

RRT Bulletin

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The Refugee Review Tribunal decisions digest

This bulletin covers recently published Tribunal decisions. The decisions summarised represent a cross-section of published decisions of the Tribunal. Selected summaries of High Court, Federal Court and Federal Magistrates Court judgments, of interest to the Tribunal, are also included.

The Refugee Review Tribunal shall not be liable for any reliance by any person on the summaries contained in this Bulletin. Each summary provides a guide only to each decision and should not, under any circumstance, be used as a substitute for the full text of a decision.

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Afghanistan

V05/17871

21 September 2005, Melbourne

Ms S Muling, Member

AFGHANISTAN - RACE - HAZARA - RELIGION - SHIA MUSLIM - FURTHER PROTECTION VISA - The applicant from Ghazni province had previously been recognised as a refugee in Australia on the basis that he had a well-founded fear of persecution from the Taliban as a Hazara Shia Muslim. He claimed that the Taliban had not gone and that they continued to persecute Hazaras. The applicant further claimed that his father and another relative were killed by the Taliban and that he would also be killed if he returned to Afghanistan.

Held: Decision under review set aside.

Having regard to independent information, the Tribunal found that the Taliban was no longer in control of the majority of the country. However, it accepted the growing evidence that the Taliban were active in various parts of the country, including Ghazni province which bordered the predominantly Pashtun Zabul province where the Taliban exercised significant control. The Tribunal noted the general state of insecurity, lack of state protection and the continued existence of the Taliban and associated parties. It found that there had not been a substantial, effective and durable change since the time when the applicant was initially recognised as a refugee. Accordingly, The Tribunal was satisfied that the applicant continued to have a well-founded fear of persecution.

N05/51771

28 October 2005, Sydney

Prof S Blay, Member

AFGHANISTAN - RACE - SAYED - RELIGION - SHIA MUSLIM - POLITICAL OPINION - ANTI-TALIBAN - FURTHER PROTECTION VISA - The applicant was previously recognised as a refugee on the basis of his Saed ethnicity, his Shia religion and an imputed political opinion of being opposed to the Taliban. He claimed that he had been beaten on many occasions by the Taliban and feared that they would take him away. The applicant claimed that he was now in a relationship with a Catholic woman and that this would put him at risk with Muslims in Afghanistan, which was operating under Sharia law. He also claimed that he had changed his ideas and beliefs in Australia and this would make him a target of strict Muslims. The applicant claimed that there had been a history of persecution of the Sayed minority group by Pashtuns and the Taliban.

Held: Decision under review set aside.

The Tribunal accepted that the Taliban had conscripted young men including the Sayed to fight in their ranks. It accepted that the Taliban systematically brutalised minorities and Shia Muslims and many people disappeared. The Tribunal noted that the Taliban was no longer in *de facto* control of the country but remained a fearful force in the country. It found that the situation of the applicant was exacerbated by the fact that he had lived in the west and acquired the type of morality the Taliban continued to oppose in their insurgency. The Tribunal found that this, coupled with his relationship with a non-Muslim woman meant that the circumstances in connection with which the applicant was recognised as a refugee had not ceased and may well have become worse. Accordingly, it found that the applicant continued to have a well-founded fear of persecution.

Bangladesh

N05/52321

29 November 2005, Sydney

Dr R Witton, Member

BANGLADESH - RELIGION - MIXED MARRIAGE - The applicant and his wife feared persecution because of their mixed marriage. He claimed that as he was a Muslim and his wife was Hindu they feared harm from members of their respective families as well as from conservative Muslims opposed to their marriage. The applicant claimed this was particularly the case since his wife had originally converted to Islam to please her conservative in-laws, but had then returned to her Hindu faith. The applicant's wife claimed that she was seen as having contaminated, corrupted and defiled a Muslim man and his beliefs. The applicant claimed he and his wife had been physically abused and threatened by his family and the authorities were unable or unwilling to provide them with effective protection against such harm.

Held: Decision under review set aside.

The Tribunal found the applicant and his wife to be credible and accepted their claims. It accepted that they had suffered abuse from the applicant's family and that the family would be particularly incensed by his wife's rescission of her Islamic conversion. The Tribunal noted that Muslim/Hindu marriages were not common in Bangladesh. It found that, given the increasing Islamist atmosphere, the wife's return to her Hindu faith might attract the attention of fundamentalists even in Daka. The Tribunal further found that police and other authorities were loath to interfere in domestic disputes and accepted that they may be unable or even unwilling to provide effective protection given the apparently sanctioned rise in Islamism. It accepted there was a real chance that the applicant and his wife would face serious harm for reasons of religion and found that relocation was not an option. Accordingly, the Tribunal found that they had a well-founded fear of persecution for reasons of religion.

Burundi

V05/18189

13 December 2005, Melbourne

Ms J Wood, Member

BURUNDI - RACE - NATIONALITY - HUTU - PARTICULAR SOCIAL GROUP - YOUNG MEN LIABLE FOR FORCIBLE CONSCRIPTION - FURTHER PROTECTION VISA - The Hutu applicant was previously recognised as a refugee on the basis that he had a well-founded fear of persecution from the Tutsis. He claimed that ever since he was born there had been fighting in Burundi. The applicant claimed that he would be forced to join militia groups and that the fighting between Hutus and Tutsis in the Congo had not ceased and in the past had spilled over into Burundi. The applicant claimed that the roots of ethnic conflict in Burundi were deep and pre-dated the recent crisis by many decades. He claimed he had seen many dead bodies and remained afraid of returning.

Held: Decision under review set aside.

The Tribunal noted independent information relating to the current situation in Burundi where a process of disarming the old militias was under way and found that the applicant's claim related to coercion into militias was no longer viable. The Tribunal accepted that there were some favourable signs that the deep-seated ethnic tensions between Hutus and Tutsis may be resolved at some time in the future. However, it was not satisfied that the current moves in this direction, while undoubtedly significant, could be held to be substantial, effective and durable. Accordingly, it was satisfied that the applicant remained a refugee to whom Australia has protection obligations under the Convention.

China

N05/51614

14 October 2005, Sydney

Ms A O'Toole, Member

CHINA - RELIGION - CHRISTIAN - UNDERGROUND CHURCH - INCARCERATION - The applicant feared persecution arising from her participation in the activities of the Christian home church. She claimed that her parents and ancestors were Christians and that she became involved in an underground workshop where she was arrested when police broke in at midnight. The applicant claimed she was detained and questioned and forced to reveal names of bishops, priests and other activists. She claimed she was charged and sentenced to a reform through labour farm. The applicant claimed that she became sick and her husband paid bribes for her release. She claimed that she had to escape from China because she was a prisoner released for medical treatment and could be returned to the labour farm at any time. The applicant claimed that the local security department had since threatened her husband, accused her of fleeing bail and said that she would be imprisoned if she returned.

Held: Decision under review set aside.

The Tribunal accepted that the applicant was a practising Christian and a member of an underground Christian church. It accepted that she was involved in activities relating to her religion and that she was arrested, detained, prosecuted and sentenced to a term of imprisonment for that reason. The Tribunal accepted that the applicant was released because of health problems on the understanding that she would return to serve out the remainder of her sentence. It accepted that she failed to return to prison and travelled to Australia using a false passport. The Tribunal accepted the applicant's evidence that if she returned to China she would be incarcerated and that any attempt by her to practise her faith would lead to persecution. It accepted that she was a committed Christian and if she returned she would continue to practise her religion in the underground church. Accordingly, the Tribunal found that the applicant's fear of persecution for reasons of her religion was well-founded.

N05/52453

14 November 2005, Sydney

Ms P McIntosh, Member

CHINA - RELIGION - CHRISTIAN - SHOUTERS LOCAL CHURCH - The applicant feared persecution because he belonged to a banned religious group in China. He claimed he was a key member of the illegal Shouters Local Church, that he distributed propaganda material and had helped establish bible study groups. The applicant claimed he was detained twice, arrested and tortured by the Public Security Bureau (PSB) and lost his job at a state-owned enterprise. He claimed that the year after his last release a colleague was arrested and exposed his activities to the PSB, following which the applicant became a target for the PSB. He claimed that the PSB visited his wife twice looking for him and told her that he was involved with an unlawful organization. The applicant claimed that he went into hiding, moved to another city and then left China using a passport issued in another name.

Held: Decision under review set aside.

The Tribunal found that the applicant had been able to conduct his religious activities more or less as he wished for some years. It accepted that he was detained on two occasions, was beaten whilst being interrogated during his later detention and released unconditionally. However, it found that the applicant was not subjected to treatment sufficiently serious to amount to persecution before he left China. The Tribunal was satisfied that tolerance of the more low key Shouter activities may have changed and that the PSB were given specific information which led to their increased interest in the applicant. The Tribunal accepted that he was likely to have been more harshly treated if he had not taken steps to avoid the PSB before his departure and that they might now perceive him as a church "leader" or "recruiter". The Tribunal found that the applicant may face serious harm amounting to persecution and was accordingly satisfied that his fear well-founded.

N05/52559

5 December 2005, Sydney

Ms K Rosser, Senior Member

CHINA - POLITICAL OPINION - FALUN GONG PRACTITIONER - The applicant feared persecution on the basis of his practice of Falun Gong. He claimed that he had practised Falun Gong since the mid 1990s and that he subsequently became a Falun Gong leader. The applicant claimed that he continued to practise Falun Gong after he arrived in Australia and had been involved in expressing his opinion in front of the Chinese Consulate and the Chinese Embassy. He claimed that he had been actively involved with Falun Gong in Australia for a number of years including Falun Gong study and distribution of materials, as well as protests and demonstrations.

Held: Decision under review set aside

The Tribunal accepted that the applicant was a Falun Gong practitioner. It accepted that he had attended Falun Gong study, was involved in the distribution of materials and regularly attended protests and demonstrations. The Tribunal found that the applicant's commitment to Falun Gong was strong and genuine and if he returned he would feel compelled to continue its practice. Referring to independent evidence, the Tribunal found that should the applicant openly practise Falun Gong he would attract the attention of Chinese authorities and face a real chance of serious harm. It concluded that the authorities would know about the applicant's activities in Australia, that he would be monitored on return and if he refused to disavow Falun Gong he could face penalties including imprisonment. It was satisfied that Falun Gong practitioners faced persecution for reasons of imputed political opinion. Accordingly, the Tribunal was satisfied that the applicant had a well-founded fear of persecution for a Convention reason.



India

N05/51473

10 October 2005, Sydney

Dr R Witton, Member

INDIA - PARTICULAR SOCIAL GROUP - LOWER CASTE HINDUS - INTER-CASTE VIOLENCE - RELOCATION - The applicant feared persecution arising from his membership of the particular social group of "lower caste Hindus" as he was a member of the Harijan (untouchable) caste. He claimed that members of such Scheduled castes did the lower types of jobs and had been suppressed for the past 2500 years. The applicant claimed he was hard working and physically strong but when he applied to join the police force he was ridiculed and humiliated and members of the upper class who were weaker than him were selected. He claimed that he gave lectures in his village for the uplifting of members of the Scheduled castes and was beaten by upper class Hindus. The applicant claimed that due to his political activities he became well known in the area and was arrested at a rally and severely beaten by police. He claimed that after this he became more active and incited his community to "realise their power". The applicant claimed that he visited people at home to convince them to vote for a party of the Scheduled classes. He claimed that on one occasion he was involved in a scuffle with attackers and seriously injured one of them. The applicant claimed that to save his life he had to flee India after he received threats that he and his children would be killed.

Held: Decision under review affirmed.

The Tribunal noted that the caste system still operated in India, particularly in rural areas, and that Scheduled caste members suffered a degree of discrimination and occasional oppression. It accepted that the Indian government had taken active measures to redress the discrimination long suffered by lower caste Hindus. However, the Tribunal also acknowledged that the independent evidence indicated that in India caste oppression regularly occurred and there was ample evidence of sporadic inter-caste violence. It accepted that the applicant was a supporter of the rights of scheduled caste members and for that reason had been targeted for harm by local higher class people. The Tribunal noted that the applicant had, despite discrimination, gained a high school education and found it would be reasonable for him to relocate to an urban area where he could avoid the caste conservatism of rural areas. Accordingly, the Tribunal found that the applicant's fear of persecution was not well-founded.

N05/51965

17 November 2005, Sydney

Ms A Younes, Member

INDIA - PARTICULAR SOCIAL GROUP - DALITS - POLITICAL OPINION - The applicant feared persecution as a member of the Dalit caste who had joined the Radical Students Unit (RSU), a student wing of the People's War Group (PWG) and later joined the Radical Youth League (RYL) where he claimed he obtained a position on the executive committee. The applicant stated that he was born in a small village where the majority upper caste held all the powers. He had studied in the city and made contact with many Dalit leaders. The applicant claimed that his community suffered police atrocities when the police entered a village burning down huts and raping women. He claimed that when he and his friends pasted posters and distributed anti-police bills they were arrested and released on conditional bail but the case was still pending. The applicant claimed he was involved in a number of demonstrations, rallies and boycotts over the years and was arrested, assaulted, injured and falsely charged. He claimed he could not relocate as he would be targeted for his membership of the PWG in India as a whole.

Held: Decision under review set aside.

The Tribunal was satisfied that the applicant was a credible witness who demonstrated a sophisticated understanding of the PWG. It was satisfied that because of his Dalit status and his political activities as well as his actual and imputed political opinion, he had experienced persecution in India. The Tribunal accepted that the applicant became a member of the RSU and later, a member of the RYL. It accepted that he regularly participated in demonstrations and the distribution of material aimed at educating Dalits on their political and social rights. The Tribunal accepted that he was subjected to arrest and imprisonment on a number of occasions and was badly beaten by police during one of his detentions. It gave the applicant the benefit of the doubt and accepted that the police fabricated false charges against him. The Tribunal was satisfied that the arrests, assault and framing of false charges were related to his Dalit status, his political opinions and his membership of the PWG. Accordingly it was satisfied that the applicant's fear of persecution was well-founded.



Indonesia

N05/52515

5 December 2005, Sydney

Dr R Witton, Member

INDONESIA - RACE - CHINESE - MUSLIM EXTREMISTS - The applicant feared persecution arising from his Chinese ethnicity. He claimed that since the 1988 riots, Indonesia's political and economic situation had remained unstable which made further attacks on Chinese likely. The applicant claimed that Chinese Buddhists were particularly at risk from a growing militant Islamic movement. He claimed that his shop was robbed often and so many goods were taken that he had to close the business. The applicant claimed he feared the "blatantly racist paramilitary", radical Muslims or even elements within the military who had been linked to violence. He claimed he would be targeted because he was Chinese and that it was useless to ask for government help because the government did not treat the affair seriously. The applicant claimed that the government's decision to permit Chinese language, press and cultural displays had caused heightened resentment and acts of retaliation. He claimed that insufficient help was being given to victims or to prevent abuse in the future.

Held: Decision under review affirmed.

The Tribunal noted that religious freedom was guaranteed by the constitution and that the government took an active role in protecting citizens from sectarian strife. It noted that Muslim extremists had been active in certain areas but accepted that their influence was on the decline and those responsible for such violence were being brought to court. It found that the events of 11 September 2001 had resulted in the Indonesian government and Muslim leaders strongly condemning violent actions in the name of Islam. The Tribunal found that any trepidation experienced by the applicant in regard to religious freedom was not sufficiently serious to constitute persecution. It found that Chinese people faced discriminatory bureaucratic procedures but accepted that progress was being made in removing such provisions from the law. The Tribunal accepted that

the May 1998 riots would have been a frightening experience for the applicant but noted the virtual absence of anti-Chinese riots since then. Accordingly, it was not satisfied that the applicant's fear of persecution was well-founded.

Iraq

N05/51056

23 August, 2005, Sydney

Ms A Younes, Member

IRAQ - POLITICAL OPINION - PERCEIVED OPPONENT OF BA'ATHISTS - RELIGION - MODERATE MUSLIM - FURTHER PROTECTION VISA - The applicant was previously recognised as a refugee on the basis that he feared persecution from the security forces who had subjected him and his family to torture and imprisonment. The applicant further claimed that he was arrested and detained because his friends confessed that he was a member of a religious group and had distributed religious pamphlets to promote anti-discrimination between Sunnies and Shi'ites. The applicant claimed that he now considered himself to be a "moderate Muslim" and not a strict practitioner of Islam. Further, the applicant claimed that he would be targeted by various political Islamic groups.

Held: Decision under review set aside.

Having regard to independent information, the Tribunal found that the situation in Iraq was extremely unstable, insecure and dangerous. It accepted that the applicant and his family were tortured and imprisoned by the security forces under the former Saddam regime. The Tribunal accepted as being plausible that the applicant was involved in a religious group and that he and his friends were arrested for distributing pamphlets. It was satisfied that he was perceived to be an opponent of Ba'athists and of Saddam's regime. The Tribunal was satisfied that the applicant was a moderate Muslim, would be perceived by Islamic groups as having rejected Islam and could be harmed on this basis. Accordingly, the Tribunal found that the applicant's fear of persecution was well-founded.

V05/17740

28 September 2005, Melbourne

Ms W Boddison, Member

IRAQ - RELIGION - SHIA MUSLIM - POLITICAL OPINION - ANTI-BA'ATHIST - RETURNEE FROM THE WEST - FURTHER PROTECTION VISA - The Shia Muslim applicant was previously recognised as a refugee on the basis of a well-founded fear of persecution due to his imputed political opposition to the Ba'athist regime in Iraq and as a Shia Muslim. He feared persecution as he was consistently subjected to arrest, detention and assaults based on suspicion of his involvement in political activism. The applicant claimed that he now feared persecution from the Islamic government because he was no longer a practising Muslim. He claimed that as a returnee from a long stay in a western Coalition country, he would be identified as a pro-Western sympathiser and be subject to discrimination, threats and violence from former Ba'athists as well as other groups.

Held: Decision under review set aside.

The Tribunal found that there had not been a fundamental and durable change in the circumstances in which the applicant was previously recognised as a refugee. It was therefore not satisfied that the circumstances in connection with which he was recognised as a refugee had ceased to exist. The Tribunal found that the situation in Iraq remained unstable and insecure and that the government was unable to protect the applicant from the violence perpetrated by Ba'athist sympathisers. Accordingly, the Tribunal found that the applicant continued to have a well-founded fear of persecution for a Convention reason.

V05/17988

8 December 2005, Melbourne

Ms I Tsiakas, Member

IRAQ - RELIGION - SHIA MUSLIM - POLITICAL OPINION - ANTI-BA'ATHIST - RETURNEE FROM THE WEST - MIXED RELATIONSHIP - FURTHER PROTECTION VISA - The Shia Muslim applicant was previously recognised as a refugee on the basis of a well-founded fear of persecution due to his political opposition to the Ba'athist regime in Iraq. He feared persecution in Iraq as when he was young his family was deported to Iran because they were Shia Muslim. The applicant also feared persecution from the fundamentalist Shia Muslim community on the basis of his non-traditional religious practices and his relationship with a Sunni Muslim woman. He claimed that as a returnee from a long stay in a western Coalition country, he would be identified as a pro-Western sympathiser and be subject to discrimination, threats and violence from former Ba'athists as well as other groups.

Held: Decision under review set aside.

The Tribunal found there was a real chance of the applicant being killed on return because of an imputed opposition to the former Ba'athist regime by reason of his family's deportation to Iran. It found that based on his return from the West and his religious practices, including his relationship with a Sunni Muslim, there was more than a remote chance that the applicant would face persecution from insurgents, remaining supporters of the Saddam Hussein regime, those opposed to the Coalition and Shia militants. The Tribunal found that the state was unable to provide the applicant with adequate protection in accord with international standards and was satisfied that he had a well-founded fear of persecution for a Convention reason.



Lebanon

N05/51086

4 August 2005, Sydney

Ms P Leehy, Member

LEBANON - RELIGION - JEHOVAH'S WITNESS - The applicant feared persecution as a Jehovah's Witness. He claimed that he had been a Jehovah's Witness member for a considerable time and was a long-serving member of a congregation. The applicant also claimed he conducted Bible studies classes and was actively involved with preaching and distribution of publications. He claimed that on numerous occasions he had been stopped by Lebanese authorities while conducting classes and warned to return home or be detained. The applicant stated that his ability to practise his religion was restricted due to continuous monitoring and that on return he would not have any choice but to practise his faith in a covert fashion.

Held: Decision under review set aside.

The Tribunal accepted that the applicant had been an active member of the Jehovah's Witnesses for some time. It found the applicant to be a credible witness. The Tribunal accepted that it was a central obligation of the Jehovah's Witnesses faith to proselytise and that restrictions on proselytising may constitute a significant restriction on the practise of religious faith. The Tribunal found that there was a climate of hostility to Jehovah's Witnesses in Lebanon and that their activities were strongly discouraged, if not legally prohibited by the clergy and authorities. The Tribunal found there was a real chance that the applicant would suffer serious harm if he were to return. Accordingly, it was satisfied that the applicant had a well-founded fear of persecution based on his religion.

N05/52155

6 December 2005, Sydney

Mr J Silva, Member

LEBANON - POLITICAL OPINION - FREE SPEECH - NORMALISATION OF LEBANESE-ISRAELI RELATIONS - The applicant feared persecution because he strongly stood for the rights of free speech and political expression. He claimed that whilst at university he found it impossible to publicly express his political opinions from fear of extremist groups. The applicant stated that although he was not a member of

any political group, he sensed intolerance towards his political views, especially on the normalization of Lebanese-Israeli relations. The applicant referred to several incidents in the later years of his course, such as being the subject of accusations and threats from Syrian sympathizers after he made a perceived pro-Israeli comment. He also claimed that he met with Christian friends in churches to discuss political issues and that a number of his friends, members of the Free Patriotic Movement (FPM), were killed or simply disappeared over time. He stated that if he returned to Lebanon, he would be unable to express his views and that the government, influenced by extremist forces, would not be able to protect him.

Held: Decision under review affirmed.

The Tribunal accepted that the applicant had political opinions about Lebanon's future, including sensitive issues such as future relations with Israel. It also accepted his accounts of sensed intolerance towards his political opinion while at university. However, it found that as the terse comments and threats were not followed through, those incidents did not give rise to or contribute to a well-founded fear of persecution. The Tribunal was not satisfied that the applicant and his Christian friends had to meet in churches to avoid harm and found that the disappearance of his FPM-affiliated friends could not be regarded as "politically suspect". It was not satisfied that the applicant would seek to have his political views published, or in any other way seek a higher profile for himself, but found that he could participate in political debates and express his political views without facing a real chance of Convention-related persecution. Accordingly, the Tribunal was not satisfied that the applicant had a well-founded fear of persecution.

Mongolia

N05/51209

30 September 2005, Sydney

Ms P Pope, Member

MONGOLIA - RACE - CHINESE - DISCRIMINATION - MISTREATMENT - NO STATE PROTECTION - The applicant feared persecution arising from his Chinese ethnicity. He claimed that he had suffered discrimination, was never given a job and could not undertake further study. He also claimed that he was attacked and threatened with death. The applicant claimed that when extremists attacked him the authorities did not assist him. He claimed that he was unsuccessful in his search for work and decided to approach managers and higher placed persons in order to establish his credentials as a willing worker. The applicant refused to leave the office of one factory manager until they considered employing him but was told that he was of mixed blood and not entitled to work. He claimed that workers were called who took him into the street and beat him. The applicant claimed he was taken into police custody where he was again abused and mistreated by the workers while the police urged his attackers on. He claimed the police told him that if he ever came back he would be killed.

Held: Decision under review set aside.

The Tribunal accepted that the applicant was half Chinese, that he was perceived from childhood to be ethnic Chinese and was treated differently by his peers. It accepted that he was often beaten and abused at school and on his way to and from school. The Tribunal found that his perceived race was the reason for the mistreatment he suffered. However, it found that the reason he did not proceed to university was because tertiary study was beyond the financial means of his family. The Tribunal accepted the applicant's account of attempting to put his case to a prospective employer and accepted that after this he became depressed and withdrawn and did not dare go out to look for work. It accepted that he had suffered significant ill-treatment throughout his life and that in the most recent instance it was not only condoned by the local police, they too became involved in this treatment of the applicant. Accordingly, the Tribunal was satisfied that he had a well-founded fear of persecution for a Convention reason.

Nepal

N05/51766

7 October 2005, Sydney

Mr A Jacovides, Member

NEPAL - POLITICAL OPINION - KIDNAP BY MAOISTS - DETENTION BY SECURITY OFFICERS - EXTORTION - The applicant feared persecution on the basis of his political opinion. He claimed that he was involved in pro-democracy protests prior to the introduction of a multi-party political system. The applicant claimed he was kidnapped by Maoists and questioned regarding his political activities. He claimed that they later threatened him and his family and demanded money. The applicant claimed that a police officer advised him not to lodge an extortion complaint as it was dangerous. He claimed that when the Maoists discovered his approach to police they threatened to kill the whole family and he sold land to meet their demands for money. The applicant claimed that he was detained by the authorities during a demonstration after the King's dismissal of Parliament. He claimed he was mistreated by security officers and accused of being a Maoist. The applicant stated that he went into hiding and the police went to his house daily to make inquiries about him. He claimed that the Maoists also considered him to be an opponent and would try to harm him.

Held: Decision under review affirmed.

The Tribunal accepted the applicant's claims that he was considered an opponent by the Maoists and that they would seek to harm or kill him for reasons of political opinion. It was satisfied that the authorities did not have the ability or resources to protect persons of particular interest to Maoists. Accordingly, the Tribunal found that the applicant had a well-founded fear of persecution in Nepal for reasons of political opinion. However, the Tribunal was satisfied that the government of India was willing and able to provide effective protection to the applicant. It was satisfied that, contrary to the applicant's claim, he would not be prevented from earning a living in India. The Tribunal found that the applicant had a right to enter and reside in India where he did not have a well-founded fear of persecution. Accordingly, it found that Australia did not owe protection obligations to the applicant.

N05/52219

2 December 2005, Sydney

Mr A Jacovides, Member

NEPAL - RELIGION - EVANGELICAL CHRISTIAN - POLITICAL OPINION - MEMBER OF MILITARY - MAOISTS - The applicant feared persecution for leaving the military without permission and for converting to Christianity. He claimed that he had refused to participate in human rights violations against Maoists, but was also targeted by Maoists because he was involved in military operations against them. He claimed they threatened to kill him if he continued to be involved in activities against the *people's war*. The applicant claimed that he had witnessed ruthless killings by the Maoists and the government. In addition, he claimed that in Australia he had converted to Christianity and to proselytising. The applicant claimed that he could not avoid harm in India as he would be targeted there by Maoists and the government would send him back to Nepal.

Held: Decision under review set aside.

The Tribunal was satisfied that Maoists targeted anyone suspected of being an opponent and often subjected their targets to life-threatening harm. It was satisfied that an adverse political opinion had been attributed to the applicant because he was a career soldier with considerable involvement in military operations against the Maoists. The Tribunal found there was a real chance that the applicant would be targeted by Maoists because of his previous involvement in the *people's war*. It found that the State could not protect such individuals when they became particular targets of the Maoists. The Tribunal was also satisfied that individuals such as the applicant who insisted on proselytising risked harm including imprisonment and police harassment. It found that although the applicant had the right to enter and reside in India, he could not avoid harm in India as he would be at risk of serious harm as an evangelical Christian from which the authorities would be unable to protect him. Accordingly, it found that his fear of persecution was well-founded for reasons of political opinion and religion.



Sri Lanka

N05/52206

9 December 2005, Sydney

Mr A Jacovides, Member

SRI LANKA - RACE - POLITICAL OPINION - TAMIL - The applicant feared persecution as a Tamil with family connections to the Liberation Tigers of Tamil Eelam (LTTE). He claimed that in the past he had been detained and assaulted by the authorities on suspicion of being an LTTE supporter. He claimed that he was only released after paying bribes. The applicant claimed that in addition the LTTE had extorted money from him. He claimed that he would have to live in Jaffna and would be targeted by the LTTE because he did not support the group. The applicant claimed he could not relocate to Colombo because he had no relatives there and could not speak Sinhalese. He claimed that the LTTE had targeted older Tamils previously and he was at risk of extortion, abduction and even forced labour for political reasons.

Held: Decision under review set aside.

The Tribunal was satisfied that the applicant had provided a truthful account of his circumstances and that he had been detained and seriously mistreated by the authorities. It was satisfied that the harm to which he was subjected, which included detention, beatings and other forms of physical violence amounted to persecution. The Tribunal noted that there were fewer human rights violations perpetrated against Tamils since the ceasefire, but was not satisfied that a permanent solution to the conflict had been achieved. It found that with the current level of instability and the particular vulnerability of the Tamil community since the insurgency began, there was a real chance that the applicant would again be subjected to persecution by the authorities. The Tribunal found that Tamils continued to be discriminated against and targeted by the authorities and that the applicant was at risk of harassment, detention and other abuse because he was a Tamil. It found that his ethnic background was the primary motivation for the harm and that he had a well-founded fear of persecution by the authorities.



Turkey

V05/18061

21 December 2005, Melbourne

Ms G Hamilton, Member

TURKEY - POLITICAL OPINION - KURDISH ALEVI - PRO-KURDISH ACTIVITIES - The applicant feared persecution on the basis of her political opposition to the Government in Turkey. She claimed she was Kurdish Alevi and that her family left their village as a result of the activities of the Turkish military such as looting and damaging crops. The applicant claimed she later participated in union activities, which adversely affected her employment. She claimed she also participated in anti-government protests for which she was on several occasions arrested, detained and tortured by police officers as an alleged terrorist. Her father helped her to obtain a passport so that she could leave Turkey. The applicant claimed that the police force continued to seek information on her whereabouts from family members.

Held: Decision under review set aside.

The Tribunal found there was a real chance of the applicant being seriously harmed for reason of her political opinion in the reasonably foreseeable future. It found that despite legislative reform, the Turkish authorities still committed serious human rights abuses of detainees, especially in the case of political offences. The Tribunal found there was a real chance that the applicant would be detained and mistreated again on that basis. It was not satisfied that she could avoid this by relocating within Turkey or that she had a right to enter and reside in any third country. Accordingly, the Tribunal was satisfied that the applicant's fear of persecution was well-founded for a Convention reason.

FEDERAL COURT JUDGMENTS

NBLC v MIMIA; NBLB v MIMIA

[2005] FCAFC 272

Federal Court of Australia, Wilcox, Bennett, Graham JJ, NSD1443 & 1444 of 2005, 23 December 2005

Immigration - Protection Visa application - proper construction of s.36(3) of Migration Act 1958 (the Act) - application to applicants of s.36(3) and (4) of Act - meaning of persecution in s.36(4) of Act - meaning of words "all possible steps" to avail himself or herself of right to enter and reside in South Korea - whether s.91R definition of persecution in Act applies to s.36(4) - where Tribunal found two North Korean applicants to have a well-founded fear of persecution on basis of political opinion if returned to North Korea - relevance of South Korean policy of allowing settlement of North Korean refugees.

These were appeals from judgments of the Federal Court dismissing applications for judicial review of decisions of the Refugee Review Tribunal (the Tribunal) that the appellants were not persons to whom Australia had protection obligations.

The Tribunal accepted that both appellants had a well-founded fear of persecution for a Convention reason in their country of nationality, North Korea. However, the Tribunal found that the appellants also had a legally enforceable right to enter and reside in South Korea and had not taken all possible steps to avail themselves of that right. The Tribunal further found that the appellants did not have a well-founded fear of being persecuted in South Korea or that South Korea would return them to North Korea.

Justice Emmett dismissed both applications at first instance, rejecting arguments that the Tribunal had erred in construing s.36(3) of the *Migration Act 1958* (the Act); and in its interpretation and application of s.36(4) by assuming that s.91R of the Act defined persecution for the purposes of s.36(4).

The primary issues before the Full Court were: the proper construction of the expression "all possible steps to avail himself ... of a right to enter and reside in" another country in s.36(3) of the Act; and whether the reference to "persecution" in s.36(4) includes persecution to which Article 1A(2) of the Convention relating to the Status of Refugees (the Convention) does not apply by dint of s.91R of the Act.

Held: per Bennett & Graham JJ (Wilcox J dissenting), appeal dismissed.

per Graham J (Wilcox & Bennett JJ agreeing)

- (i) The words "all possible steps" in s.36(3) ought to be interpreted as meaning exactly what they say, and should not be read down in any way. They should not be construed as "all steps reasonably practicable in the circumstances", "all reasonably available steps" or "all reasonably possible steps".

per Graham J (Bennett J agreeing)

- (ii) The word "persecution" in s.36(4) of the Act has the same meaning as that defined in s.91R of the Act.

per Graham J

- (iii) The legislature intended the definition of persecution in s.91R to cover all situations where persecution fell to be considered under the Act. The primary judge was correct to reason that ss.36(3), 36(4) and 36(5) have no independent effect or operation. They operate only as qualifications of s.36(2). Although s.91R(1) refers only to Article 1A(2) of the Convention, it would be anomalous to treat the concept of persecution in ss.36(4) and 36(5) as being different from the concept of persecution imported into s.36(2) by s.91R(1). The preferable construction of s.36 of the Act, as a whole, is to treat the concept of persecution that is found in s.36 as a single and consistent concept.

per Bennett J

- (iv) Section 36(3) is a qualification of s.36(2) and s.36(4) is a qualification to that qualification. That means that protection obligations under the Convention, including Article 1A(2) of the Convention, are only owed to a person who has a well-founded fear in his or her country of nationality and has taken all

possible steps to avail himself or herself of any available third country right unless he or she has a well-founded fear in that third country.

- (v) The object of s.91R of the Act is the “*particular person*”, the applicant. The section deals with the *application* of Article 1A(2) of the Convention *in relation to persecution*; s.91R does not merely define the term persecution within Article 1A(2).
- (vi) Accordingly a person is not a refugee under Article 1A(2) unless he or she has a well-founded fear of persecution amounting to serious harm in his or her country of nationality and in the country in which he or she has a third party right.
- (vii) The persecution relevant to each applicant before satisfying the test for application of the Convention is both persecution in the country of nationality and persecution in any available third country. They both precede the application of the Convention. They are both persecution to which the Convention, as applicable under the Act, relates.

per Wilcox J (dissenting)

- (viii) Section 91R of the Act has no application to the question under s.36(4) of the Act. By treating the word “persecuted” as being limited by the requirements of s.91R, the Tribunal erred in law.
- (ix) Article 1A(2) of the Convention is the gateway through which all applicants for refugee recognition must pass. By raising the threshold of what constitutes “persecution” within the meaning of Article 1A(2), as applied to that person, the amending legislation was achieving the Minister’s stated purpose of weeding out unworthy applicants for recognition. However that purpose has no relevance to s.36(3), a provision that is concerned with people who have already satisfied Article 1A(2), as notionally amended by s.91R, and whose only reason for not being entitled to an Australian visa is that they have a right of residence in another country.

QAAR v RRT

[2005] FCA 1818

Federal Court of Australia, Greenwood J, QUD 93 of 2005, 13 December 2005

Immigration - Protection Visa application - failure to make a finding - failure to ask correct question - failure to exercise jurisdiction - Tribunal did not accept that arrest warrant genuine - whether findings as to general credibility could be relied upon to reject arrest warrant as genuine.

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that the appellant was not a person to whom Australia had protection obligations.

The appellant, a citizen of Uganda, claimed to fear that he would be persecuted by members of a group described as the “Lords Resistance Army” (LRA) and by the Government of Uganda by reason of a perception that he was or had been a member of the LRA. After the hearing the appellant sent to the Tribunal what purported to be a copy of an arrest warrant (said to have been issued by a Magistrate in Uganda) suggesting that collaborators were behind it, thus causing him to fear for his life. The Tribunal did not accept that the warrant was genuine, in part because it found the applicant to be generally not credible.

The essential contention in the appeal was that the Tribunal asked itself the wrong question by analysing simply whether the appellant held a well-founded fear of persecution from anti-government rebels in Uganda and failed to ask whether he held a well-founded fear of persecution from government authorities. The extent to which the Tribunal was entitled to apply a view formed about his credit and truthfulness on particular facts put to the Tribunal to a determination of whether the warrant of arrest was genuine, was central to the challenge. The appellant also contended that before rejecting the warrant of arrest as not genuine, he ought to have been heard.

Held: Tribunal decision quashed and remitted for redetermination according to law.

- (i) The decision of the Tribunal was affected by jurisdictional error because the Tribunal failed to afford natural justice to the appellant by failing to provide him with an opportunity to answer the proposition that the warrant of arrest tendered to the Tribunal after the hearing was not genuine.
- (ii) While there is no “universal proposition” that the Tribunal can never make a finding adverse to an applicant without putting the contention about the matter to the applicant (especially in the case of material first put to the Tribunal by an applicant), the Tribunal nevertheless must examine the document, make a judgment about the gravity of the document should the appellant be able (perhaps remotely) to demonstrate a basis upon which its authenticity might be established and then plot a point on the continuum in the discharge of its duty which determines whether the particular document in the circumstances of the particular case is one which would require as a matter of procedural fairness, the appellant being afforded an opportunity to say something about it. This was such a case.
- (iii) The Tribunal was astute to the two limbs to the appellant’s claims and dealt with each of them.
- (iv) Fundamentally, the Tribunal must respond to the case the applicant for a visa advances and although the applicant is not to be put, in a pleading sense, in a position of picking the correct “Convention label”, the Tribunal ultimately can only deal with the claims actually made before it.
- (v) It was open to the Tribunal to reject the warrant of arrest by relying upon its disbelief of the appellant generally, without identifying an independent and separate basis for rejection of the document.

SZBMC v MIMIA

[2005] FCA 1882

Federal Court of Australia, Branson J, NSD 1182 of 2005, 21 December 2005

Immigration - Protection Visa application - whether Tribunal complied with requirements of s424A of Migration Act 1958 - where similarities between appellant’s statement and statements of other visa applicants who had same migration adviser - whether similarities part of reason for Tribunal affirming decision under review - whether jurisdictional error.

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that the appellant, a national of Bangladesh, was not a person to whom Australia had protection obligations.

The appellant claimed to fear persecution for reasons of his political activities on behalf of the Bangladesh Nationalist Party (BNP) and membership of a particular social group of “performers of traditional folk music” or “artists who practice traditional Bengali culture”. The Tribunal in affirming the delegate’s decision noted that the claims made by the appellant in the statement that formed part of his visa application and a letter from the appellant’s adviser contained many of the same details and were for the most part in the same words as the statements of other applicants represented by the same adviser. Having made this observation, the Tribunal stated that it had “therefore approached the Applicant’s evidence with some caution and [was] unable to rely upon that evidence where implausible or inconsistent with the independent information”. Although the Tribunal accepted some aspects of the appellant’s claims it rejected others.

The Federal Magistrate noted that the application for review was lacking in particularity and dismissed the application. The appellant contended that the Federal Magistrate erred by failing to find that the Tribunal failed to consider whether the appellant had a well founded fear of persecution by reason of his membership of a particular social group and that the Federal Magistrate should have found that the Tribunal failed to comply with s.424A of the *Migration Act 1958* (the Act).

Held: Appeal allowed. Tribunal decision set aside and remitted for reconsideration.

- (i) The Tribunal made a jurisdictional error by failing to comply with the requirements of s.424A of the Act.
- (ii) The Tribunal rejected the appellant’s evidence about the problems experienced by him as a performer for the reasons that caused it to approach the appellant’s evidence with caution. One of the two reasons given by the Tribunal for treating the appellant’s evidence with caution was the similarity

between the appellant's original statement and statements made by other visa applicants who had the same adviser. Therefore, at least part of the reason why the Tribunal was not satisfied that the appellant had a well-founded fear of persecution was the similarity between his original statement and statements made by visa applicants who had the same adviser.

- (iii) Information in the possession of the Tribunal that the statements of other visa applicants included the same details, and for the most part in the same words, as the statement of the appellant and that the other visa applicants had the same adviser as the appellant was information that the Tribunal was obliged to give to the appellant by a method specified in s.441A of the Act. It was also required to ensure, so far as reasonably practicable, that the appellant understood why the information was relevant to the review and invite him to comment on it.

FEDERAL MAGISTRATES COURT JUDGMENTS

SZCLE v MIMIA & Anor

[2005] FMCA 1551

Federal Magistrates Court of Australia, Scarlett FM, SYG 68 of 2004, 25 October 2005

Immigration - Protection Visa application - applicant citizen of China - claim of fear of persecution as Falun Gong practitioner and former member of People's Liberation Army - where Tribunal did not accept applicant ever a member of People's Liberation Army - whether jurisdictional error.

The applicant, a national of China, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations.

The applicant had claimed that because he had been an army officer and was also a Falun Gong practitioner, he was likely to face more serious consequences than a civilian Falun Gong practitioner. The applicant produced a photograph of himself in a People's Liberation Army (PLA) uniform as evidence of his membership of the PLA. The Tribunal did not accept that the applicant was ever a member of the PLA and gave the photograph no weight as it did not overcome other problems with the applicant's evidence. These problems were first, that the applicant only made this claim at the review stage and not the primary stage and second, that the applicant produced a passport dated 25 September 2000 that noted his occupation as "manager".

Held: Tribunal decision quashed and matter remitted for reconsideration.

- (i) It was open to the Tribunal to find that the applicant was a manager rather than a member of the PLA on and after 25 September 2000. The evidence, however, did not entitle the Tribunal to make an assertion that the applicant was never a member of the PLA. The photograph of the applicant was rather evidence that the applicant was at one stage in the past a member of the PLA.
- (ii) The applicant's past army service was integral to his claim that he was more likely to be subject to persecution. Disregarding evidence of this fact because it did not fit the Tribunal's hypothesis constituted jurisdictional error.
- (iii) There was no breach of s.424A of the *Migration Act* 1958. The applicant provided the information in issue to the Tribunal for the purposes of the review application.
- (iv) It was entirely a matter for the Tribunal whether or not it accepted the applicant's evidence.
- (v) The applicant's claims that the Tribunal failed to investigate certain matters was misconceived. It is for the applicant to provide the necessary evidence. The Tribunal is under no obligation to conduct its own investigation.

SZEAS v MIMIA & Anor

[2005] FMCA 1776

Federal Magistrates Court, Smith FM, SYG 2303 of 2004, 18 November 2005

Immigration - Protection Visa application - Nepalese social worker persecuted by Maoist rebels - whether Tribunal failed to address claim - particular social group - whether Tribunal failed to ask itself correct question - jurisdictional error.

The applicant, a national of Nepal, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations.

The applicant claimed to have been targeted by Maoists, and to fear persecution by Maoists, by reason of his participation in community social development programs. In answering the question on the application form as to the reason for his fear he ticked "membership of a particular social group", "political opinion" and "other reasons". He claimed, among other things, that the Maoists killed civilians and "human rights workers" indiscriminately, and information forwarded to the Tribunal highlighted reference to "widespread harassment

and extortion” of Non Government Organisation (NGO) workers. The Tribunal analysed the applicant’s claims as to his individual history and was not satisfied that he had a well-founded fear of being persecuted. In addition, the Tribunal was satisfied that he had “effective protection” in India. In reaching that conclusion, the Tribunal referred to both s.36(3) of the *Migration Act 1958* (the Act) and the “effective protection” doctrine subsequently overruled by the High Court in *NAGV and NAGW of 2002 v MIMIA* [2005] HCA 6.

The issues before the Court were whether the Tribunal was required, and failed, to address a claim that the applicant feared persecution by reason of his membership of a particular social group, being a group consisting of or including people who worked for international NGOs in Nepal and secondly, whether it also erred when affirming the delegate’s decision upon a finding that the applicant had “effective protection” in India.

Held: Tribunal decision quashed and matter remitted for reconsideration.

- (i) The Tribunal’s decision was affected by jurisdictional error in that there were elements in the applicant’s claims which arose tolerably clearly and which were not addressed by the Tribunal. The applicant’s fears of the Maoists both while he was still in Nepal, and also of his fears of returning there, related not only to specific incidents in his own history, but also to his general membership of a group of people who he claimed were at risk of being targeted by Maoists. The Tribunal was obliged to consider the position of the applicant if he returned to Nepal by including a consideration of the elements of a claim relating to particular social group.
- (ii) The Tribunal failed to ask itself correct questions in relation to the application of s.36(3) of the Act. The Tribunal made no finding that the applicant had an enforceable right of entry to India. Nor did it make any finding, necessary under s.36(3), on whether the applicant had taken “all possible steps to avail himself” of such a right.

SZBXV v MIMIA & Anor
[2005] FMCA 1884

Federal Magistrates Court, Driver FM, SYG 2497 of 2003, 22 December 2005

Immigration - Protection Visa application - where applicant claiming persecution in China as “black child” - whether constructive failure to consider application - whether Tribunal overlooked relevant consideration or asked itself wrong question - whether Tribunal erroneously conflated issues of non-registration of births and non-compliance with One Child Policy.

The applicant, a national of China, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations. The applicant claimed that he had a well-founded fear of persecution for reason of being a “black child”, born in contravention of the One Child Policy.

The Tribunal accepted that the applicant was born in contravention of the One Child Policy and would be regarded as a “black child”. However, referring to country information regarding the treatment of unregistered children, the Tribunal found that the applicant would not face a real chance of discriminatory treatment amounting to persecution. The Tribunal was satisfied that not all avenues had been exhausted to obtain household registration and that the applicant could be registered at a later stage on payment of a fine. It was also satisfied that the applicant’s parents could bribe officials to overlook irregularities and buy the applicant’s registration. In addition, the Tribunal was satisfied that the One Child Policy was less rigorously enforced against second children born overseas and that the Policy was not strictly enforced throughout the country. The Tribunal concluded that even if the applicant was unable to obtain registration, the consequences would not amount to persecution.

On appeal, the applicant contended that the Tribunal erred by assuming that the question was simply whether the applicant could be registered as a birth and what the consequences of non registration would be. He contended that the proper question was what the consequence of him being born in breach of China’s One Child policy would be. The Court also raised the question of whether the Tribunal had erred by finding that the applicant could avoid the risk of persecution through his parents bribing officials in China to register him.

Held: Tribunal decision quashed and matter remitted for reconsideration.

- (i) The Tribunal erred by asking itself the wrong question and constructively failing to consider the applicant's claims. Alternatively, the Tribunal overlooked a relevant consideration by restricting its enquiries to the issue of registration, while the applicant's claim was based on a fear of persecution due to non compliance with the One Child Policy, in respect of which registration was but one issue.
- (ii) The Tribunal asked itself a wrong question by conflating the notion of non-registration with being a "black child". While the absence of registration may generally be equated with being a black child, the country information demonstrates that they are not the same thing. The question was not what the consequence would be of not being registered but, rather, what the consequence would be of being a "black child" in the sense of one born in breach of the Chinese One Child Policy. The absence of registration was merely one consequence of being a "black child", albeit an important one.

Obiter:

- (iii) If the Tribunal found that the applicant's parents could avoid the persecution of their child by bribing officials, then it fell into the error identified in *Applicant S395 of 2002 v MIMIA (2004) 203 ALR 112*. It is impermissible for a decision-maker to expect an applicant to avoid the risk of persecution by engaging in the immoral and probably illegal practice of bribery.

Legislative developments of relevance to the work of the Refugee Review Tribunal are noted below

▶ Legislation passed

Migration and Ombudsman Legislation Amendment Act 2005

The *Migration and Ombudsman Legislation Amendment Act 2005* (the Act) was introduced into the Senate on 15 September 2005. The Act was passed by the Senate on 13 October 2005 and on the same day introduced into the House of Representatives (House). The Act was passed by the House on 30 November 2005. The Act received Royal Assent on 12 December 2005.

The Act commenced on 12 December 2005, amending the *Migration Act 1958* by:

- establishing 90 day time limits for the making of protection visa application decisions by the Minister for Immigration and Multicultural and Indigenous Affairs and the review of those decisions by the Refugee Review Tribunal;
- permitting the disclosure of personal identifiers to individuals or the public to assist with identifying or locating a person in connection with the administration of the Act;
- requiring the Secretary of the Department of Immigration and Multicultural and Indigenous Affairs and the Principal Member of the Tribunal to report to the Minister about protection visa applications and review applications that take longer than 90 days to decided;
- introducing measures to support and facilitate the Commonwealth Ombudsman's enhanced role in immigration and detention matters.

A copy of the Act can be found at:

[http://www.comlaw.gov.au/ComLaw/Legislation/ActI.nsf/0/8F1796DAD7E6E0F0CA2570D9001B090E/\\$file/141-2005.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActI.nsf/0/8F1796DAD7E6E0F0CA2570D9001B090E/$file/141-2005.pdf)

Anti-Terrorism Act (No. 2) 2005

The *Anti-Terrorism Act 2005* (the Act) was introduced into the House of Representatives (House) on 3 November 2005 and passed by the House on 29 November 2005. The Act was introduced into the Senate on 30 November 2005 and passed by the Senate on 06 December 2005. The Act received Royal Assent on 14 December 2005.

The Act commenced on 14 December 2005, amending the Division 9 provisions concerning the definition of "security" in relation to the deportation of non-citizens and those convicted of an offence against Division 80 of the *Criminal Code*. It also extends the definition of a terrorist organisation to enable listing of organisations that advocate terrorism and introduces a new notice to produce regime to ensure the Australian Federal Police is able to enforce compliance with lawful requests for information that will facilitate the investigation of a terrorist act or other serious offence.

A copy of the Act can be found at:

<http://www.comlaw.gov.au/ComLaw/Legislation/ActI.nsf/all/search/9249AE71DF443FDFCA2570D80024D5A0>



Regulations made

Migration Amendment Regulations 2005 (No. 11) (SLI 317 of 2005)

The *Migration Amendment Regulations 2005 (No. 11) (SLI 317 of 2005)* were made on 15 December 2005 and commenced on 20 December 2005. Regulation 2.06AA in Division 2.1 of Schedule 1 was inserted into the Migration Regulations 1994 (the Regulations) and it prescribes the circumstances and days on which the 90 day period starts for the purposes of subsection 65A(1) and subsection 91Y(10) of the *Migration Act 1958* which were inserted by the *Migration and Ombudsman Legislation Amendment Act 2005* (the Act).

Subsection 65A(1) of the Act provides that regulations may prescribe the circumstances in which the 90 day period within which the Minister must make a decision on an application for a protection visa will start. Subsection 91Y(10) of the Act provides that the “decision period” for the purposes of section 91Y means the period of 90 days starting either on the day on which the application for the protection visa was made or, in the circumstances prescribed in the regulations, on the day prescribed.

The new regulation provides that in the case of an applicant for a protection visa who already holds a certain temporary protection or humanitarian visa, the 90 day period for making a decision commences once the applicant has held his or her current visa for a specified period. The specified period would vary according to the visa class, reflecting the existing criteria in the Regulations.

A copy of the regulations can be found at

[http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/A72EB9FD5D3B4A7ACA2570D8000E7208/\\$file/0512759A-051024EV.doc](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/A72EB9FD5D3B4A7ACA2570D8000E7208/$file/0512759A-051024EV.doc)

CASELOAD OVERVIEW

RRT Decisions – January 2006

Country	Primary decision affirmed	Primary decision set aside	No jurisdiction	Withdrawn	Other	Total
Afghanistan	1	3	0	0	0	4
Albania	1	0	0	0	0	1
Algeria	1	0	0	0	0	1
Bahrain	1	0	0	0	0	1
Bangladesh	6	1	6	0	0	13
Brazil	1	0	0	0	0	1
Burma (Myanmar)	0	3	0	0	0	3
Burundi	0	1	0	0	0	1
Cambodia	1	0	0	0	0	1
China (PRC)	62	11	5	2	0	80
Colombia	0	1	0	0	0	1
Congo Democratic Republic of	1	0	0	0	0	1
Egypt	3	5	0	1	0	9
Fiji	2	0	0	0	0	2
Germany	1	0	0	0	0	1
Ghana	2	0	0	0	0	2
Guatemala	1	0	0	0	0	1
Hungary	1	0	0	0	0	1
India	7	0	2	0	0	9
Indonesia	13	1	1	0	0	15
Iran	0	1	0	0	0	1
Iraq	0	5	0	0	0	5
Israel	1	0	0	0	0	1
Japan	1	0	0	0	0	1
Lebanon	2	0	0	0	0	2
Liberia	1	0	0	0	0	1
Libya	1	0	0	0	0	1
Malaysia	10	0	0	0	0	10
Mongolia	1	0	0	0	0	1
Nepal	10	5	0	0	0	15
Nigeria	4	2	0	0	0	6
Pakistan	11	2	1	0	0	14
Philippines	0	0	1	0	0	1
Romania	0	1	0	0	0	1
Russian Federation	1	0	0	0	0	1
Sri Lanka	13	1	0	3	0	17
Thailand	3	0	0	0	0	3

Tonga	1	0	0	0	0	1
Turkey	4	0	0	0	0	4
Ukraine	1	0	0	0	0	1
United Kingdom	1	0	0	0	0	1
Vietnam	2	0	0	0	0	2
Yemen Republic	0	1	0	0	0	1

ACCESSING TRIBUNAL DECISIONS

Access on Tribunal Premises

Access to published decisions of the Refugee Review Tribunal can be obtained from the Sydney and Melbourne Registries of the Tribunal.

The Sydney Registry is located at: Level 11
83 Clarence St
Sydney NSW 2000

The Melbourne Registry is located at: Level 12
460 Lonsdale St
Melbourne VIC 3000

Access via the Internet

A selection of Tribunal decisions is also currently available on the Refugee Review Tribunal's World Wide Web site located at <http://www.rrt.gov.au>.

The web site also contains information about how to apply to the Tribunal, how the Tribunal is organised, the function of the Tribunal and what it aims to achieve, caseload statistics, as well as copies of this and previous RRT Bulletins.

The RRT web site is updated on a regular basis.

The Tribunal's Email address is: rrtinfo@rrt.gov.au

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