

1002696 [2010] RRTA 734 (12 August 2010)

DECISION RECORD

RRT CASE NUMBER: 1002696

DIAC REFERENCE(S): CLF2009/166306

COUNTRY OF REFERENCE: Fiji

TRIBUNAL MEMBER: Ann O'Toole

DATE: 12 August 2010

PLACE OF DECISION: Sydney

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 Fiji, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
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 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 and *Applicant S v MIMA* (2004) 217 CLR 387.
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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
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.
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 appeared by video link before the Tribunal to give evidence and present arguments.
21. The applicant claims to be a citizen of Fiji, is married and his wife and children remain in Fiji. Movement records accessed by the Tribunal indicate that he made several entries to Australia during the years prior to his application for a Protection visa. He claims that his religion is Seventh Day Adventist. In his Protection visa application he sets out his qualifications and his work history. He claims that for a few years prior to his application he was unemployed.
22. In his Protection visa application, in answer to the question why he left his country, he said he left for a better future in Australia. On separate sheets provided with the Protection visa application and headed Appendix 1 through to Appendix 6, (folios 69-75), he stated as follows:
 - "I left my country to seek protection here in Australia Frustration and fear of intimidation, victimisation by the military because of my political beliefs have motivated me to make this move to Australia. I left the country to seek a better life that I have observed as enjoyed by the citizens by this wonderful nation and wish to be part of it too. I have been to this country on a few occasions and wish to become a citizen here because of the many issues that I view as threatening to myself and to my family back at home. I now have an Australian qualification [name of qualification] and I would like to pledge my allegiance to the Australian way of life and its laws and support it in every which way that I possibly can.

I found it very hard to get employment that deserves my qualification in my country and I do not agree with the current government as it is an unlawful one that governs through the pretension of "cleaning up" while my family and I, the innocent people of the country continue to pay the price of their unlawful acts by trying to survive the high cost of living, with restrictions and exercising our freedom of choice and speech through the correct forum. As a citizen of my country, there is no forum to raise my concerns to the authorities, and from time to time it has triggered my intention to seek Australia's protection. (Appendix 1)
 - I fear that I will be imprisoned, intimidated by the military and live a continued life of frustration and fear to the restrictions of my basic human rights. The situation in Fiji is discouraging to me to live in Fiji as I am forced to live daily with human rights repression in the form of severe restrictions and freedom of expression and media rights and the inability to openly comment on government policies that are devastating the lives of our people. In my

view, the PED (Public Emergency Decree) is currently used to weaken any form of dissent. It is being used as an explanation of rationale behind the stopping of any gathering by citizens of the country to voice our concerns about the worsening situation in Fiji. This has severely affected my choice of country as home and I would never want my children to be brought up in an environment that portrays the “illegal” as “legal” and the “wrong:” as “right” or it will provide a negative platform in my children’s mentality. That will **NOT** respect the rule of law and its meaning to our basic well being and its impact on the next generation.

I have this fear that if I return to my country, I will always be subjected to torture, frustration and intimidation even if I were to open my mouth and voice my concerns to anybody. I have been observing the deteriorating situation in Fiji and I wish to seek protection early before it’s too late for me. (Appendix 2)

- The current government will harm and continue to mistreat me if I do go back to Fiji. Their policies of a better nation for the people is far from being a reality and comfort to me. The current high cost of things in Fiji is already painful on a daily basis and I envision that as the days, months and years do pass by, it is going to be much worse and unbearable for us and will cause more physical, psychological and emotional pain for me and my family.

News and rumours of people randomly picked up and held in detention by the military for unknown reasons is very alarming. Although information is presently censored to the public, word goes around very fast in this small community and has instilled fear every time I see soldiers in uniforms and military vehicles on the streets.

During the period that my [child] spent at the hospital, I made many enquiries and pushed to help the officials about the results and quick actions to be taken. I was just overlooked and felt that the system of the government has been infested with other agendas. Pushing for effectiveness from an ordinary citizen like myself had no effect on them as their cause is more important than the life of one human being. The trauma of watching my [child] die in front of all of us (the family members) is very unbearable and I cannot bear to go back and live under this system of governance any more as we will still not have fully recovered from it.

I couldn’t get a job because my academic qualifications were not recognised by the government as it has its own recognised educational institution where it recruits its workers from. Other graduates were always first priority in the selection for employment for many years and we have always been second class to them in the selection process of the government. Even if I were to be employed by them, my salary would be far below the salary of those graduates (although my qualifications are higher) from their own recognised institutions which would really make it hard for me to cope with living and its rising costs in my own country. The promise of better things to come is far from reality for me who has faced discrimination mainly because of my choice of educational institution. (Appendix 3)

- The reason why I know that the government of Fiji will harm me are:-
 1. I have always been against the current government and its unlawful leaders who act like they are saving the country from corruption yet I am more poor than before. Although I have been sharing my views openly through personal conversation with people I meet, I am fearful that, as small as the country is, I will soon become a target by the government and the army, and can soon face interrogation and possibly torture like the many other people who have gone through it before. [Mr A] married to a [relative] of mine was taken to the army barracks on [date] and was killed the same day without any clear information and detail. That is a major cause of my fear.

2. I was following a group of activists on a campaign of human rights in [year], and I watched in horror as the army came and forcibly took them and loaded them into the trucks to be taken to the barracks. Some of them were assaulted including the women in the group. I did escape unnoticed and fearful. My mind wondered what can happen to me and my family if we were the targets of this cruel treatments.
3. The emotional pain and suffering with the hard life in Fiji is unbearable to me (and my family) at the moment as I could not wait to get out of the country. Today is the first anniversary of the death of my young [child][name] who passed away in my arms one year ago [date] at 11 months old. [My child] was born very healthy and cute. At 7 months [my child] developed some symptoms and was taken to hospital for medical check up. Blood samples were taken by the hospital, but given the seriousness of this process to diagnose and quick action for the[childs] needs, we had to wait two months to get the results of the test and by that time, it had been too late to save my [child]. (Appendix 4).
- The government authorities would never protect me if I go back for the many reasons that I have mentioned in the previous questions and the experiences that I have gone through of which I am blaming the government for and the current situation that I have been facing back at home with my family. No, they will not protect me because of :-
 - My political views on the current government and its methods.
 - My being a graduate of an unrecognised institution and discrimination of wages that I will face even if I am lucky to be employed.
 - My involvement in the debate with military officials that came to my community to promote the peoples charter – a document pushed by the government to the people to accept. I have been critical with their presentation and have made a stand under the restriction of basic human rights that their presentation and the document highlights. I felt that I may be a target for my community, that the military may look for, given my academic qualifications from that community.
 - This is also a reason why they will not protect me if I return to live, a horrible, terrible and miserable life in my country. (Appendix 5)
- Although there are no current criminal charges pending against me, I only want to let the authorities know that I was charged with assault in [year] of which I denied and pleaded ‘not guilty’ until it was solved in court in [year]. At the closing of this case, I had expected that my name be cleared and the record be set straight and confirmed that the case had been solved in court and that my name be cleared. I had been happy about that rather embarrassing experience. However, upon applying for my visa in [date], I was required to produce police clearance. On doing so, I was informed that there was still a case pending on my name and on the records the police said that I have been charged. I have explained on the phone to the Australian Immigration Dept in Fiji of this matter hence the approval of my current visa. (Appendix 6)
23. The applicant provided a copy of his passport to the Department. He also provided other documents including a copy of his Drivers Licence and a copy of a Student Card.

Departmental interview

24. The interview was conducted in English. The applicant stated that his wife and children are still in Fiji. He stated that his wife is working. He stated that he and his

family feel frustration because of the current situation in Fiji. He said he feels that the country is deteriorating. He stated that he and his wife discussed the situation and decided that it was best for him to leave before something drastic happened.

25. He stated that he was a member of the SDL. He said he attended some of their meetings and gatherings. He said he witnessed some of the things that happened at the hands of the military. He said that the army personnel are not responsible defenders of the law of Fiji. He said they are very violent. He said because he is very fit he was fortunate to escape harm at the hands of the military. However he saw some people being abused and assaulted. He said the country was filled with fear. He said he also showed support for human rights groups in Fiji. He felt that because he was educated he had a duty to do so. He said marches were being led and the military would arrive and stop the meetings. He said Fijian citizens had not been told the truth by the media. He said different things are happening. He said that there is an underground movement controlled by the military that pass on any information about what people are saying. He said persons find it difficult to even trust their neighbours. He stated that he has several children. He said he is very worried about the future.
26. The applicant talked about his difficulties in finding employment because he was not seen as acceptable by the government. He stated that even his salary, if employed by the government, would be lower even if he had the same qualifications as a colleague.
27. The applicant said he was studying in Australia. The applicant talked about the military in Fiji trying to promote the Peoples Charter. He said when they came to his community, they gathered everyone together at night time. He said he is regarded as an educated person in his community and a person who is able to speak publicly. He stated that he asked some questions. He said he felt that the military personnel became offended. He said there was another person present. The applicant said that he expressed the view that the Charter was unfair. He said the other person backed him up. The applicant stated that a few months later he found out that they were asking about him amongst the community. He said that made him feel suspicious. He said for a person like him who speaks out, it is not a safe place to be. He said when he was in Fiji last year, he was approached by people he does not usually have much contact with and they were asking him questions about a meeting which took place with the military. He said he found that to be very worrying. He then decided he should leave because if he stayed something might happen to him. He said some family members are now in Country X. He said he feels it will come round to him one day. When he was asked what his relative had been doing, the applicant said he was a government worker. He said he was at home and the military took him away. He said his relative always spoke his mind and would not have backed down. He believes that is why he was killed.
28. The applicant was asked if he wished to provide any further details. He said he is very worried and that is why he is in Australia. He said he is hoping that if he is out of sight, he is out of mind. He said he is hoping that his family will not be affected. He said he fears for himself and his family. He said he feels at peace in Australia because he feels safe.
29. The Tribunal wrote to the applicant indicating that it had considered the material before it but was unable to make a favourable decision on that information alone. He was invited to appear before the Tribunal.

30. The applicant did not respond to the invitation to the hearing and did not attend the Tribunal. The Tribunal made some enquiries by telephoning the applicant on his mobile phone. He told the Tribunal case officer that he is now living in another state and was unable to attend the hearing. He also stated that he had sent some material to the Tribunal. The case officer told him that the Tribunal had not received any further information from the applicant.
31. Subsequently the Tribunal received a letter and other documentation from the applicant. In his letter he stated that he would not be able to attend the hearing because he had changed his address. He stated that he was attaching some information and because of financial circumstances he had to suddenly change his address. He stated that the distance involved and time away from work had caused him difficulty and that contributed to his decision not to attend the scheduled hearing.
32. He stated that he fears persecution for “emotional” “economic” and “physical” reasons. He stated that the death of his infant child has caused “emotional persecution”. He stated that “prejudice in the distribution of employment opportunities is a persecution” that he faced in Fiji. He stated that although he may be considered for employment now “it will not be for long as the retirement age has been reduced to 55 and considerations are continuing to further deduct it to 50”. He stated that if he returns home he fears for his life because he is not sure “as to the confidentiality of what I have done here now and will be subject to physical persecution if knowledge of what I have done (applying for protection) gets to the military. He provided three photographs of his child and documents relating to the death of his child.

Tribunal hearing

33. The applicant appeared via video link before the Tribunal. He provided his evidence in English. He told the Tribunal that he did not have any further material to provide to the Tribunal.
34. He stated that his wife and children remain in Fiji. His children attend school. His wife works full time. He said that she does not earn enough money to support the family so he sends her a sum of money each fortnight. He said that his only sibling lives in Fiji. He said that his parents are alive and live on their own. They are coping financially because he sends them some money. They are both elderly. He said that his sibling is married. He said that his sibling’s spouse is unemployed but his sibling is managing to support the family.
35. The applicant his religion is Seventh Day Adventist. He stated that he does not fear any harm because of his religion. He told the Tribunal that he had been a member of the SDL and that he supported that party for many years. He said that he attended many meetings and was happy with what the party advocated. He said that big meetings were held in Suva.
36. The applicant has studied for and completed a course in Australia. He recently graduated. He had a professional position in Fiji for several years. He said that he did not work in Fiji since [date]. He has been making trips to Australia from Fiji for several years. I asked why he had not applied for a Protection visa sooner. He said

that he had thought about it but decided to complete his study and graduate before applying for a Protection visa.

37. He said since 2006, he has seen a big change in Fiji. He said that he feels that his rights and the rights of others are not observed or respected. I asked the applicant about [Mr A] and referred to the fact that the applicant had referred to his first name as “[Name 1]” and not “[Name 2]” as reported by the press. The applicant said that family members knew him as Name 1 but his first name was Name 2. The applicant said that Mr A’s wife is the applicant’s father’s relative. They used to see one another at church gatherings. He said that he was always very outspoken and was not reluctant to speak his mind. He also was an elder at their church. I noted Mr A’s age. The applicant said that elders can be any age if the church feels that they fit the profile of an elder. The applicant said that he is related to Mr A’s wife and he used to see her. He said that when Mr A died, his wife was in Australia and the applicant spent time with her. She was told that she must return to Fiji because her husband was in hospital. The applicant said that at that time many Seventh Day Adventists came from Fiji to Australia to attend a church function. Mr A stayed at home because he was busy with work commitments. His wife and children are now living in Country X and the applicant believes she has applied for a Protection visa. He said that he has not spoken to her since the funeral because she wanted to isolate herself. The applicant then described the village Mr A came from.
38. The applicant told the Tribunal that at an approximate date four military officers arrived at his village to talk to the villagers about the People’s Charter. He said that they were dressed as civilians. He said the meeting took place in a public place. He said that a person with a senior position in the area, who is a Fijian lady, was told to spread the word about their arrival amongst the people in the village. He said that about 40 people attended the meeting. He said that one of the four men spoke. The applicant could not remember his name. He told the group that the People’s Charter was excellent and would be enforced. He also criticized the previous government. The applicant told the Tribunal that part of the Charter is acceptable but many parts are intimidating. The applicant said that he asked during the meeting if they realized that saying ‘yes’ to the Charter would mean that their rights were seriously affected. He said that the army officers started to smile and said nothing. The applicant said that he became angry because they would not answer. He said that he remained calm and told them that if they could provide some reasonable explanations, people might accept it. He said that he could not shout because he was fearful that if he did so, it might be dangerous for him. He said that he was firm and just raised his voice a little. He said that he was trying to express his point of view and felt that there would be no opportunity for anyone to voice any concerns about the rights of citizens of Fiji.
39. He said that another man also spoke up. He said that he believes this man is now living in Country X. He said that this man made similar comments about the Charter. He said that he asked them whose ideas and philosophy were used to prepare the Charter. He said he mentioned the names of some philosophers and he gave the clear impression that he was very frustrated with the contents of the Charter. I asked if they answered this man. He said that the officer who had been speaking about the Charter stood up and went outside. He said that the other three remained and tried to answer questions but they were not very successful. He said that they kept repeating the same things over and over again – that the people should support the Charter and what it

stood for. The applicant said that there is no forum for any concerned citizen to raise individual concerns. He said that the meeting lasted about three and a half hours and it finished because it was getting late. He said only two people from the village spoke. The applicant said that he thinks that they were too frightened to say anything.

40. The applicant said that in Fiji, hardly anyone speaks if army personnel are present. He said one must not question them because it will attract adverse attention. The applicant said that he was not quite sure why his relative Mr A had been arrested.
41. I asked the applicant what he thought would happen to him if he returned to Fiji. He said that he could not be part of this government and he would feel very frustrated. He said that he is fearful about his return, especially since he applied for Protection from the Australian government. He said that he will be declared a traitor because of that. I told the applicant that the Tribunal could not find any information which indicated that people returning to Fiji had suffered any adverse attention from the Fijian authorities because they had applied for protection in Australia. The applicant did not comment. I also mentioned to the applicant that his movement records indicated that he had returned to Fiji quite often and had not suffered any harm. He said that he may be targeted now because of what he stands for. He said that in about [date], a friend of his told him that he had met two men, whom he did not know, who were asking about a person and named the applicant. He said that his friend knew they were military personnel. The applicant said that has caused him some concern. I mentioned to the applicant that his movement records indicated that he was in Fiji at that time. He said that was correct. He said he was unemployed and studying at home. I noted that he had also been to Fiji in [later date]. I asked why he had returned if he had been fearful. He said that he did not think it was serious but he was planning to lodge a Protection visa as soon as he finished his studies. I mentioned to the applicant that it would have been easy for the authorities to find him if that was the intention. I asked if he had heard of any other enquiries being made about him. He said that there none that he knew of.
42. I told the applicant that it appeared from his evidence that he did not have a very strong case and that the Tribunal was concerned about the fact that he had gone over and back to Fiji many times and had not been targeted by the authorities. The applicant said that he understood what the Tribunal was saying but felt that he may now be targeted if he returns to Fiji. I asked the applicant if he would like to tell the Tribunal anything else about his application. He said that he expressed his personal view and he had written everything in his application. He said that he could have made other claims but he wanted to tell the truth. He said that he did not wish to add anything further.

Independent country information

43. No information has been located that indicates that the military regime of Commodore Frank Bainimarama is able to effectively monitor the political activities of Fijians abroad. In 2008 Fiji did 'revive' the National Security Council (NSC) and the Fiji Intelligence Services (FIS). According to the Fiji Times, '[t]he NSC was established in 1990 to protect Fiji from espionage, sabotage, sedition, foreign intervention and terrorism' (Elbourne, F. 2008, 'Regime revives Fiji spy agency', *Fiji Times*, 28 February <http://www.fijitimes.com/story.aspx?id=82492> – Accessed 19 May 2010) It is doubtful that the NSC or the FIS have the resources necessary to monitor the

activities or all or even many of its citizens abroad without the assistance of pro-regime expatriates. No information has been located that indicates that pro-Bainimarama Fijian expatriates in Australia or elsewhere monitor the activities of anti-regime activists and pass on this information to the regime. What does appear likely is that Fiji's military censors monitor reports on Fiji in the international media and take note of critical remarks made by local and overseas critics of the regime; on '22 May, Tale Tora, one of the military's censors, contacted Peter Waqavonovono and warned him not to speak to the overseas media as the military were monitoring all overseas media interviews with Fijians' (Amnesty International 2009, *Fiji: Paradise Lost – A Tale of Ongoing Human Rights Violations April – July*, p 22).

FINDINGS AND REASONS

44. Having sighted a copy of the applicant's Fijian passport attached to his Protection visa application, the Tribunal finds that the applicant is a citizen of Fiji.
45. In assessing the claims made by an applicant the Tribunal will need to make findings of fact in relation to those claims and this will more often than not involve an assessment of the credit of the applicant. When assessing credibility, it is important to be sensitive to the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims. However, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. See *Randhawa v MILGEA (1994) 52 FCR 437 at 451, per Beaumont J; Selvadurai v MIEA & Anor (1994) 34 ALD 347 at 348 per Heerey J and Kopalapillai v MIMA (1998) 86 FCR 547*.
46. In *Abebe v The Commonwealth of Australia (1999) 162 ALR 1 at 52 Gummow and Hayne JJ* observed:

“the fact that an applicant for refugee status may yield to temptation to embroider an account of his or her history is hardly surprising. It is necessary always to bear in mind that an applicant for refugee status is, on one view of events, engaged in an often desperate battle for freedom, if not for life.”
47. The Tribunal must keep in mind that if the Tribunal makes an adverse finding in relation to a material claim made by an applicant but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true. (See *MIMA v Rajalingam (1999) 93 FCR 220*).
48. The applicant claims that if he returns to Fiji he will be persecuted by the Fijian military because of his political beliefs. He claims that he does not agree with the current government. He claims that because of medical negligence his infant child died causing the applicant and his family deep emotional pain. The applicant also claims that he left Fiji for economic reasons. He claims that his academic qualifications were not recognised by the government and if he finds employment in his field in Fiji, he will not be paid a fair salary.
49. The Tribunal has taken into account the applicant's claims in his Protection visa application, his evidence during his Departmental interview and before the Tribunal. The Tribunal feels sympathy for the applicant, especially in relation to the loss of his

child. The Tribunal accepts that the applicant does not support the current military regime in Fiji. The Tribunal accepts that persons who are seen or perceived to be criticizing the government can be targeted and in some cases, seriously harmed.

50. The Tribunal accepts that the economic climate in Fiji is difficult and that the applicant may have difficulty finding employment where he is paid what he believes to be a fair salary. In relation to this issue however, the Tribunal does not accept that the applicant's expected difficulties come within s. 91R(2)(f), which states that an instance of serious harm is the 'denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist' The Tribunal does not accept that the applicant faces persecution on his return to Fiji in the reasonably foreseeable future because of the weak state of the country's economic climate.
51. The Tribunal accepts the applicant's evidence relating to Mr A. The Tribunal notes that the applicant did not state in his evidence that he was involved in any way with Mr A apart from attendance at the same church and that the applicant is related to Mr A's wife. The applicant told the Tribunal about a meeting he attended where he expressed some reservations about the People's Charter. He told the Tribunal that he remained calm and firm and just raised his voice a little. He told the Tribunal that he could not shout because he was fearful that if he did, it might be dangerous for him. During his evidence before the Tribunal he stated that he may be targeted now because of what he stands for and said that in about [date] a friend of his told him that two men were looking for him. The applicant's passport indicates that from [date], when he first arrived in Australia, he travelled on many occasions to Fiji until his last arrival in Australia shortly before he applied for a Protection Visa. The Tribunal is of the view that had the authorities been interested in speaking to, or detaining the applicant, they had ample opportunity to do so. The Tribunal is not satisfied that the Fijian authorities are adversely interested in the applicant for any Convention reason.
52. The applicant also claimed that he is more fearful about his return because he applied for a Protection visa in Australia. He said that he would be declared a traitor. The Tribunal mentioned to the applicant that it could not find any information which indicated that people returning to Fiji had experienced any adverse attention from the Fijian authorities because they had applied for protection in Australia. The applicant did not provide any information apart from his own assertions in relation to this claim. The Tribunal, through its research section has not been able to locate any information which suggests that unsuccessful Protection visa applicants have been subjected to harm by the regime upon their return to Fiji. The Tribunal also notes that Protection visa applications are confidential and unless the applicant chose to reveal information about his application to others in the Fijian community, it would be difficult for the regime to find out that he had made such an application. The Tribunal therefore does not accept that the applicant will face any difficulties in the reasonably foreseeable future in Fiji because he lodged a Protection visa application in Australia.
53. The Tribunal asked the applicant why he did not apply for a Protection visa earlier. He stated that even though he had been told that [date] people were asking about him he did not think it was serious and he was planning to lodge a Protection visa application as soon as he finished his studies. When asked by the Tribunal if he had heard of any other enquiries being made about him, he said that he did know of any. The Tribunal is of the view that had the applicant seriously believed that he would be seriously harmed, he would not have returned to Fiji. The Tribunal is of the view that had the

authorities wished to locate the applicant, they had ample opportunity, given his frequent travel to Fiji. The Tribunal is not satisfied that the Fijian authorities are adversely interested in the applicant.

54. The Tribunal has considered the applicant's evidence in relation to his life in Fiji and notes that he expressed his concerns in relation to the People's Charter at one public meeting. The Tribunal does not accept that if the applicant returns to Fiji, there is a real chance that he will publicly or actively oppose the current military regime in a way which might attract the attention of the authorities. The Tribunal does not accept that there is a real chance that the applicant will be persecuted for reasons of his imputed or actual political opinion.
55. Overall, the Tribunal does not accept that the applicant will be persecuted if he returns to Fiji in the reasonably foreseeable future because of his political opinion or because he applied for protection in Australia. The Tribunal is not satisfied that he will be interrogated, detained or targeted in any way by the authorities if he returns to Fiji in the reasonably foreseeable future. The Tribunal is not satisfied that there is a real chance that the applicant will be persecuted if he returns to Fiji.
56. Accordingly, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution for a Convention reason in Fiji.

CONCLUSIONS

57. 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

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

FOR MRT PUBLICATION CASES