

**061000497 [2007] RRTA 39 (15 February 2007)**

**DECISION RECORD**

**RRT CASE NUMBER:** 061000497  
**DIMA REFERENCE(S):** CLF2006/109324  
**COUNTRY OF REFERENCE:** Philippines  
**TRIBUNAL MEMBER:** Rodney Inder  
**DATE DECISION SIGNED:** 15 February 2007  
**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**

This is an application for review of a decision made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the Applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The Applicant, who claims to be a citizen of Philippines, arrived in Australia and applied to the Department of Immigration and Multicultural Affairs 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 and posted the same day.

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.

The Applicant applied to the Tribunal for review of the delegate's decision.

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**

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a Protection (Class XA) 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 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Convention). 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'**

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997)

191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## **CLAIMS AND EVIDENCE**

The Tribunal has before it the Department's file relating to the 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. The Tribunal also has before it his application for review.

The Applicant appeared before the Tribunal to give evidence and present arguments.

The Applicant was represented in relation to the review by a registered migration agent. His adviser did not attend the hearing. An interpreter was also present.

The Applicant claims in his protection visa application that he is at his fifties who arrived in Australia some time ago.

### **Claims and Evidence**

#### **Claims in the protection visa application**

In his adviser's submission attached to the Applicant's protection visa application, it is submitted that the Applicant is homosexual and has faced the equivalent of what may be regarded as "cumulative grounds discrimination" in accordance with Section 54 of the Handbook. It is submitted that the Applicant lived in Quezon City for a number of years and worked nearby. It is submitted that the Applicant claims he has been consistently discriminated against in terms of what may be regarded as normal economic benefits and opportunities and he has kept his sexuality totally repressed and he believes that his perceived sexuality was a reason for refusal of employment. It is submitted that he is obliged to live a lifestyle of high level of conformity and cannot live freely and openly and share a same-sex relationship and if he has a boyfriend then that person must come to his home very late at night and leave very early in the morning. It is submitted that his family are aware of his sexuality and have to some extent attempted to ostracised him which has upset him and his family are not willing to include him in social events, so he is obliged to lead a lonely and marginalised existence

It is submitted that the Applicant has been an active supporter of a political party and has attended a number of demonstrations in support of it over the years for which he has received a number of threats, as well as attended protests outside the presidential palace in Mendiola and other parts of Quezon City. While not claiming to be a party official, it is submitted that this party is a mainstream opposition party and has a number of elected Senators.

The adviser submits that when the Applicant first left school he worked for a construction company for a number of years and then set up his own business which involved him buying items from overseas for resale in the Philippines, prior to establishing his property business.

It is submitted that the gay club scene is increasingly repressed and there are regular police raids and, for this reason, and due to possible dishonour to his family, he does not go to such clubs and he cannot introduce his friends to his family who live close to his home and this exacerbates the situation. It is submitted that he has sought to avoid showing his sexuality to his family so as not to embarrass them and his relative now lives at his former business address. It is further submitted that relocation is not a viable option as the political and social ethos of the provinces is ultraconservative and overtly condemnatory and therefore he finds the relationships he enters into tend to be exploitative, and he does not have any cogent family life as he is always living alone.

In conclusion, the adviser submits that the principal foundation of the application is considered membership of a social group and the cumulative discrimination which he has persistently experienced which has significantly impacted on him and is supported by both the government and the church.

### **Subsequent submissions**

The adviser provide the Department with a number of articles obtained from the Internet which he submits demonstrates a significant level of discrimination, and draws particularly attention to one article in regard to the condemnation by the Catholic Church. It is submitted that these articles contradict any country information which suggests that the gay community in the Philippines is accepted on an equal basis and does not suffer significant discrimination and their powerful infrastructure of the Catholic Church serves to act as condemnatory force.

The adviser again wrote to the Department and attached further documentation in regard to the existence and character of the small political party (although the articles are actually on another associated political party) which it is submitted he is interested in and has participated in. It is also submitted that other country information indicates that there are instances of government sanctioned persecution against homosexuals in the Philippines which appears entrenched, unrelenting in its character, and more aggressive, and this is persecution that cannot be nullified by relocation.

### **Claims made in his application for review**

No further claims are made in his application for review. However, the Tribunal received from the Applicant's adviser a further submission, with the original being received by the Tribunal on a later date. In his submission, the adviser notes that the delegate's decision states there is country information in support of the Applicant's claims by, for example, alluding to cumulative discrimination as well as other country information regarding gay discrimination in addition to that already supplied. It is submitted that the extracts used to support the Applicant do not support the view that homosexuality is increasingly tolerated in the Philippines and the there is recognition that gays are detested and at best are compelled to "remain in the closet".

The adviser submits that continued discrimination is recognized as harassment and hate crime, along with intolerance and disinformation, and that the fact of more violence in Latin America does not mitigate the claims made. Further, it is submitted that no reliance can be placed on a Bill that has not been introduced as law as it is merely conjecture and that while the Applicant does not claim he has a significant political persona, the violation of the political situation is plainly recognized.

The adviser submits that the wrong test was applied by the delegate and country information support his claims and the existence of a theoretical debate relating to a bill is irrelevant and the conclusions reached regarding gay persecution may be regarded as perfunctory.

### **Claims made at the hearing**

In response to questions put by the Tribunal, the Applicant claimed that everything he stated in his protection visa application, application for review, and all other statements was true and correct and there were no changes he wanted to make.

The Applicant produced his Philippines passport prior to the commencement of the hearing and he confirmed that this had been legally issued to him in his name with his personal particulars and photograph in it.

The Tribunal asked the Applicant if he had ever been to any other country and, in reply, he claimed he went to country A for a number of days for pleasure few years ago and he visited country B every few months for a number of years when he was in the trading business. Asked if he had ever been anywhere else, the Applicant replied in the negative.

The Tribunal asked the Applicant what languages he speaks, reads and writes, and he replied English and Filipino. Asked where he was born, the Applicant claims that he was born in a small city and lived there for a while then moved to Quezon Province. The Tribunal asked the Applicant if he owned his own home and he replied in the affirmative and gave its address. He claimed that he bought it some time ago and he lived there until he came to Australia, and his relative is currently living there. The Applicant claims that he spent a number of years at school and then obtained a Bachelor degree. He claims that after obtaining his degree, he worked for a construction company for a number of years; then became a self-employed businessman buying items from overseas and selling them in the Philippines. He claims a few years ago he established his own property business which was mainly concerned with property rental, but also did some sales, and he was the sole owner and he employed a few agents. Asked what had happened to this business since his arrival in Australia, the Applicant claims he gave it up and closed it down before he came here.

The Tribunal asked the Applicant to tell it why he believed he was a refugee and he replied because he had been discriminated against by his family because he was gay and he could not do everything he wanted to do as they always looked down on him as if it was wrong. The Tribunal repeated the question and ask the Applicant to tell it in a lot more detail about why he believed he was a refugee.

In reply, the Applicant claims that he had been discriminated against many times and someone had thrown stones at him for no reason and laughed and shouted at him that he was gay. He claims that on one occasion when he was driving a car and was going through a police checkpoint with other cars, the police let the other cars go on through but stopped him and asked him to disrobe as they said they were looking for a tattoo, so he felt they were preying on him.

The Tribunal asked the Applicant when he became aware he was gay, and how old he was at the time, and he replied he was still young but he felt okay about it and it occurred when he was at high school. The Tribunal asked the Applicant how many gay relationships he had had in the Philippines and he replied only a few as he could not do what he wanted to do and

his brothers and friends could kill him. The Tribunal asked Applicant when his parents passed away, and he replied that his mother passed away a number of years ago and his father passed away long time ago. In view of this, the Tribunal asked Applicant why he claims he was afraid of his family and he replied that when he was in high school he was not actively gay then but he feared his brothers. Asked what he feared his brothers may do to him, he replied that they may kill him as they no longer recognize him and they don't except that he is gay. He claims he has a number of siblings and that they all discriminate against him. The Tribunal asked the Applicant where he met his partners socially in the Philippines, and he replied that sometimes they come to his place late at night and leave early in the morning. Asked if this was one particular person, the Applicant claimed that he had been in a relationship with one person for a number of years and they continue to remain in telephone contact even though he is in Australia. The Tribunal asked the Applicant to tell it about the gay scene he had experienced and been involved with in the Philippines and, in reply, he claimed he had not actively participated in the gay scene as he was afraid he could be recognized. The Tribunal asked the Applicant if he had any gay relationships since had been in Australia and he replied in the negative.

The Tribunal put to the Applicant that at the beginning of the hearing it had outlined to him the UN refugee definition and said that homosexuals could be considered under the Convention category of particular social group. However, it noted that he was now a number of years old and asked him to tell it what serious harm amounting to persecution he believed he had experienced in the Philippines in the past because he was gay. In reply, the Applicant claims that he was always hit by his brothers and other relatives. The Tribunal asked the Applicant when the last time he was hit by his brothers was, and he replied it was some months ago. Asked what happened, the Applicant claimed he could almost not get up because of the blows. Asked if he had fled, the Applicant claimed he was not able to run away. In view of this, the Tribunal asked him how he was able to escape and he claims that his brothers asked him not to do it again so he agreed in order to survive.

The Tribunal asked Applicant about his claimed association with the small political party and he replied it was known as another party. The Tribunal asked Applicant if he had ever been a full member of the political party, and he replied in the affirmative and stated that he did not like what was happening in the country. He claims he first became involved with this party in [Year] and he attended rallies which were targeted by the police and they threatened him stating that they did not want to see him there again, and so from [Year], he no longer became involved with this group. Asked what the political philosophy of the political party was, the Applicant claimed that (1) it was against corruption and (2) was against the killing and disappeared of people in the Philippines.

The Tribunal asked the Applicant to tell it about its policies in, for example, education and social security, and he replied that it was fighting because nothing had been done in regard to education. Asked what other activities he had been involved in, the Applicant replied that he was just a member and just attended rallies and these were disbursed by water cannons when he was protesting against the President some years ago.

The Tribunal asked Applicant why he thought he would be persecuted because of his very limited involvement in the political party and he replied that he honestly didn't know as he didn't know what was going on at the moment in the Philippines.

The Tribunal asked the Applicant what he thought would happen to him if he went back to the Philippines and he replied that he will be at his middle age and he wanted to be happy because there have been lots of sadness in his life but, the time he has spent in Australia, there has been no hardship. He claimed that if he returns to the Philippines the same things will happen and he doesn't know whether he will reach [Number]. He repeated that he wished to be happy in the last days of his life but had never been happy before. The Tribunal repeated its question and asked Applicant if he had any more to say about what he thought would happen to him if he went back to the Philippines, and he replied that up until now he had been sending text messages and letters to his brothers but they had not replied but through his relative he had been told that his brothers said it would be better if he remained in Australia than to spread the infection in the Philippines, which meant that his brothers did not want to see him again.

The Tribunal asked Applicant why it would not be reasonable for him to live in another part of his country if he did not want to return to be near his family in Quezon City, and he replied it would be the same situation as his family was monitoring him wherever he goes and he remembers what they have been doing to him in the past. Asked if he had any other claims or matters he wished to put before the Tribunal before the hearing closed, the Applicant claimed that if he gets a protection visa in Australia, he will be happy whereas if he returns to the Philippines, life will be hell.

## **FINDINGS AND REASONS**

Based on his Philippines passport sighted at the hearing, the Tribunal accepts that for the purposes of Article 1 of the Convention, the Applicant is a citizen of the Philippines. It also accepts that his religion is Roman Catholic.

The Applicant's core claim is that he is homosexual and he has faced the equivalent of what may be regarded as "cumulative grounds discrimination" as he has been consistently discriminated against in terms of normal economic benefits and opportunities and he has kept his sexuality totally repressed and he believes that his perceived sexuality was a reason for refusal of employment. It is submitted that he is obliged to live a lifestyle of high level of conformity and cannot live freely and openly and share a same-sex relationship and if he has a boyfriend then that person must come to his home very late at night and leave very early in the morning and that his family are aware of his sexuality and have to some extent attempted to ostracised him which has upset him and they are not willing to include him in social events, so he is obliged to lead a lonely and marginalised existence. He claims that this discrimination is supported by both the government and the Roman Catholic Church to which he belongs.

In regard to these claims, the Tribunal accepts that the Applicant is gay and has been aware of this since he was at high school, and also accepts that this meets the criteria of belonging to a particular social group under the Convention. However, the Tribunal also accepts that notwithstanding knowing he was gay since high school and his claim experiences of discrimination in the Philippines, the Applicant does not claim to have previously sought refugee status or international protection in the countries he visited on his many international trips, the most recent country A some years ago, or in a foreign diplomatic missions or at a UN office. Nor did he take the opportunity of being outside the Philippines to go to another country but rather from the claims made by the Applicant at the hearing the Tribunal accepts that he chose to return to the Philippines after each of these visits. Moreover, from the claims



made by the Applicant at the hearing, Tribunal is satisfied that the claimed difficulties he experiences (with the exception of his being beaten by his brothers which is dealt with separately below) were not serious harm amounting to persecution for a Convention related reason. For example, the Applicant claims he perceived his sexuality was a reason for his inability to get a job but he does not claim that this perception was anything more than his personal perception (for example, he does not claim that he was directly or indirectly told this was the reason for not getting the job) nor does he provide any evidence that this was the case. Nor does he claim that he had any difficulty in being admitted to university, during his student days, or was prevented from graduating because he was gay or that he experienced any difficulties from the staff or students at the university because he was gay. Further, the Applicant claimed at the hearing that he was employed after graduating with a construction company for a number of years; then became a self-employed businessman buying items from overseas and selling these in the Philippines; and then, he established his own property business and he was able to employ a number of agents. He does not claim that other than applying for one job he ever had any other difficulty in finding employment or setting up a business in the Philippines. Nor does he claim that he was fired from his job at the construction company because he was gay or any other Convention related reason. Nor does he claim that the reason he left his trading business and set up his property business was because he was gay or for any other Convention related reason. Nor does he claim that he sold his property business was because of any difficulties he or his business experienced because he was gay or for any other Convention related reason. Accordingly, and based on the claims made by the Applicant, the Tribunal has not been able to satisfy itself that the Applicant has been discriminated against in terms of normal economic benefits and opportunities in the Philippines, and the Tribunal does not accept this claim. On the contrary, the Tribunal accepts that the Applicant has been a successful business man in the past and is satisfied that he would be able to continue to find employment or set up a new business in the Philippines if he returned that now or in the reasonably foreseeable future without there being a real chance that he would experience any difficulties whatsoever because he is gay or for another Convention related reason.

The Applicant claims that he has kept his sexuality totally repressed and he is obliged to live a lifestyle of high level of conformity and cannot live freely and openly and share a same-sex relationship and that his boyfriend of some years standing had to go to his home very late at night and leave very early in the morning. He also claims that his siblings are aware of his sexuality and have attempted to ostracised him which has upset him and do not include him in social events, so he is obliged to lead a lonely and marginalised existence.

At the hearing, the Applicant claimed that when he was in high school he was not actively gay then but he feared his brothers; claimed his siblings may kill him as they no longer recognize him and they don't accept that he is gay and also discriminates against him; for the last few years he has a gay friend who went to his place late at night and had to leave early in the morning; but that he had not actively participated in the gay scene as he was afraid he could be recognized. The Applicant also claims that the gay club scene is increasingly repressed and there are regular police raids and, for this reason, and due to possible dishonour to his family, he does not go to such clubs and he cannot introduce his friends to his family who live close to his home and this exacerbates the situation; he has sought to avoid showing his sexuality to his family so as not to embarrass them. And when the Tribunal asked the Applicant to tell it why he believed he was a refugee at the hearing, he replied because he had been discriminated by his family because he was gay and he could not do everything he

wanted to do as they always looked down on him as if it was wrong. The Tribunal repeated the question and ask the Applicant to tell it in a lot more detail about why he believed he was a refugee. In reply, the Applicant claimed that he had been discriminated against many times and someone had thrown stones at him for no reason and laughed at him and shouted that he was gay. He claims that on one occasion when he was driving the car and was going through a police checkpoint, the police let the other ones through but stopped him and asked him to disrobe as they said they were looking for a tattoo, so he felt they were preying on him.

In regard to these claims, the Tribunal accepts that on one occasion he had stones thrown at him and he was laughed at because he was gay and on another occasion the police searched him, asked him to disrobe, and he felt that they were preying on him because he was gay. However, he does not claim that he was hurt in either incident or that there were any further such incidents. Nor does he claim that he was beaten up by the police, arrested, or subject to any other abuse. And while from the country information provided by the Applicant the Tribunal accepts that on occasions the police may raid gay clubs, it also accepts that the Applicant does not go to such venues and has not claimed to have been harassed or arrested by the police because he is gay. In short, while accepting that the Applicant has experienced over years of living in the Philippines some isolated incidents of discrimination, the Tribunal has not been able to satisfy itself that this was systematic or frequent discrimination or harassment or that it was condoned by the State or the Roman Catholic church. Indeed, from the claims made by the Applicant, the Tribunal does not accept that the Applicant's experiences in the Philippines while in some senses were unfortunate and on several occasions amounted to limited discrimination, the Tribunal has not been able to satisfy itself that this was serious harm amounting to persecution for a convention reason. Indeed, when the Tribunal put to him that he was now of certain age and asked him to tell it what serious harm amounted to persecution he believed he had actually experienced in the Philippines in the past because he was gay, his only claim was that he was always hit by his brothers and other relatives. However, the Applicant it does not claim that he reported the matter to the police. Nor does he provide any evidence to support this claim such as a police report or a doctor certificate or hospital admission record that indicated that he was seriously hurt. Moreover, the Applicant does not claim that he sought to move elsewhere in Quezon City or indeed the Philippines to avoid any further attacks by his brothers. Given all the above, and while the Tribunal accepts that his siblings do not want to associated with them because he is gay, the Tribunal does not accept that they want to kill him as they have had plenty of opportunities of doing so in the past but had not done so.

Accordingly, and based on the claims made by the Applicant and while accepting that he has been physically assaulted in the past by his brothers, the Tribunal is satisfied that if he had a well founded fear of serious harm from his brothers for a Convention reason because of his homosexuality, then he would have reported the matter to the police or moved elsewhere in the Philippines in order to prevent a further rich currents. However he does not claim that he did so. And while he claims that relocation is not a viable option as the political and social ethos of the provinces is ultraconservative and overtly condemnatory, and therefore he finds the relationships he enters into tend to be exploitative and he does not have any cogent family life as he is always living alone, the Tribunal has been unable to satisfy itself that the essential and significant reason for this was persecution for a Convention related reason. Indeed, the Tribunal is satisfied that if for any reason he did not wish to return to live near his brothers as he has in the past, then it would be reasonable for him to relocate elsewhere in Quezon City or the Philippines in safety and does not accept that there is a real chance of

being subject to harm from any source including his family if he did, and the Tribunal does not accept his claim made at the hearing his family was monitoring him wherever he goes, let alone that they would have the interest or capacity of doing so. On the contrary, the Tribunal has already accepted that his brothers want nothing to do with him and he understands from comments made by his relative that his brothers do not want to see him again.

The Applicant's adviser provide a number of articles obtained from the Internet which he submits demonstrates the significant level of discrimination against gays, and draws particularly attention to one in regard to the condemnation by the Catholic Church. He submits that these articles contradict any country information which suggests that the gay community in the Philippines is accepted on an equal basis and does not suffer significant discrimination and their powerful infrastructure of the Catholic Church serves to act as condemnatory force. The Tribunal accepts from this material provided by the Applicant and his adviser that there have been cases of difficulties and some discrimination in the Philippines, particularly against transsexuals. However, the Applicant does not claim to be transsexual and from this material it very clear that there is a strong and open pro-gay and pro-transsexual movement addressing the cultural and legal issues confronting gay and transsexual men in the Philippines and that this is not suppressed by the police or other authorities there. Indeed, the Tribunal accepts that a gay impersonator has launched a civil case against a restaurant as she was prohibited from entering a restaurant, and is satisfied that this clearly indicates that gay rights are being actively pursued in the courts in the Philippines. And while the Tribunal accepts that the applicant is Roman Catholic and the Roman Catholic Church does not accept homosexuality, the Applicant does not claim that he has been expelled from his church or has been in any way admonished by the Roman Catholic Church due to his sexual orientation. The Tribunal also accepts that there is a strong move by, for example, Amnesty International to launch a global campaign to call on the Philippine government to pass legislation prohibiting discrimination based on sexual orientation and this campaign is in support of the proposed legislation already under consideration by the Philippines Congress. In short, while accepting that there is some limited discrimination in the Philippines, the Tribunal is also satisfied that there are significant efforts currently a foot to address this and this is well illustrated by the country information provided by the Applicant which shows that the pro-gay rights groups are particularly active in pursuing this agenda.

And while accepting that the Roman Catholic Church does not support homosexuality as a basic tenant of their faith, the Tribunal does not accept his claim that any discrimination of homosexual men is supported by both the government and the church, or that the powerful infrastructure of the Catholic Church serves to act as condemnatory force and that its approach is persecutory in nature. Indeed, in an article provided by the Applicant titled "Gay discrimination in the Philippines" (Gayrice.com) it is clear that an Abbot in the Order of St. Aired not only officiated at a "gay wedding" but also argues strongly that the fact one of the parties he "married" had his work contract at a Roman Catholic Miriam College terminated, and he argues that this was in breach of the antidiscrimination ordinance of Quezon City. In short, based on the claims made by the Applicant and the country information he has provided, the Tribunal does not accept that the Applicant has persistently experienced discrimination which has significantly impacted on him or that this discrimination is supported by the government (either national or local) or the Roman Catholic Church.

The Applicant also claims that his sexuality has been totally repressed and he is obliged to live a lifestyle of high level of conformity and cannot live freely and openly and share a same-sex relationship and gays are detested and, at best time are compelled to “remain in the closet”. However, from the claims made by the Applicant and the evidence he has provided, the Tribunal does not accept these claims. Indeed, the Tribunal has already accepted that while the Applicant has in his several years since high school experienced several relatively minor incidences of discrimination because he is gay, it does not accept that he has a well founded fear of serious harm amounting to persecution on this basis. It also accepts that the two incidents that the Applicant refers to (having stones thrown at him and being harassed by the police on one occasion) was because they thought he was gay and that he was not suppressing this. Nor does he claim that he denied it on either occasion. However, in both cases he was not subject to serious harm. And while he claims that his boyfriend had to visit him later that night and even early in the morning to avoid being seen, he provides no evidence to support this such as a statement from his boyfriend. Moreover, the Tribunal accepts the claims made by the Applicant at the hearing when it asked him if he had any gay relationships since had been in Australia and he replied in the negative, even though he does not claim that there are any restrictions on him being able to do so. In short, from the claims made by the Applicant the Tribunal is satisfied that the Applicant has been open about his sexual orientation in both the Philippines and Australia and has not been subject to serious harm because of it. It follows that the Tribunal does not accept the Applicant has been forced to “remain in the closet” in the Philippines or to repress his sexuality but rather finds he has been able to express this to the extent he desires. The Tribunal is also satisfied that if the Applicant returns to the Philippines, he will be able to continue to live a normal life as a gay man as he has been able to do in the past without having to repress his sexual orientation and without there being a real chance of his being subject to serious harm amounting to persecution on this basis, and the Tribunal does not accept this claim.

The Applicant claims that he was a supporter of a political party but at the hearing he amended this to being a member of another political party. He claims he first became involved with that political party in [Year] and he attended rallies which were targeted by the police and they threatened him stating that they did not want to see him there again, so he did not participate and in [Year] no longer was involved with this group. The Applicant does not elaborate on his claimed threat from the police nor does he provide any evidence to support this claim. And while claiming that water cannons were used against the demonstrations in which he participated, the Applicant does not claim that he was detained, beaten, assaulted, or otherwise harmed because of his participation in these demonstrations, his membership of the political party, or because of his actual or imputed political opinion. The Tribunal accepts that the Applicant, when he was of certain age, became involved for the first time in politics in the Philippines and joined the political party a number of years ago, over a period of time, he participated in some number of demonstrations. However, he does not claim to have held any position in the party or to have undertaken any other activity other than being a participant in these demonstrations. And when asked what the political philosophy of the political party was, the Applicant’s responses revealed no real knowledge whatsoever about the aims, philosophy, mandate, or party manifesto of the political party, simply claiming that it was against corruption and the killing and disappeared of people in the Philippines, and that nothing had been done in regard to education. Nor does the Applicant claim that he has been an active supporter of the political party since his arrival in Australia. In short, while accepting that the Applicant was a member of the political party and participated in a number of street demonstrations in the Philippines, it does not accept that he had a political profile of

any sort in the Philippines, even at the local level, and the reason he stopped attending rallies was because of the threats by the police or for any other Convention related reason. Further, the Tribunal is satisfied that there is not a real chance that he would be subject to serious harm amounting to persecution for a Convention reason on this basis (his membership of the political party or because of his participation in some demonstrations) if he returned to the Philippines, now or in the reasonably foreseeable future, even if he continued to participate in further demonstrations.

The Applicant claims that the principal foundation of the application is his membership of a social group and the cumulative discrimination which he has persistently experienced which has significantly impacted on him and is supported by both the government and the church. While the Tribunal has already considered the individual claims made by the Applicant, and does not consider that the Applicant has a well founded fear of serious harm amounting to persecution because of them, the Tribunal also needs to consider their cumulative nature and, as the adviser submits, "cumulative grounds discrimination". In regard to this matter, however, and while accepting that the Applicant has been subject to several episodes of limited discrimination and some abuse by his brothers, having considered the totality of the claims made by the Applicant and their cumulative effect, the Tribunal has not been able to satisfy itself that cumulative discrimination he has experienced because he is homosexual, and due to his limited involvement with the political party, is sufficient to be serious harm amounting to persecution, and the Tribunal does not accept this claim.

In short, having considered all the Applicant's claims and circumstances, both individually and cumulatively, and given all the above, the Tribunal is not satisfied that there is a real chance that the Applicant would be subjected to serious harm amounting to persecution for a Convention reason if he were to return to the Philippines, either now or in the foreseeable future, and finds that he is not a refugee.

## **CONCLUSIONS**

Having considered the evidence as a whole, 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) for a protection visa.

## **DECISION**

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant.

Sealing Officer's I.D. PRIKSA