

071350951 [2007] RRTA 279 (17 October 2007)

DECISION RECORD

RRT CASE NUMBER: 071350951

DIAC REFERENCE(S): CLF2007/7285

COUNTRY OF REFERENCE: Burma (Myanmar)

TRIBUNAL MEMBER: Adolfo Gentile

DATE DECISION SIGNED: 17 October 2007

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 Citizenship 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 Burma (Myanmar), 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 her review rights by letter.

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 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 Refugees Convention, or 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:

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] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (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 applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Burmese and English languages.

The applicant was represented in relation to the review by her registered migration agent.

In a statutory declaration sent to the Tribunal, the applicant outlined her claims as follows:

- *[Information relating to specific events/persons/places has been amended or deleted in accordance with s431 of the Migration Act as this could identify the applicant]*

1. I was born on [date] in [town A], [Province] of Myanmar. I have a father who is Burmese and a mother who is [Ethnic group]. I have [a few] siblings.

2. My family have been living in [City G] since [the early 1990s]. They were forced to move from [town A], [Province] to [City G] so my father could obtain employment.

3. I left Myanmar as I feared for my safety and further arrest and detention by Military Authorities. Amongst other things, I have been tortured and blacklisted as a result of my political opinion and activism. In addition, my family has been under tight surveillance and monitoring due to my political activities and those of my father.

Family's Political Activism

4. In [date], my father was [involved in a] political uprising against the Burmese Military Regime. As a result, [a year later], my father was arrested in [town A], [Province] and detained at the [Prison] for [a few] years as a political prisoner.

5. My mother did not speak much of my father's arrest, nor did she talk of the visits to the prison when she called on my father. She did not want my father's arrest to affect me or my siblings emotionally. My mother was worried that the emotional strain would negatively impact on me and my siblings and affect our academic performance at school.

6. Because of my father's arrest, my mother had to start working outside the family home to provide for the family financially. She did not permit me or my siblings to give up school and look for work, even if we were financially struggling. Instead my mother encouraged us to focus on our education. My mother worked on a small farm. She also ran a small shop selling [various items].

7. My father was released from prison [a few years later]. However he was a changed man. He was no longer the same person as he had become very distant and quiet. He had become very ill, had difficulties sleeping at night and was regularly suffering from chest infections. My father had also changed physically. He had lost a lot of weight and was much darker in colour than before.

8. On his release from prison, my father could not secure employment [in his chosen profession] any longer as he had been blacklisted. My father had graduated from [University Q] in Myanmar [in his chosen profession] and had been working in the profession before his arrest. He lost his job [in his chosen profession] at the [agency]

in [town A] and was blacklisted. Because he was blacklisted, he could not obtain approval from the [relevant office] to work for the [relevant] companies. Since he had no job, he had no other choice but to help my mother on the farm for a while. While my parents worked on the farm we were often subjected to abuse, military men would come and whatever they wanted we had to give them.

9. Life was very difficult because of the financial strain on our family. My father therefore decided to move to [City G] in [the early 1990s] in a desperate attempt to find a job. Eventually my father obtained work in [City G] that did not require government approval. In [year], the rest of us moved to [City G] so that we could be reunited with my father.

10. I was only a [young child] at the time of my father's arrest. I still remember the impact of my father's imprisonment on me and the rest of the family. The events affected me and the family tremendously both emotionally and financially. As a result, I grew up in fear and in resentment of the military authorities.

11. At the same time that my father was arrested in [the 1980s] my [relative I] disappeared. He had been a member of [a group] and had to flee. We did not hear from him for many years and we did not know where he was. Finally we got word that he was in [town B] on the [Country V] border and that he had taken up arms against the military regime. [Several years later], I travelled there to see him.

Education System

12. Before my father was imprisoned, my parents had always encouraged me to focus on my education. I was doing very well at school and would always put a lot of effort into my schoolwork. My teachers believed that my older [sibling] and I had great academic potential and were likely to achieve top grades.

13. Unfortunately I did not perform at my best because of my father's imprisonment. As a result, I was only offered one of the lower course preferences at uni.

14. I believe the education system in Myanmar was tightly regulated by the Burmese Military Regime. The education standards were low and I was frustrated with the consistent forced closures. Schools and universities were open for only a few months a year and closed for very long periods which would disrupt the education system. Consequently, I was only able to attend the first [few] months of my [early years] of university. I and all other students were then required to sit the exams, without proper preparation. I became frustrated with the government's control of the education system.

MY POLITICAL ACTIVITIES

Demonstration and Detention

15. In [the 1990s], when I was in my [later year] of university, I participated in a political movement.

16. Although I feared the authorities, the injustice and hardship that I experienced and saw led me to get involved in protesting when I went to university.

17. In [the 1990s], I actively took part in a political movement initiated by the students at [University R], where I was studying at the time. I organised a peaceful student demonstration. At the time, I was in my [later] year of university.

18. [Sometime later], me and everyone else involved held the demonstration. The demonstration called for the student union to be reinstated, the release of students from detention and the release of political prisoners, including Daw Aung San Suu Kyi

19. The demonstration included a march that was stopped by the military on the approach to [town C]. Once the march was stopped the demonstration was abandoned.

20. That night, [an officer] came to my house. He was accompanied by [a few] other people. I was asleep at the time and was awoken by my father as I had to go with the military personnel.

21. I was forced on to a truck and driven to a place that seemed to be quite far from my house. I was told to stay quiet. I couldn't see anything but I could feel and hear there were other people on the truck.

22. It was a long drive and they stopped a few times to pick up more people. I didn't know where they were taking me or why but it was very far from my house. I was then interrogated about my family and my involvement in the student demonstration.

23. The same man then started interrogating me. When I said that I was acting on my own accord, the man got angry and called me a liar. He hit me hard several times.

24. I must have passed out, because when I came to, I was back in the first room. I was in great pain and very frightened.

25. [A few days] later, I was taken to a room where I was interrogated again. I felt it was the same man who interrogated me. Like the first time, I was told to keep my head down. I was hit several times when I moved. I was getting tired keeping my head down for such a long time. I was again asked questions about other [people] involved in the demonstration. When I did not give any names, the man became very angry and shouted at me.

26. During my detention, I had trouble eating. The rice wasn't washed and had stones in it. I had to ask the guards for water and for permission to go to the toilet.

27. I was kept at the place until [date]. On that day I was forced to sign a document. I was then taken by military intelligence personnel in a truck and dropped off [at a place], which was a long, long way from my home.

28. I walked to my friends' shop which was located in [town D] and contacted my father there who later came and picked me up.

29. Since the detention and torture, amongst other things, I am suffering physically, psychologically and emotionally. I have sought medical treatment, but medication does not seem to help.

30. I am so afraid of being detained again; since my release I have found out that many [people] who are detained are [physically abused]. I have not been the same since I was detained as I live in fear of being picked up by the police.

Blacklisted

31. All universities in Myanmar were closed by the Burmese Military Regime from January 1997 to April 2000. Notwithstanding this, in [late 1990s] the universities sent students notice of forthcoming exams. My [sibling] received a notice from [University R], but I did not receive a notice. I went to [University R] to enquire about my exam date.

32. I was told that my name was on a list of students that were not allowed to sit the exam. As a result I was not able to complete my exams or complete my university degree.

33. I started looking for work. I soon found out that the police department would not issue me with a police clearance which I needed to secure employment.

34. I believe that I was blacklisted from university and refused a police clearance because of my political involvement in the demonstration.

35. I felt hopeless and resented the Military Regime even more so.

36. Eventually, I was able to find employment through my father's friends, with [organisation L], an organisation that runs projects for [organisation M] and other [organisations]. I worked with [organisation L] for [several] years. From then on I was employed by [organisation N]. At the time of my employment with the [two organisations], government approval was not required when employing Myanmar nationals.

37. I have been very lucky to find work with these [organisations] because I am still not able to get a police clearance and because of the high profile of my family and my own activities, I would never be able to get one which means that I can never work in any government job and it would be almost impossible to get a job with a private company in Burma.

38. I have tried to re-enrol at University, in order to complete my studies. I tried in [year] and again at the beginning of [year]. I was told on both occasions that I was not allowed to re-enrol. This means that I am still blacklisted.

Petition and Detention

39. I signed a public petition that demanded that the Burmese Military Regime immediately release certain student leaders who had been imprisoned, together with

all other political prisoners. The petition was a public petition collected by student activists.

40. As a show of support, those who signed the petition and felt passionately about the cause wore white outfits over an 8 day period. I wore a white outfit throughout this period.

41. Although I thought signing the petition and wearing a white outfit would be disliked by the Burmese Military Regime, I did not think it would raise a big problem, as many people signed the petition and wore white outfits. But I was wrong.

42. On [date], after I got home from work, I was taken by the [the authorities]. They interrogated me for [a few] hours regarding participating in the petition, why I wore the white outfit and what I hoped to achieve.

43. They told me that they have a file of my political activities. They threatened that I could be detained and questioned at any time about my political activities. They demanded that I sign an undertaking that I would never again participate in anti-Burmese Military Regime activities. They also demanded [sum 1] as a 'donation' which is a lot of money in Myanmar.

44. When I refused to sign the undertaking and 'donate' the money, they threatened me further with more detention. I was very fearful that they would detain me and torture me again. I was also worried about the effect of my detention on my family.

45. I involuntarily signed the undertaking and asked my father to get [sum 1]. My father went and got the money and we paid the police. I was then released.

Loss of [Card 5]

46. On [date], all of the members of my family were asked to go to the [local office] in town C to be photographed by immigration officials so the military could come and check if anyone else from outside was sheltering in the house. This is a requirement for families in Myanmar but I think that they did this at this time because they were concerned that I was becoming politically active again.

47. Me and my family were each asked to present our [Card 5] and [Card 6]. When the officer saw my [Card 5], he said the card was getting old and that the signature of the government authority was unclear. My card was old - it was issued in [year] - and was well worn because I travelled frequently with [organisations L & N].

48. The officer said that he would keep my [Card 5] until he arranged for a new card to be issued. He demanded [sum 2] to issue a new [Card 5]. I was very worried because I knew that not having [card 5] would draw even more attention to me, right at a time when I didn't want that attention. I asked why it would cost so much, I knew that the [Card 5] should not cost so much, but this was a mistake because he immediately said that I had committed an offence under the [law] by tampering with my card. I had never tampered with my [Card 5] and told the officer but he kept my card anyway and I went home.

49. I needed my [Card 5]. It is an offence not to carry a [Card 5] and you can be arrested and/or detained. I knew of [a person] who was stopped because she did not have an id card, instead of being taken to the police station she was taken to another place and [physically abused]. I was very afraid. My parents recommended that I pay the amount and get another [Card 5] reissued.

50. I returned to the [local office] the next day, with [sum 2] and requested that a new [Card 5] be issued as soon as possible.

51. The officer that I spoke to refused to issue a new card because he said it appeared as if I had tampered with my old one. He said it was an offence under the [law] and that he would be reporting the offence. He said that I should go home and that I would receive a summons from the relevant authorities in due course.

52. [The next] day, a local official approached my mother and warned that I may be charged as a person having committed an offence under the [law] because the [local office] claimed that my [Card 5] had been tampered with.

53. I became very fearful of further detention and torture. I felt helpless and hopeless, and very worried about what could happen to me next. I decided to leave Myanmar as I feared for my own safety.

54. I fear that on return to Myanmar, I will be charged with a serious offence without merit or detained by the authorities. I believe that they are using my [card 5] to send me a clear message and to make things very difficult for me, I am very afraid of what they will do next.

55. I believe I am being targeted and persecuted because of my political activities combined with the negative profile of my family and that if I had to return thing would get much worse and they would detain me or worse.

The above declaration was accompanied by a submission by the applicant's adviser.

The Tribunal received, through the applicant's adviser, a statutory declaration from Person Y and Person Z.

The above claims are consistent with the claims which were made by the applicant in her Protection Visa application form.

At the Tribunal hearing the applicant clarified the addresses in Burma [information deleted: s.431].

The Tribunal discussed with the applicant the issue of her identity card. It was agreed by the applicant that the document referred to in English translations as Citizenship Scrutiny Card was indeed the card 5. It was pointed out by the Tribunal that the translation of that card had a different date of birth on it. The applicant stated that it was a translation error and that she had not checked it before sending it to the Australian Embassy. [information deleted: s.431].

She was asked how she could operate without the card 5 between the time she claimed it had been confiscated by the authorities and the time she left the country. She stated that she didn't travel at that time and that her employer was providing the transport to and from home to her place of work. In any event the time between the confiscation and her leaving was days. She claimed that the authorities complained that the photo was faded and asked for sum 2; she remembered what had happened to her father when a pickpocket took his card 5 and how it took several months to get another one. She stated that even without the card 5 they were supposed to have a photo of those living on the premises hung on a wall in the house so the authorities could come and check. She stated that they intentionally claimed that the card 5 was feint. She tried to pay them the money they asked for. They intimidated her by saying that they would send this issue to a higher authority where a court or the police might be involved and then she would have to sort it out herself.

The applicant was asked about the time interval between obtaining the visa and leaving the country. This period was more than a few weeks. The applicant stated that she was very stressed at the time, that there was no one who could look after her in Australia and that she did not want to leave her family; her situation got worse and worse and there was the confiscation of her card 5.

The applicant was asked whether she did not have a person in Australia who in fact invited her to come to Australia. The applicant stated that this was correct and since she has been in Australia they have kept in contact with each other.

[Information deleted: s.431]

Asked about her university studies, she stated that she enrolled in the 1990s and that the academic year lasted about a few months in every year in which she was enrolled. She was asked why she would seek a certificate of her results in the early 2000s and she replied that she wanted to do something with this; she was the only one in the family, except her mother, who had not finished a university degree: her younger sibling was attending university and she asked her to get the certificate for her. It was pointed out to the applicant that she had in fact obtained some qualifications from private institutions in Burma. She had enrolled in the University later, when students from a number of universities tried to get together in a demonstration. The demonstration was to involve a march from University R to University S; more than a thousand students took part. The students could not reach University S. The point of the demonstration was to be able to form a student union, to obtain the release of imprisoned students and detained politicians. At the time no one was arrested on the spot but they were grabbed later. When asked why she thought she was detained, the applicant replied that a lot of people were arrested; they took pictures and she was there; when they arrested her they told her that they had her picture. She stated that her role in the demonstration was that she had told her friends to take part in it. Asked whether she was a member of any organisation, the applicant replied in the negative.

The Tribunal asked the applicant to describe what had happened to her between the 1990s and early 2000s. She stated that she tried to find a job and to get a job, even in a private company, you need a letter from the police and the Peace and Development Council. She could never get such a letter because she had been arrested once. She was asked how she was able to obtain her passport under these circumstances. The

applicant stated that the travel and protocol section of organisation N got her the passport, her office organised it, she was supposed to be travelling on official business. Organisation N applied for it and got it.

She stated that she signed the petition after applying for the visa for Australia. The petition was organised by former university students and it was signed at the NLD office as well as at the residence of some of these students; the petition was to seek the release of the student leaders who were imprisoned. A few days after signing the petition she was detained; she believes it was because of her background and previous history. She was not charged with any offence but asked to sign a paper. She never admitted to what they said she had done.

Asked what she thought would happen to her if she were to return to Burma, she replied that they took away her card 5 and they can harm her at anytime and anywhere; she believes that they intentionally took her card 5 away from her and this signifies that they wish to harm her.

At the request of the adviser the Tribunal asked for clarification about the role of organisation N in getting the applicant out of the country and the applicant stated that a broker organised the buying of the air ticket, her father had found the broker; organisation N played no role in her leaving the country. After giving the broker the money she had simply followed him.

The applicant's adviser made an oral submission to the Tribunal indicating that the applicant's fear is cumulative and derived from when she first came to the attention of the authorities in the 1990s to the further detention and the removal of her card 5. This latest incident was the cumulative effect of her activism coupled with that of her father and relative I. She fears that she will attract the attention of the authorities and end up detained or worse.

Pursuant to s424A of the Act the Tribunal asked the applicant to comment on the following information:

The claim of your arrest

The US State Department country report on human rights practices for 1996 –Burma, published in February 1997, states *inter alia*:

Yet again in December, in the wake of student demonstrations, the SLORC detained more than 200 activists, supporters, and others, in addition to at least 263 students whom they had detained and released, and whom they accused of aiding and abetting the student protests. Authorities confined Aung San Suu Kyi to her compound from December 6 to December 29. Since mid-December, she has been severely restricted in her ability to receive visitors.

...

The Government curtailed student demonstrations in December. It did, however, permit students to demonstrate for several days early in the month. Riot police eventually curtailed the demonstrations, using water cannons and batons. After

detaining and releasing hundreds of students, the Government closed the universities to prevent further demonstrations.

The same report for 1997, published on 30 January 1998, stated:

Following student demonstrations in December 1996, the Government closed the universities and even primary and secondary schools to prevent further demonstrations. While the primary and secondary schools reopened in August, most universities remained closed at year's end.

The same US Department of State report for 1998 stated:

Following student demonstrations in December 1996, the Government closed the universities and even primary and secondary schools to prevent further demonstrations. Primary and secondary schools reopened in August 1997. After 2 years, several universities were opened for abbreviated refresher course and examinations for 2 weeks in August. Dissatisfaction with the limited time for education prompted several student demonstrations. The authorities arrested student protest leaders, and universities held exams, only to be closed again within a few weeks. The Government did not reopen the Medical University during the year.

Amnesty International, in a document titled *Myanmar: Intimidation and imprisonment September – December 1996* (ref. ENGASA160011997) published in early 1997 described the events in December 1996 (in part) as follows:

STUDENT DEMONSTRATIONS AND MASS ARRESTS OF DECEMBER

During the month of December the SLORC responded to large student demonstrations by arresting hundreds of students and NLD members. Although most of these individuals have been released, Amnesty International remains concerned about the continued detention of almost 100 people, who were still held at the time of writing. On 2 December a group of students from the Yangon Institute of Technology (YIT) staged a sit-in demonstration on their campus, and then marched to the entrance of the Yangon University campus. They initially protested the earlier alleged police beatings of three YIT students who had been briefly detained on 20 October 1996 after a fight at a food stall in Insein township. They were also protesting against the circulation of letters on 29 November to some YIT students, which reportedly called on them not to ignore their studies in favour of politics. Students' demands included the punishment of the policemen involved in the October beatings and the reinstatement of two students who had been subsequently suspended. The authorities responded by stating that the policemen involved in the 20 October arrest had been sentenced to two years' imprisonment with hard labour. Students also asked to be able to form a student union, which had been abolished by the SLORC when it re-established military control in 1988 after suppressing the pro-democracy movement.

Peaceful protests continued all night, when YIT students were joined by students from other universities, to form a group of 2,000 people, much larger than the previous October demonstration. Their demands grew to include the release of imprisoned students, human rights and democracy, and improved educational standards. Students marched through the streets of central Yangon carrying the flying peacock flag, a

symbol of Burmese independence, and pictures of General Aung San, Myanmar's independence hero and father of Daw Aung San Suu Kyi. At about 5.30 am on 3 December a group of some 400 students gathered at Shwedagon Pagoda, were arrested by police and taken away in trucks to the Kyaikkasan sports ground. There were unconfirmed reports of beatings of students with rubber batons. According to the SLORC, all of the students were released after they were identified and questioned. The SLORC claimed that the group was detained in order to determine whether they were students or "infiltrators". The authorities later said that 424 students were arrested and later returned to their campuses and 172 non-students who were also briefly detained were sent back to their homes. However, Amnesty International remains concerned about those whom the SLORC characterize as "infiltrators" who are still in detention.

...

Barricades were lifted on the road in front of Daw Aung San Suu Kyi's compound on 2 December, but it was blocked again at about 7am on 3 December, and by the end of the year the barricades remained in place. As a consequence she was unable to hold a planned press conference on 3 December. Also on 3 December five members of the NLD youth wing were arrested after they left Daw Aung San Suu Kyi's compound. Daw Aung San Suu Kyi was able to leave her compound on 5 December in order to join over 200 NLD members and supporters to mark Myanmar's National Day at the home of U Tin U. However she could not leave her home again until 27 December, although key NLD leaders, including party chairman U Aung Shwe, U Kyi Maung, and U Tin U were able to visit her. During and after the December student demonstrations, Daw Aung San Suu Kyi stated that the NLD was not involved in the demonstrations, although they certainly supported the students' goals of democracy and human rights.

Further demonstrations by students took place in Yangon on 6 December. Eyewitnesses provided the following account of events on that day and in the early hours of 7 December. YIT students began protesting on their campus in the morning, and in the early afternoon marched down towards the main Yangon University (YU) campus. Students from various universities gathered at Hledan intersection, the site of the October 1996 demonstration. Between 2 and 3 pm Insein Road was blocked by riot police and army troops. The students displayed banners and made speeches, repeating their calls for the right to form their own union and the release from prison of 80 student leaders. Some students left the demonstration during the day, fearing intervention by riot police and armed troops, but by late evening some 500 remained, ignoring appeals from teachers to disperse. Local residents and other onlookers provided the students with water and food.

In the early morning hours of 7 December a group of some 100 - 150 students remained sitting at the Hledan intersection, surrounded by security forces. The group of students burned candles and prayed towards Shwedagon Pagoda. Onlookers, local residents and other students were gathered on streets and balconies nearby. Students from inside the YU campus also looked on. Riot police backed by armed troops were assembled on the surrounding streets. As the riot police marched down Insein Road towards the Hledan intersection, people gathered on that road threw bricks and other projectiles at the riot police, who threw stones back at them.

Demonstrations were finally broken up forcibly by the authorities at about 3 am with the use of water-cannons and riot police who charged the crowd wielding shields and batons. All the students in the intersection ducked down to avoid the water cannon directed at them, but one student, holding the flying peacock flag, remained standing and was knocked over. Police sprayed water cannons for 20 minutes on the students in the intersection before arresting them, and riot police with batons and shields charged another group of 100 students gathered nearby. According to official sources, 180 students and 83 non-students were detained and taken away to the Kyaikkasan sports stadium. The authorities later claimed that all of them were "handed over to their guardians".(23) Amnesty International is concerned that although for the most part the authorities exercised restraint, they did use violence against peaceful demonstrators in the centre of the intersection.

...

After the demonstration most of central Yangon was blocked off and only residents were allowed through checkpoints. On 7 and 8 December hundreds of NLD supporters gathered at Goodliffe Junction to wait for NLD leaders, who did not appear. They dispersed quietly after one hour. The SLORC stated that the NLD, the ex-patriate All Burma Students Democratic Front (ABSDF, an armed opposition group) and the largely defunct Burma Communist Party (BCP) were involved in the student demonstrations. The NLD continued to deny that there was any connection between itself and the demonstrations.

Two universities in Mandalay were closed on 9 December after demonstrations by students there. During the week beginning 9 December there was a heavy security force presence throughout Yangon. Students who boarded at YU and YIT began to return home and classes at universities and other educational institutes, including boys' high schools, were suspended from 9 December. On the same day there were reports of a small demonstration of some YU students, which was broken up by security forces. There were also small demonstrations at Dagon University, Kyimindine College, Botatang College and the Institutes of Dentistry and Medicine, all of which were broken up by the security forces. After the demonstration at Dagon University at least four students were arrested.

According to official sources, a crowd at the Dagon University demonstration attacked Lance-Corporal Kyaw Ohn, who "was seriously hurt and had to be hospitalized." This occurred after the security forces barricaded roads and broke up the demonstration. The Minister of Education had talked with the group, which the authorities claimed comprised non-students, but they proceeded to "push their way" down the road.(24)

A small demonstration in front of the US Embassy was held the night of 10 December when about 20 students were reportedly arrested. Small demonstrations on that day also occurred at the Governmental Technical High School, which was broken up by the riot police, and at the Number One Institute of Medicine, where a second demonstration was held on 11 December. The same day students from the Number One Institute of Medicine wrote a letter to the Rector concerning the continued detention of three medical students who had been arrested during the 11 December demonstration. On 13 December roadblocks began to be lifted but five tanks were deployed near City Hall in Yangon; by the end of the year they were still in place.

Demonstrations occurred in other parts of the country. On 11 December there was a demonstration of some 200 people in front of the palace in Mandalay. On 12 December there was a student demonstration at the university in Moulmein, capital of the Mon State in southeastern Myanmar. On 14 December a demonstration took place at the university in Sittwe, capital of the Rakhine (Arakan) State in southwestern Myanmar. Both universities were subsequently closed by the authorities. Reports also indicate that students at Monywa high schools, Sagaing Division, Upper Myanmar, held demonstrations on 11 and 12 December.

Your account of events differs from these reports in important aspects such as the fact that no demonstration appears to have been reported for the date you mention; by that time the universities had been closed. The tactics employed by the authorities do not reflect your statement that they took pictures of students and did not arrest them on the spot and, as in your case, came to your house the same evening.

This information is relevant as, depending on your response, the Tribunal might find that your evidence in relation to the demonstration you claim occurred on [date] is not credible, thus your evidence about your arrest and harm would also not be credible.

Your addresses in [City G]

You declared in your Protection Visa application form that you had lived at [address AA] from [early 1990s to early 2000s]. A "Family Members List" document issued [in the 1990s] (an official register of residents) and provided by you to the Department indicates the address of your family as [address BB]. This form attests to two checks of this state of affairs and confirms that on [date] you were living at this address with your parents, [and siblings].

The translation of your [Card 5] issued on [date] has your address as [address CC].

A sales contract indicating that you purchased an apartment on [date], again provided to the Department, shows that the you were living at the time at [address CC] and that the apartment you purchased was at [address AA] , the address that you claimed to be living at since [the early 1990s]. At the hearing you stated that this was explained by the fact that 'before we bought the house [address AA] we lived in it'.

The Tribunal has consulted the Yangon Directory (www.yangon-directory.com) and has established that [the road at address AA] is only found in [another] township, not in [town C] as claimed and as stated in the above document (no original of the apartment sale/purchase document has been provided). Could you please comment on this. Could you please provide the Tribunal with a detail list of addresses in [City G] where you lived from [the early 1990s to early 2000s] when you left for Australia and whether you were living at these addresses with your family or independently. Further could you please clarify for the Tribunal why you, as a single person in [year], would purchase an apartment where the whole family was living/was going to live, especially given your claims about the parlous nature of your finances not too long before this point. Could you please indicate to the Tribunal the reason that three addresses have been provided as your place of residence for the same or similar period.

The above information is relevant because, subject to your response, the Tribunal may form a view that you are not telling the truth about your employment, financial and social situation between [the early 1990s and early 2000s].

The petition

Following is a selection of information obtained from the sources indicated which report on the petition and the White Campaign:

Fri 6 Oct 2006

Filed under: ,

Students of the 88 generation are going on an overdrive with their campaign for the release of five leaders arrested recently, along with Daw Aung San Suu Kyi, Hkun Tun Oo and other political prisoners.

From October 10, the campaigners will start, what is being called, a 9-day long "White Campaign", wearing white shirts to collect signatures from people across the country.

The 'White Campaign' will come to an end on Min Ko Naing's 44th birthday, October 18.

...

Surprise response to 'White Campaign'

Mungpi

Mizzima News (www.mizzima.com)

October 10, 2006 - In a surprise response to the 'White Campaign' by Burma's 88 generation students', many civilians in Rangoon and other parts of Burma were seen in white clothes today.

The 88 generation students today launched the 'White Campaign', where they urged people to wear white clothes for over a week till student leader Min Ko Naing's 44th birthday on October 18.

The campaign, according to the students is a peaceful demonstration in support of the demand for the release of student leaders and political prisoners including Nobel Peace Laureate Daw Aung San Suu Kyi and a call for tripartite dialogue to begin the national reconciliation process.

Marke an 88 generation student activist told Mizzima, "Coincidentally, Su Su Nwe is holding a commemoration offering for her parents in her village and we, about 200 students, activists and politicians in white dresses went to the place."

"We have also got reports that in central Burma especially in Mandalay a lot of people were seen in white clothes," Marke added.

Nyan Win spokesperson of the National League for Democracy, Burma's main opposition political group, said, "I have not been carefully observing the difference between the way people dressed today and on previous days but significantly I can see many people are in white dresses today."

The campaign, which was launched today while the Burmese junta is busy re-convening its long-stalled National Convention, was seen by many as a well planned action to boycott the junta's convention to draft the constitution.

However, Marke dismissed such speculation saying it was a coincidence.

"We have not deliberately launched the campaign to time it with the National Convention. This campaign supplements the campaign for collecting signatures," Marke said.

With an appeal to the junta for the release of student leaders who were recently arrested, and political prisoners and to kick-start national reconciliation through tripartite dialogue, the 88 generation students have been collecting signatures across Burma to be submitted to the authorities on October 18, 2006.

Reports suggest that the number of signatures collected is over 120,000. So far there has been no report of intimidation or restriction imposed by the authorities over the two campaigns launched by the 88 generation students. (Mizzima News 11 October 2006)

...

Associated Press: Latest challenge to Myanmar's junta led by protest veterans - Grant Peck

Fri 13 Oct 2006

Filed under: News, Inside Burma

Pro-democracy activists in Myanmar are trying to turn the latest military crackdown to their advantage, hoping that a signature campaign calling for political dialogue will mobilize the public without exceeding what the junta can tolerate.

"Now, people are more courageous than ever," said Kyaw Min Yuu, one of the campaign's organizers, describing the petition as a way "to test our people's courage and to test our campaign for democracy.

"Since the military crushed a pro-democracy movement in 1988, killing hundreds and imprisoning its leader, Aung San Suu Kyi, it has come down hard on dissenters, arresting hundreds of political activists. The signature campaign a rare protest against the repressive regime was launched Oct. 2 by an informal group of former

student leaders who were key players in the 1988 movement that sought to end military rule in Myanmar, previously called Burma.

Just days earlier, five of the group's members were detained for suspected subversion.

"We are trying to seek how people can participate politically at the lowest level," Kyaw Min Yuu told The Associated Press, explaining that signing a petition is one political act people believe won't get them in trouble with the authorities.

Most leaders of the 1988 pro-democracy movement who didn't flee the country were imprisoned for more than a decade.

Spirits unbroken by their time in jail, the former student leaders began casting about for a fresh political role after they were released in 2004 and 2005. Their de facto leader is Min Ko Naing a near-legendary activist and they call themselves the 88 Generation Students' Group.

Their semi-public petition campaign people are contacted and sign in privacy has captured the imagination of many in Yangon, the country's commercial and cultural center.

The boldness of their move stands in contrast to the virtual paralysis of the National League for Democracy party of charismatic Nobel Peace Prize laureate Suu Kyi, which despite its large and loyal following seems incapable of any political initiative while she remains under house arrest.

She has been in detention for almost 11 of the past 17 years, continuously since May 2003. The signature campaign was started a week after Min Ko Naing and four colleagues were detained by the authorities "in order to prevent unrest and instability in the country," according to the state-run newspaper Kyemon.

The petition demands the release of all political prisoners including Suu Kyi and the 88 Generation detainees and a dialogue among the military, political opposition, and ethnic minority leaders "for the national interest and national reconciliation.

"The activists claim to have gathered more than 120,000 signatures, including 2,000 on the first day alone.

So far, the campaign has drawn only relatively mild rebukes from the military government, which is usually not shy about condemning its foes. However, on Thursday at least one former political prisoner in Yangon said he had been warned by the junta's neighborhood representative not to sign.

Asked about the matter earlier this week, Information Minister Brig. Gen. Kyaw Hsan replied that any effort to mislead the public "is not appropriate, not suitable.

"He said that not many people had signed the petition, and that "those who sign are not knowing the issue well, and they are deceived, we understand."

"The authorities close their eyes," said Kyaw Min Yuu. "I think they wait and see.

“Although all daily newspapers and radio and television stations are owned by the government, and other media are under tight censorship, the campaign is able to publicize its activities through foreign radio broadcasts, he said.

For news, many people turn to foreign shortwave broadcasts, particularly the BBC’s Myanmar-language service.

The NLD, which Kyaw Min Yuu said pioneered the petition approach with a 2003 campaign seeking Suu Kyi’s release, is supportive of the signature campaign.

“The campaign has brought greater unity among political parties, the public and those interested in politics,” said Nyan Win, a lawyer and spokesman for the party.

The 88 Generation wants to measure the political temper of Myanmar’s people and the capacity of the group’s campaigners in order to see “what we can do for the next step,” said Kyaw Min Yuu.

“Democracy wants fearless persons, so ... we have to be fearless,” he said.

Tue 24 Oct 2006

Filed under: ,

Burma’s leading pro-democracy activists on Monday closed their signature-gathering petition campaign calling for political dialogue and the release of political prisoners. The petition was signed by a total of 535,580 people, the organizers said.

The petition was drawn up by the 88 Generation Students group, comprising former political prisoners and student activists. They launched it on October 2 after five of their leaders were arrested in September at their homes in Rangoon by security officials. The regime accused the detained activists of trying to stimulate unrest at a time when the UN Security Council was holding discussions on how to achieve democratic reform in Burma.

Mya Aye, one of the group’s leaders, told The Irrawaddy on Tuesday. “We conclude that the campaign has been successful, because people express what they want with more courage than ever.” The completed petition would now be sent to the UN.

Burmese officials made no move to stop the circulation of the petition, apart from arresting Win Ko, a National League for Democracy member. Win Ko was arrested on October 6 with 400 petition signatures in his possession. He was convicted of obstructing the work of a government official who had questioned him about the signatures, and he was sentenced to two years imprisonment. He was sentenced to a further year on a charge of possessing illegal lottery tickets, which he denied.

The organizers of the petition claimed it was a way of giving people a chance to participate in politics. The petition urged the regime to free all political prisoners-

particularly NLD leaders Aung San Suu Kyi and Tin Oo, prominent journalist Win Tin, Shan ethnic leader Hkun Htun Oo and former student leaders Min Ko Naing, Ko Ko Gyi, Htay Kywe, Min Zeya and Pyone Cho.

Could you please comment on this information especially as it relates to your description of what happened to you in connection with the petition. Could you please indicate to the Tribunal when and where you signed the petition. The above information seems to indicate that, apart from one arrest, no attempt was made by the regime to stop the signature campaign and no reports have indicated any reaction to the White campaign by the regime.

This information is relevant to our case as it casts some doubt on your claim of detention for reason of having signed the petition, especially since your claimed detention occurred before the end of the signature collection period and the names of the petitioners would not have been presented to the regime, as some of the above reports attest, before the 23/24 October or later.

Interval between obtaining the Australian visa and leaving Myanmar

At the hearing you stated that the interval between your being granted the Australia visa [date] and your leaving Myanmar [date] was because you were very stressed at the time, that you did not want to leave the family, and that there was no one who could look after you in Australia. The Tribunal pointed out that in fact a person whom you claimed to be a close friend had issued an invitation to you from Australia to visit. At the hearing you indicated that this person was closer to your [relative] and that you have had sporadic contact with her since arriving in Australia.

Could you comment on this information; the information is relevant as the Tribunal, subject to your response, might find that the delay in leaving Myanmar of more than [a few weeks], does not lead to a conclusion that you feared persecution in Myanmar.

[Relative I]

In your submission to the Tribunal of [date] you stated that your [relative I], had disappeared in [the 1980s] and he had been a member of [a group] and he had to flee. You got word at some point that he was in [town E] on the [country V] border and in [year] you went to see him. [Information deleted: s.431]. At the hearing it was established that you did not use a passport to cross the border into [Country V] and back into Myanmar.

Could you please comment on the above, especially in relation to why you would not remain outside Myanmar once you exited it, given your claimed history and why you would risk a border crossing without a passport.

The above information is relevant because, subject to your response, the Tribunal may find that you were not of interest to the authorities as you claim.

The applicant responded to the Tribunal's letter via a statutory declaration. Her answers can be summarised as follows:

On the matter of the demonstration – the applicant maintains that no one was arrested during the demonstration itself; she has given a particular date as the date of the demonstration but she cannot recall the exact date; she calculated the date by working back from her release from detention; it is possible that the specific demonstration she took part in may have occurred on an earlier date.

On the matter of the addresses – address AA and address BB indicate the same dwelling; it is at the corner of these streets; in the early 1990s she was living with her family at address CC, in or about the late 1990s the family moved to the address AA/address BB address; then a few years later the family bought these premises and have been there ever since. There is definitely an address AA in town C; names of roads are often duplicated, changed without notice and change name between Wards; addresses as such are not very important in Burma as all correspondence or communication has to go through the Ward's central authority. The property was not bought entirely with her own money; it is common for children to pool their money with their parents to buy a family home; it was put in her name to show confidence in her when she was down after the struggles she faced as a result of her political involvement also at the time her father was out of town and the seller was there for a limited time from Country W; her father was happy for the house to be registered in her name.

On the matter of the petition – she signed the petition sometime in early 2000s; she cannot remember the exact date; it was done in a private home; she was brought in for questioning; it is common practice for people in Burma to be detained for questioning without their being officially arrested and charged; she does not think that the authorities found out about her involvement by seeing her name on the petition once it was handed to them, what seems more likely is that they were keeping an eye on her family due to past political involvement and they noticed her wearing the white outfit and this led to her being questioned.

On the matter of the interval between receiving the Australian visa and leaving Burma – she first made attempts to obtain an Australian visa as she was becoming very uneasy about what would happen if she remained in Burma; when the card 5 incident happened she realised that she would no longer be safe; the warning that her mother received that the family was being watched because of her was the last straw and she left Burma within weeks.

On the matter of relative I – she stated that when she visited relative I there was not the same urgency to leave the country that she later faced; Country V would not have been the safest destination to run to as many Burmese people are detained and sent back to Burma; the border between Burma and Country V is not closely monitored by authorities from either country; it is common for people to cross the border without a passport.

The Tribunal received from the applicant a further submission documenting the recent developments in Burma and indicating their negative impact on the applicant.

FINDINGS AND REASONS

The applicant travelled to Australia on a valid Myanmar passport issued in her own name and an Australian visa granted in City G. This documentation is sufficient for the Tribunal to find that the applicant is a citizen of Myanmar and will consider her claims against that country.

The essence of the applicant's claims is that she fears persecution for reason of a real or imputed political opinion inimical to the regime in Burma. She fears she will be persecuted on return because she has a history of activism, as does her father and the authorities have detained her a few times and have taken her card 5 under the pretext that it had been tampered with. The evidence adduced in support of her claims are her statements that she was detained in the 1990s as a student and participant in a student protest march, slapped about and released after several days; that she signed a petition and was interrogated for this action and released after paying a sum of money (she also wore white clothing as part of the petition to release political prisoners); that later, she was accused of having tampered with her card 5 and the card was retained and she was told that she would be charged with this offence. The applicant also claims that her profile has prevented her from getting employment and completing a university degree. She could not get a police clearance for employment and she was blacklisted for the resumption of her university course.

The country information provided to the Tribunal by the applicant's adviser in her submission together with other information available to the Tribunal indicates that the Burmese regime is characterised by denial of human rights across the spectrum, that political dialogue is not allowed, that ability to choose one's government is denied and that punishment for transgressions include torture, if not death. Although what could be considered a political party in opposition, the NLD is allowed to exist, its activities in Burma, such as they are, are monitored and the state controls impede its functioning. The information available indicates that the movement of persons is tightly controlled and illegal departure is regarded as a political statement against the regime.

Information about the operation of the regime in Burma indicates that corruption is widespread and in the Corruption Perception Index published by Transparency International, Burma occupies the last place in the Asia-Pacific Region (2006); that is, it is perceived to be the most corrupt nation in the region.

The most recent and widely publicised events in Myanmar of the end of September 2007 indicate that actions by the regime continue the repression of any dissent and confirm the absence of the rule of law; they exemplify a continuation of the pattern of conduct by the regime as documented in sources cited above and which have occurred at intervals since 1988.

In terms of the applicant, the Tribunal accepts her evidence in relation to her detention; it is consistent with the events at around that time and the applicant has provided sufficient detail for the Tribunal to find that she was detained and beaten sometime in the 1990s when she was a university student. The Tribunal has noted the movements of the family especially in relation to the activities of the applicant's father and accepts that she comes from a family where, at least her father, was/is a

known political activist. The Tribunal accepts that these two factors would ensure that the family is closely monitored.

The Tribunal does not accept that the applicant was detained simply for the reason of her signing a petition, the Tribunal accept her latest version of this incident where she claims that she was probably arrested because she was wearing white clothing during the “White campaign” and that she was singled out for attention because she had previously come to the attention of the authorities. In light of the description of the detail of this event and the independent information about it, the Tribunal prefers this version of events.

The Tribunal accepts that her card 5 was confiscated but does not accept that this incident is related to her political opinion and considers it a crude attempt by the functionaries involved to extort money from her and her family. The Tribunal has come to this view following the applicant’s evidence about the manner in which this took place. The Tribunal accepts that whatever the motivation of this incident it did trigger a sense of panic in the applicant and she then left Myanmar.

The Tribunal is required to consider whether there is a real chance that the applicant would be persecuted on return for a Convention reason. The Tribunal has taken into account her past history with the regime and does not consider that the applicant has a high political profile within the context of Myanmar; she has not stated that she is a member of any political organisation and appears to be protesting against the regime from time to time. The Tribunal finds that given the history of political activism of her father and the claims which it has accepted in relation to the applicant’s own actions, the applicant, in the context of political dissidence and political action in Myanmar, including that in the recent past, would, on return, face a real chance of being questioned, harassed and detained for a substantial period. Such harm constitutes serious harm in terms of the Refugee Convention and in terms of municipal legislation (s.91R(1)(b)). The Tribunal finds that her political opinion, a Convention reason, is the essential and significant reason for the serious harm amounting to persecution which she would be subjected to (s.91R(1)(a)). The Tribunal thus finds that there is a real chance that the applicant would be persecuted on return to Myanmar for the Convention reason of political opinion, now or in the reasonably foreseeable future and thus that her fear of persecution is well-founded.

CONCLUSIONS

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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.