that your father is in the process of being granted residence in Australia on humanitarian grounds, having approached the Minister with his protection visa application claims and with claims regarding [visa type].

This information is relevant to the review because you and your [relative] both claimed at the RRT hearing on [date] that your claims are linked significantly to the claims of your father. You both claimed that as members of your father's family you face harm that is related to the harm he fears, and that you fear it for a similar reason. In view of the Tribunal having found that your father does not face a real chance of Convention-related persecution, the presently-constituted Tribunal considering the applications of you and your [relative] may come to the same view on your applications: that you do not meet the Convention definition of refugees; and therefore find that neither of you are entitled to protection visas.

The information about your father and mother being granted residence on humanitarian grounds is also relevant to the review because the granting of residence under s.417 of the Act is not any form of recognition by the Minister that your father and mother are refugees within the meaning of Article 1A(2) of

the Refugees Convention. This means that, to the extent that your claims rely on the claims of your father, your claims before the presently-constituted Tribunal may not be regarded as Convention-related claims. Therefore the Tribunal may find that you do not meet the Convention definition of refugees and, accordingly, that neither of you are entitled to protection visas.

- You and your [relative] told the Tribunal on [date] that on a few occasions in recent years some threats were made by persons hostile to your father: essentially the threats were warnings to your father not to assist any authorities with information that might lead to their, or their cronies', conviction in criminal matters such as murder. The Tribunal acknowledges that the persons making these threats indicated that they might harm you and/or your [relative] if your father acted as a witness against them and/or their cronies.

This information is relevant to the review because, again, it indicates that your father's (unsuccessful) claims are at the heart of your claims and, also, your [relative]'s claims. In addition, this information indicates that the harm threatened may not be Convention-related. On these facts, subject to additional information that you might provide, the Tribunal may find, as was found in relation to your father, that the harm you both fear is not Convention-related. Therefore, the Tribunal may find that you do not meet the Convention definition of refugees and, accordingly, that neither of you are entitled to protection visas.

- The information about your father being in the process of being granted residence in Australia indicates that he may have no intention of ever returning to Peru and no intention (for whatever reason) of ever giving evidence that could disaffect or incriminate the persons who have threatened him and you both.

This information is relevant to the review because the harm threatened in both your cases is evidently harm that *might* occur if your father acts as a prosecution witness in Peru in cases that *might* or *might not* proceed. On the information you have both provided, the Tribunal may find it highly speculative that the conditions leading to the threats being carried out may ever arise. The Tribunal may find that there is not a real chance that either of you will be harmed in Peru as claimed such that your fear of harm is not well founded. This may lead the Tribunal to find that neither of you meet the Convention definition of refugees and, accordingly, that neither of you are entitled to protection visas.

**You are invited to give comments or respond to the above information in writing.**

Your comments or response should be received at the Tribunal by [date] If the comments or response is in a language other than English they must be accompanied by an English translation from an accredited translator.

If you cannot provide your written comments or response by [date], you may ask the Tribunal in writing for an extension of time in which to provide the comments or response. If you make such a request, it must be received by the Tribunal before [date] and the request must state the reason why the extension of time is required. The Tribunal will carefully consider any request for an extension of time and will advise whether or not the extension has been granted.

**If the Tribunal does not receive your comments or response within the period allowed or as extended, it may make a decision on the review without taking any further action to obtain your views on the information.**

36. The Applicants responded through their adviser with arguments and attachments.
37. The two letters, responding to concerns common to both Applicants, are essentially identical.
38. Both statements confirm that the Applicants claim protection on the basis of their "particular social group" link to their father. Both statements assert that in giving testimony against Fujimori and/or his cronies, their father would be expressing a "political opinion". This view was not accepted by the Tribunal in the other RRT case and the Tribunal's conclusions on this point have not been disturbed in law. The statements do not go into detail as to why their father's fear of persecution, and by extension the fears of the Applicants, should be regarded as fear of persecution "for reasons of ... political opinion", beyond suggesting that the Applicants face persecution in Peru for reasons of their father's past involvement as an "eye

witness” to politically motivated crimes perpetrated by Fujimori and his apparatus and for reasons of the declarations that he “might” give if questioned by the authorities in Peru.

39. The Applicants submitted independent reports regarding the ongoing process of bringing Fujimori to justice. Their references to their father’s “past involvement” as an “eye witness” were not detailed, but the Tribunal accepts that they were referring to reports given to the Peruvian police about instances of intimidation.
40. Both statements argued that the respective Applicants are fearful that the authorities in Peru would be unable to protect them from harm by the persons described.
41. Both statements suggest that the Tribunal should apply the benefit of the doubt. The principle of the “benefit of the doubt” is a fine one, normally applied when the credibility certain facts are in doubt. In the present cases, the adviser seemed to be arguing that the benefit of the doubt should be applied to the question of whether or not the chance of persecution of the Applicants was sufficient to be regarded as “real” rather than “remote”. The Tribunal considered this. The adviser also seemed to be arguing that the Tribunal should, if in doubt as to Convention nexus in the present matters, be generous in considering that the harm feared relates sufficiently closely to factors referred to in the Convention definition as to be reasonably regarded as “Convention-related”.
42. The submissions argued that the Tribunal, for all legal intents and purposes, “technically accepted” the Applicants’ evidence at the hearing because it did not positively disprove any of their claims. The adviser argued that on this basis the Tribunal should not find “lack of credibility”. Here the adviser seemed to be entertaining a discussion of the “rules of evidence”. The Tribunal is not bound by the rules of evidence (s.420(2)(a) and (b) of the Act refers) That said, the Tribunal did explore some issues going to credibility at the hearing, but those issues are not discussed here as they are ultimately not relevant.
43. Addressing more specifically the points raised by the Tribunal in its letters, the Applicants said through their adviser that their father did not seek judicial review of the RRT decision due to factors of health and finances. They submitted copies of related medical certificates, saying that just because the Tribunal’s decision was not challenged did not mean it was right.
44. The submissions went on to cite other RRT decisions in which credibility was assessed and in which various principles of assessing credibility were discussed The submissions also revisit the question of Convention nexus, suggesting in each case, although in language that is not always clear and coherent, that the Tribunal regard the Applicants as persons caught up in the ongoing conflict between opposing political forces of long-standing in Peru:

The Tribunal member under special circumstances (‘such as the Applicant’s experience, [child]of an “eye witness’) should make an analysis of the ‘Peruvian political spectrum’ with neutrality, empathy and ‘open mind’ favouring the Applicant. Therefore, it is submitted that under the principle of ‘accumulation of circumstances’ the Applicant is an ‘innocent individual amongst others family members of ‘Eye Witnesses social group’ who are victims of the Peruvian political spectrum’ whom against their ‘free will’ are involved with ‘political motivated activities’ amongst the Peruvian society.
45. Generally, the Applicants’ submissions portray the Tribunal’s task of assessing Convention nexus in these cases as a task of assessing credibility, that should be undertaken in accordance with the best principles of assessing credibility. The submissions conclude with citations of the RRT’s paper “Guidance on the Assessment of Credibility”.



46. Attached to each submission is a copy of a statutory declaration from the Applicants' father who claims that because of the perceived connection of the organisation he was involved in with the Maoist Shining Path movement, the Fujimori government persecuted people of his social group. He claims he is a "potential witness [to] those political criminal activities committed by followers of the Fujimori administration since 1980".
47. Neither the applicants nor their father provided evidence of the latter having been persecuted (or threatened with persecution) for reasons other than in the context of his potential to give evidence of criminal activities such as the murder of the colleague whose house he visited. The father asserts in his statutory declaration that if he is called to give evidence to a Truth Commission he and his wife could be killed.
48. The father also states that he received threats of serious harm in the event of his not resigning from his job. Whereas this latter claim suggests that the father was being threatened in connection with an arguably political stance, the evidence of the Applicants indicates, in effect, that he has left forever the occupation he formerly held because he has come to Australia and is in the process of being granted resident status.

### **FINDINGS AND REASONS**

49. The Tribunal accepts, on the evidence of their respective passports, that both Applicants are nationals of Peru.
50. The Tribunal also accepts that the Applicants are the children of the applicant in another RRT case.
51. Accordingly, the Tribunal accepts that the Applicants are member of the "particular social group" reasonably defined as "members of the immediate family of the father".
52. There are two forms of "persecution" discussed in the Applicants' claims.
53. The Applicants claim they may be killed if their father gives testimony against Fujimori. This form of persecution is evidently dependent on the father carrying out a particular set of actions. The chance of the harm occurring therefore depends on whether or not he ever carries out such actions, or on whether or not he is suspected of doing so.
54. The other form of persecution includes the threats, sometimes accompanied by acts of physical assault as is alleged in relation to the incident, which could have the effect of keeping the recipients in a state of fear. The relevance of this second form of harm is that it is arguably capable of occurring in spite of the father not taking the action that his enemies want him to refrain from taking.
55. The Tribunal accepts that one of the applicants was assaulted and threatened in connection with a warning to their father not to testify in any way or at any time against the former Fujimori regime.
56. Albeit with some difficulty, given the isolated nature of the claimed event, and noting what one might view as the "convenient" proximity of the threat to the time of travel to Australia, the Tribunal is prepared to give the benefit of the doubt and accept that the applicant also received an anonymous telephone call from a person with similar interest in discouraging the father from testifying.

57. The Tribunal regards these impositions upon the applicant as warnings of what could happen to the applicants in the event of their father giving testimony against Fujimori and his administration.
58. None of the evidence before the Tribunal in the present two cases suggests that the father has any intention of giving any such testimony in or outside of Peru. The Tribunal heard very clearly at the hearing that he has no intention of assisting any enquiries into the activities of the Fujimori regime.
59. Insofar as the Applicants claim fear of persecution for reasons of being members of the family of the father, potential informant against agents of the Fujimori regime, the Tribunal is not satisfied that the father is a potential informant. He is in the process of taking up residence in Australia. If he had any intention of presenting himself to a Truth Commission in Peru, one would reasonably expect there to be evidence of his trying to do so by some means. The Tribunal finds no such evidence and gives weight to one of the Applicant's evidence at the hearing to the effect that he has no intention of doing so. Having considered the evidence before it, the Tribunal is not satisfied that the Applicants face a real chance of the first form of persecution discussed above, *i.e.*, the harm that would occur in the event of the father testifying against the Fujimori regime.
60. As to the second form of harm, which is arguably capable of occurring in spite of the father having no intention of giving testimony against the Fujimori regime, the Tribunal has considered a number of factors. The threats against the Applicants have been few and far between over the last three years. The last threat came after an evidently long gap and involved no actual physical harm. The threat, as an action in itself, has evidently become only verbal, and it has evidently been contextualised by the caller as something entirely contingent on a particular course of action that the Applicants know the father has no intention of pursuing. The Tribunal is not satisfied that the threats continue or would continue to be accompanied by physical harm. The Tribunal bases this view on the fact that the applicant has not recently been directly intimidated, and on the evidence of the Applicants' other relatives not having been pressured to discourage the father from giving testimony against the Fujimori regime. The Tribunal also finds on the evidence before it that the threat, as recently manifested, required one of the Applicants to be accessible at the father's old telephone number. The Tribunal heard at the hearing that the Applicants other relatives had not received any threats because they lived at other addresses. In the circumstances, the Tribunal finds that the threats, having become just verbal threats, do not involve sufficient risk of serious harm to amount to persecution.
61. The Tribunal has considered the Applicants' fresh arguments to the effect that the harm their father fears is a Convention-related fear due to the "political opinion" imputed to him as a result of his past and potential actions in reporting crimes committed by Fujimori agents. In all these instances his actions or potential actions have related or potentially relate to giving evidence about individual criminal activities. Even after considering the recent arguments such as the one relating to the "Peruvian political spectrum", the Tribunal does not accept that the harm feared by members of the "particular social group" described in these applications is Convention-related, because the reasons for the feared persecution are purely individual, arising from individuals' efforts to avoid prosecution for crimes committed by them.
62. The Tribunal notes that in his own case, the father claimed that he faced persecution if he did not resign from his job. The Tribunal can see that this comes much closer to being a claim on the father's part about facing persecution at some time in the past for reasons of political

opinion. However, the Tribunal notes that the Applicants' father has long since resigned from the above-mentioned position in any event and evidently has no intention of ever re-entering the social and political scene in Peru. The Tribunal is not satisfied on the evidence before it that the Applicants face a real chance of persecution in Peru in relation to this particular claim that the father once made about himself.

63. The Tribunal is not satisfied that the Applicants face a real chance of Convention-related persecution in Peru. Their claimed fear of such persecution is not well founded. They are not refugees.

## CONCLUSIONS

64. Having considered the evidence as a whole, the Tribunal is not satisfied that the respective Applicants are persons to whom Australia has protection obligations under the Refugees Convention. Therefore the Applicants do not satisfy the criterion set out in s.36(2)(a) for protection visas.

## DECISION

65. The Tribunal affirms the decision not to grant the respective Applicants Protection (Class XA) visas.

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 *Migration Act 1958*

Sealing Officer's ID: PRMHSE

for District Registrar