



The MRT-RRT Monthly Bulletin

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I would welcome feedback from Précis readers about the new service.

Chris MacDonald, Director, Country Advice & Information 02 9276 5111
chris.macdonald@mrt-rrt.gov.au

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MIGRATION REVIEW TRIBUNAL DECISIONS

Business and Skilled visas

0902056

30 April 2010, Melbourne

Mr D Thomas, Member

STANDARD BUSINESS SPONSOR – CANCELLATION – S137B – APPROVAL OF BUSINESS SPONSOR – MINIMUM SALARY LEVEL

A delegate of the Minister took action under section 137B to cancel the sponsor's (PVC Windows Australia Pty Ltd) approval as a standard business sponsor as he found three Subclass 457 sponsorship breaches had been substantiated. The delegate also barred the sponsor from making applications for approval as a sponsor for five years, the subject of a separate review. The sponsor notified the Department that one of their Subclass 457 visa holders (Mr Sari) had ceased employment. Mr Sari provided pay slips and time cards showing that he was paid \$15.00 per hour for overtime, he was paid cash in hand and no tax deductions were made. He claimed that the rate of \$15.00 per hour for overtime was in contradiction of his contract with the sponsor and the gazetted Minimum Salary Level. A Director of PVC Windows was interviewed by the Department, and provided salary information. The Department, with officers of the Workplace Ombudsman, visited the sponsor's premises and interviewed the Director and another Subclass 457 visa holder. A breach notice was issued to the sponsor stating that false or incorrect information had been given to the Department which did not correspond with information provided by Mr Sari or the company Director during a telephone interview. Mr Sari also made allegations to the Workplace Ombudsman regarding his overtime payments and his dismissal. Following an investigation, the Ombudsman determined that PVC Windows had breached the award by failing to pay Mr Sari his accrued pro rata annual leave on termination of employment and the correct penalty rates for weekend work, overtime work and work on public holidays. The delegate noted that the company's failure to make tax deductions was not a breach of the relevant regulation but referred it to the Australian Taxation Office. The delegate found that three breaches were substantiated; failure to comply with laws relating to workplace relations, failure to comply with minimum salary level payments and the provision of false information. At the Tribunal hearing, the sponsor agreed that the breaches identified by the Department had occurred and that the Ombudsman's investigation had reached its conclusion and all monies owed to Mr Sari had been paid. The Director explained that when he first approached the two visa holders, they agreed to a particular salary and he would assist by paying their air fares and other expenses. However, he later found that he was required to pay a minimum salary which was higher than the agreed salary. He claimed he paid for some of their expenses and they came to an 'arrangement' to adjust the salary and hours, however, he terminated Mr Sari's employment around September 2008. Evidence was also taken from the other Subclass 457 holder who claimed he had no such problems and that he was still employed by the business. He said the business paid his rent and he typically worked 38 hours on ordinary time and two hours overtime per week. He claimed that he was paid about \$50,000 pa. Documents later received by the Tribunal indicated his total income was \$44,001.

Held: Decision under review set aside.

The Tribunal noted that the delegate had found that three breaches in respect of the Subclass 457 sponsorships were substantiated and that sanctions were imposed, taking the form of the imposition of a bar on further sponsorships for a period of five years and cancelling the sponsor's approval as a business sponsor under section 137B. The sponsorship bar under section 140L(e) was the subject of a separate application for review. In relation to the cancellation of the sponsorship under section 137B, the Tribunal found that Section 137B was repealed by Item 9 of the Migration Legislation Amendment (Workers Protection) Act 2008, together with the then existing Subdivision GA of Division 3. The Tribunal further noted that Subdivision GA had been inserted prior to the insertion of Division 3A, and was repealed because it was no longer necessary to have a cancellation process and powers for business sponsors in that Subdivision. It found that a Subclass 457 visa was a prescribed visa for the purposes of Division 3A: r.2.56, whereas previously it was not, and that the repeal took effect from 14 September 2009. However, the Tribunal found that there was no direct reference to the power to cancel the approval of a person as a business sponsor under s.137B. Accordingly, the Tribunal noted that no equivalent provision existed from the date of repeal. Therefore, the Tribunal found that, in the absence of transitional provisions relating to

the cancellation of powers under s.137B, it had no option but to set aside the cancellation and substitute a decision that the sponsorship not be cancelled.

0902411

12 May 2010, Melbourne

Ms D Buljan, Member

SKILLED (PROVISIONAL) – (CLASS VC) – SUBCLASS 485 – SKILLED GRADUATE – CL.485.214 – IELTS SKILLS ASSESSMENT NOT PROVIDED AT TIME OF APPLICATION – A delegate of the Minister refused to grant the visa applicant a Skilled Graduate visa as the delegate was not satisfied that the visa applicant had applied for an assessment of his English language skills for his nominated occupation at the time of lodgement of his visa application and, therefore, found that he did not meet clause 485.214. The visa applicant nominated the occupation of a 'Computing Professional (not elsewhere classified)' in the online visa application lodged on 30 July 2008. On 9 March 2009 he provided to the Department evidence that he had applied for an assessment from the Australian Computing Society on that date. As a result, the delegate found that the visa applicant had applied for his skills assessment more than 7 months after he lodged his visa application. The visa applicant's representative advised the Tribunal that, through no fault of his own, the visa applicant was unable to apply for a skills assessment without his academic record and completion letter from the university because the Australian Computing Society would not accept such applications without these documents. Further, the representative contended that the education provider was under no obligation to provide such documents within a specified time. As a result, students were usually faced with a very confusing situation because they were required to lodge an application before their student visa expired, which is usually shortly after the completion of their course, but before they have been able to obtain some of the evidence required for the visa application. The representative further argued that the purpose of Subclass 485 visas was "...to allow 18 months temporary stay in Australia for applicants who have recently completed studies in Australia but need additional time to gain the skills required to apply for a permanent General Skilled Migration visa." The representative also referred to the observations of Brennan J in *Re Drake and Minister for Immigration and Ethnic Affairs (No 2)* (1979). As a result, the visa applicant's representative asked the Tribunal to consider the rights of an applicant who had lodged an application online and whether there was misleading information that led to the refusal of the visa application.

Held: Decision under review set aside.

The Tribunal considered the time of application criterion and the relevant case law at length. In considering the requirements of clause 485.214, the Tribunal had regard to the recent High Court decision in *Berenguel v Minister for Immigration and Citizenship* [2010] HCA 8 (5 March 2010). The Tribunal found that this review application highlights the fact that the visa applicant faced practical difficulties in providing the relevant information at the time of application, which go to the issue of fairness. Specifically, in this case the relevant assessing authority, the Australian Computer Society, would not accept an application for a skills assessment without an academic record and letter of completion from the relevant education provider. However, the visa applicant's academic transcript and the letter of completion were not provided to him by Edith Cowan University until 9 September 2008, almost 6 weeks after his student visa had ceased to be valid. Notably, the timing of the issue of these documents was not a matter over which the visa applicant had any practical control. In addition, as noted by the visa applicant's representative, there was nothing in the legislation that required an education provider to issue this documentation to applicants within specified timeframes. In this case, the Tribunal found that, although the visa applicant stated in his online visa application that he had not applied for a skills assessment, he had applied for his skills assessment from the Australian Computing Society on 7 March 2009, three days after the Department requested this evidence, and approximately a week before the delegate refused his visa application. On 13 April 2010, the Tribunal received a letter dated 10 June 2009 from the Australian Computer Society stating that the visa applicant's skills had been assessed as suitable for migration under ASCO Code 2231-79 (ICT Recent Graduate). As a result, the Tribunal found that there was evidence before the Tribunal at the time of decision that the visa applicant had applied for an assessment of his skills by the relevant assessing authority, the Australian Computing Society, for his nominated skilled occupation of 'Computing Professional (not elsewhere classified)'. The Tribunal therefore found that the visa applicant met the requirements of cl.485.214 of the Regulations for the grant of a Subclass 485 (Skilled - Graduate) visa.

0903021
3 May 2010, Sydney
Mr J Cipolla, Acting Senior Member

SKILLED – (PROVISIONAL) (CLASS VC) – SUBCLASS 485 – SKILLED GRADUATE – CL.485.222 – COMPETENT ENGLISH – FALSIFIED IELTS RESULTS – A delegate of the Minister refused to grant the applicant a skilled visa on the basis that the visa applicant had not provided evidence that he had Competent English. The applicant advised the Tribunal at hearing that although he had not achieved Competent English in previous tests, he hoped to sit a further IELTS exam. The applicant requested that he be allowed to sit a further exam at the first available opportunity and the Tribunal agreed to this. The applicant advised the Tribunal that he would sit an IELTS exam on 23 January 2010, and exam results subsequently provided to the Tribunal indicated that the applicant achieved scores of 7.0 for Listening, 6.0 for Reading, 6.0 for Writing, and 6.0 for Speaking, with an overall band score of 6.0 in this exam. An online verification of these results undertaken by a Tribunal officer revealed, however, that the applicant had achieved scores of 7.0 for Listening, 4.5 for Reading, 5.0 for Writing, and 6.0 for Speaking. Due to this discrepancy, the Tribunal sought verification of the test results with the assessing authority. This authority was 'unable to confirm as genuine' the results as submitted by the applicant. The Tribunal wrote to the applicant inviting comment and response to this information but no response was received to the Tribunal's correspondence.

Held: Decision under review affirmed.

The Tribunal noted that the applicant had undertaken several IELTS tests during the processing of the application and had not achieved a score of at least 6.0 in each of the four test components in any of these tests. It also referred to the evidence before it which indicated a falsified copy of an IELTS result was provided to the Tribunal and noted that the attempted verification of that test result indicated the applicant had again failed to achieve a score of 6.0 in each of the four components. The Tribunal found that there was no evidence before it to indicate that the applicant had undertaken any other language test, and accordingly, the Tribunal was not satisfied that the applicant had Competent English as required by cl.485.222(b) and therefore found that he did not meet cl.485.222 of the Regulations.

0900244
10 May 2010, Sydney
Ms N Dougall, Member

BUSINESS SKILLS (RESIDENCE) (CLASS DF) – SUBCLASS 892 – STATE/TERRITORY SPONSORED BUSINESS OWNER – CL.892.211 & CL.892.212 – NO OWNERSHIP INTEREST IN MAIN BUSINESS – A delegate of the Minister refused to grant the applicant a Subclass 892 visa on the basis that the visa applicant did not satisfy cl.892.211 of the Regulations because the visa applicant did not have an ownership interest in a business in Australia. The delegate also found that the visa applicant did not meet clause 892.212 as the delegate was not satisfied that the visa applicant, or the visa applicant and his spouse together, had assets in Australia of not less than \$250,000 and their assets in the nominated business were not less than \$75,000, throughout the 12 months immediately preceding the visa application. An historical extract from ASIC indicated that the business was placed into external administration in March 2009, and in February 2010 the final accounts of Creditors' Voluntary Winding Up were lodged with ASIC.

Held: Decision under review affirmed.

The Tribunal found that, at the time the business was placed into external administration in March 2009, the business was not a "qualifying business", as it was not being operated for the purpose of making profit through provision of goods, services, or goods and services to the public. The Tribunal noted that it had invited comments from the visa applicant on information in the ASIC historical search, and it had also invited the visa applicant to provide additional information, including a submission and supporting evidence that he had an ownership interest in another business. It further noted that he had failed to comment on or respond to the information or provide the requested information within the prescribed time frame. Therefore, the Tribunal found that as the visa applicant did not have an ownership interest in a business, he did not satisfy the criterion in cl.892.211, and as such did not meet the criterion in cl.892.211 of the Regulations.

0909060
21 May 2010, Melbourne
Ms G Hamilton, Member

EMPLOYER NOMINATION (RESIDENCE) (CLASS BW) – SUBCLASS 857 – REGIONAL SPONSORED MIGRATION SCHEME – CL.857.213(b) – DIPLOMA OR HIGHER QUALIFICATION RELEVANT TO THE APPOINTMENT – EXCEPTIONAL CIRCUMSTANCES – A delegate of the Minister refused to grant the applicant a Subclass 857 visa on the basis that she did not have a relevant diploma or higher level qualification. The delegate considered that according to the Australian Standard Classification of Occupations (ASCO) definition, without the applicant having 5 years experience, exceptional circumstances did not exist to justify waiving this requirement. The applicant was nominated by a radio station to work as a radio presenter in Western Australia, and the sponsor had asked for the job to be considered exempt from the need for diploma level qualifications as the applicant had already been working in the job and had received very good listener feedback. The sponsor noted that the applicant had a psychology degree which was 'ideal', and that she had the necessary outgoing personality, further noting that the nominated position was approved. In lodging her visa application, the applicant sought a waiver of the criterion of diploma level qualification on the basis of exceptional circumstances. She submitted that in her work she constantly drew on the skills she had developed whilst studying psychology. Nonetheless, the visa application was rejected on the basis that the applicant did not have a relevant diploma or higher level qualification. In support of the review application, the applicant's sponsor made a written submission reiterating the station's strong business need to retain the applicant in her position. The applicant lodged further supporting references from numerous local government and business people, as well as a newspaper article publicising her cause.

Held: Decision under review set aside.

The Tribunal was able to decide the review in the applicant's favour on the basis of the material before it without the need for a hearing. The Tribunal referred to the ASCO description of the nominated occupation, which indicated the entry requirement for a radio presenter was a bachelor degree or higher qualification, or at least 5 years relevant experience. It also stated that the occupation required high levels of creative talent or personal interest as well as, or in place of, formal qualifications or experience. The Tribunal noted that cl.857.213(b) did not require that academic qualifications be in the same field as the nominated occupation, only that they be relevant. The Tribunal pointed out that it was apparent from the ASCO description that personal qualities could take the place of formal qualifications as the requisite skill level for entry into the nominated occupation. The Tribunal found that this meant no particular degree was required at all, let alone a degree in radio specifically. In accordance with the evidence given by the applicant and her sponsor, the Tribunal found that as the role was very much about communicating with an audience, it made sense that the applicant's psychology degree was relevant to the occupation. The Tribunal therefore found that the applicant had a diploma or higher level qualification relevant to the appointment. Accordingly, the Tribunal found that she met the criterion in cl.857.213(b) of the Regulations.

Family visas

0907967
19 May 2010, Melbourne
Ms M Cameron, Member

CHILD (RESIDENCE) (CLASS BT) – SUBCLASS 802 – CL.802.212 – CL.802.221 – DEPENDENT CHILD – COMPELLING AND COMPASSIONATE CIRCUMSTANCES – A delegate of the Minister refused to grant the applicant a Subclass 802 visa on the basis that the visa applicant did not satisfy cl.802.212 and cl.802.221 of the Regulations because the delegate was not satisfied that the applicant was a dependent child of the sponsor. A medical report indicated that the sponsor had a number of medical conditions and the visa applicant assisted her with all aspects of her daily living, such as personal hygiene, dressing, cooking, cleaning and mobility. The report suggested that the applicant should continue as the sponsor's carer as an alternative to nursing home care, which was inevitable if the applicant could not care for her. The visa applicant claimed she was not the child of, or related to the sponsor, and was aware she did not satisfy the key criteria for the visa, but wished to provide evidence with a view to appealing to the Minister. She claimed she came to Australia to care for the sponsor because the sponsor's family was unable to provide care. She claimed that she had lived with the sponsor overseas, and then in Australia, and

considered herself a part of the family. The sponsor claimed that the visa applicant did everything for her, and that she could not manage without the applicant's help. The sponsor claimed that she lived with her family members who were unable to assist as they were ill or rarely at home, and she did not receive assistance or services from the community. The sponsor's granddaughter claimed that the applicant was part of the family, and that as the sponsor did not speak English she needed someone to care for her who could speak her language. She claimed that for personal, language, cultural and medical reasons the sponsor could not be placed in a nursing home as she would not cope. The sponsor's daughter claimed that the sponsor needed help as her family situation was very difficult due to her illness, and that if she put her mother into a nursing home she would die. The applicant's representative claimed that her circumstances were unique and exceptional because she had been part of the family for an extensive period and had an emotional attachment to them. He claimed there was a public policy consideration that, without the applicant's assistance, the sponsor would be prematurely institutionalized and this would have a financial cost as well as loss of dignity for the sponsor. He further claimed that there were no nursing homes where the sponsor could communicate effectively, and that there were compelling and compassionate circumstances which would lead to the sponsor's family suffering prejudice and hardship if the applicant was not able to remain in Australia.

Held: Decision under review affirmed.

The Tribunal found that the visa applicant did not meet the requirements of the Regulations as she was not the dependent child of a person who is an Australian citizen, holder of a permanent visa or eligible New Zealand citizen. It further found that she had turned twenty five and she was not incapacitated within the meaning of reg.1.03. She therefore could not meet the requirements of cl.802.212 or cl.802.221 of the Regulations. The Tribunal noted that it did not have the ability to waive the criteria for the grant of the visa. The Tribunal noted the sponsor's family was clearly motivated by their concern for the care and wellbeing of the sponsor, and that the sponsor was elderly, physically frail and required care. However, it found that this was outside the Tribunal's jurisdiction as the discretion could only be exercised by the Minister. Accordingly, the visa applicant did not satisfy cl.802.212 and cl.802.221 of the Regulations for the grant of a Child (Residence) (Class BT) visa.

0901145

4 May 2010, Sydney

Ms J Marquard, Member

OTHER FAMILY (MIGRANT) (CLASS BO) – SUBCLASS 116 – CARER – CL.116.211 – CL.116.221 – R.1.15AA(1)(c) – SUBSTANTIAL AND CONTINUING ASSISTANCE – A delegate of the Minister refused to grant the applicant a Subclass 116 (Carer) visa on the basis that the visa applicant did not meet cl.116.211 and cl.116.221 of the Regulations, because the delegate was not satisfied the visa applicant was willing and able to provide substantial and continuing assistance to the review applicant. A Health Services Australia Carer Visa Assessment stated that the review applicant met the requirements for a carer according to her total impairment rating. The Certificate confirmed a medical condition which impaired the review applicant's daily life and would continue for at least two years, and that she needed assistance for practical aspects of daily life. An accompanying report stated that she had significant heart disease with signs of cardiac failure, and a cardiologist report stated she was diagnosed with coronary artery disease and was at risk of acute myocardial infarction and sudden death. The report claimed that it would be safer for the applicant to have her son with her to keep an eye on her. The visa applicant claimed that he would provide 24 hour assistance and be able to look after the review applicant's daily necessities such as food, cleaning, shopping and washing, and that he would be able to assist her to move around as she had limited mobility. The review applicant claimed that she had a friend who visited and helped her but that she could not provide all the necessary assistance as she lived far away and had a family. The review applicant claimed she found it hard to cope and would not be able to make a telephone call if she had a heart attack, and that she could not speak English and did not know anyone else who could assist her. She claimed she paid for someone to translate her letters and that she had no money for community or nursing services. The visa applicant claimed that he did not have formal medical training but that he had knowledge of first aid and CPR and would update his knowledge through first aid courses.

Held: Decision under review set aside.

The Tribunal found the Health Services Australia Carer Visa Assessment and impairment rating met the requirements of r.1.15AA(1)(c). The Tribunal accepted that the review applicant had no other relatives in Australia and that she required 24 hour assistance which was difficult to obtain from welfare or community services without finances. The Tribunal also accepted that the review applicant had a language barrier and that she could not obtain assistance from other sources. The Tribunal accepted the visa applicant would not work and that money saved along with his wife's income would provide for the family. The Tribunal further accepted that he had no medical training but had done first aid and was prepared to undertake further courses, and that he was able to assist with washing, cooking and daily chores and would drive the review applicant to hospital or medical appointments. The Tribunal found that the assistance would also be a physical presence for the review applicant in emergencies and when she was unwell. The Tribunal was satisfied the visa applicant's wife would work and the visa applicant was willing and able to provide the required assistance for the duration of the sponsor's illness. Accordingly, the Tribunal found the assistance was of the kind needed and that the visa applicant met the requirements of the Regulations for the grant of a Subclass 116 (Carer) visa.

0909791

19 May 2010, Perth

Ms L Ward, Member

CHILD (MIGRANT) (CLASS AH) – SUBCLASS 117 – ORPHAN RELATIVE – CL.117.211 – CL.117.221 – NOT AN ORPHAN RELATIVE OF THE REVIEW APPLICANT – A delegate of the Minister refused to grant the visa applicants a Subclass 117 (Orphan Relative) visas on the basis that they did not satisfy cl.117.211 of the Regulations as the delegate was not satisfied the visa applicants were the orphan relatives of the review applicant, that their mother had died or that their father was of unknown whereabouts. The review applicant claimed their father had been arrested and taken away by the Taliban, and that he had not been heard of since 2001. The three visa applicants all claimed to be brothers, and not to have turned 18 at the time of the application. The visa applicants claimed that their father was missing, their mother had died and that they had one other sibling, who was the review applicant. In an affidavit, the review applicant's wife claimed that she had met the review applicant's mother who had been unwell, and had subsequently died in hospital. The review applicant's wife claimed she did not take part in the burial process as she was too distressed, but that she did attend the wake in her home after the burial and regularly visited her mother-in-law's grave. She claimed that she looked after the visa applicants until she left for Australia, and that her neighbour subsequently cared for the visa applicants and that the review applicant sent her money to look after them. The applicants' representative provided copies of death certificates which attested to the death of the applicants' mother, and also submitted that the applicants' father was listed as missing since his arrest and kidnap by the Taliban, and that he had not been heard of since, which meant that no death certificate was available. The applicants' representative further submitted that the review applicant had attempted to obtain news of his father via the Red Cross, and that as their father had been missing for many years he was unable to care for his children.

Held: Decision under review set aside.

The Tribunal found that all of the visa applicants had not turned 18 at the date of the application, but that the review applicant had previously provided a different birth date for the third visa applicant which would have made him over 18 at that time. The Tribunal noted that a passport and statement issued by the Afghan Consulate had given a different date of birth, which would have made the applicant 17 years of age at the date of application. The Tribunal found this to be strong evidence of his actual birth date and preferred this evidence to the information provided by the review applicant. The Tribunal accepted that nine years had elapsed since the applicants' father was last seen or heard of, and inferred from this that the visa applicants' father had died in or about 2001. The Tribunal found that the father's whereabouts was clearly unknown and he was likely unable to care for the visa applicants. The Tribunal accepted the documentary evidence that had been provided which indicated that the mother of the visa applicants had died. The Tribunal was therefore satisfied that the visa applicants could not be cared for by either of their parents, hence the visa applicants met the requirements of the Regulations. The Tribunal was satisfied that there was no compelling reason to believe the grant of a visa would not be in the best interests of the visa applicants. The Tribunal concluded that at the time of application the visa applicants were orphan relatives of the review applicant. Accordingly, the Tribunal found that the visa applicants satisfied cl.117.211 and cl.117.221 of the Regulations.

Partner visas

1001411

7 May 2010, Melbourne

Mr D Mitchell, Member

PARTNER (MIGRANT) (CLASS BC) – SUBCLASS 100 – SPOUSE – CL.100.221 – GENUINE AND CONTINUING RELATIONSHIP – DOMESTIC VIOLENCE – A delegate of the Minister refused to grant the visa applicant a spouse visa on the basis that the applicant did not meet cl.100.221 because the delegate was not satisfied that the relationship between the applicant and her sponsor was genuine and continuing. As a result of information received, Departmental officers had visited simultaneously the couple's declared address and the home of relatives of the applicant, and based on their observations, the delegate had concluded that the applicant was not living with the sponsor. The Department subsequently received a letter from the applicant's migration agent stating that the marriage had recently broken down as a result of domestic violence committed by the sponsor against the applicant, and advised that the applicant was applying for permanent residence under the domestic violence provisions of the Act. The agent also provided the Department with a copy of a Complaint for an Intervention Order and a statutory declaration in which the applicant claimed that she had suffered domestic violence committed by the sponsor since August 2006. On review, the applicant's migration agent provided the Tribunal with a police report in which a police officer stated that he had served the Complaint for an Intervention Order on, and executed the Complaint for an Intervention Order and Warrant against the sponsor, and that the sponsor had been bailed by police to appear at the Magistrates' Court of Victoria.

Held: Decision under review set aside.

In reaching its decision the Tribunal did not consider a hearing to be necessary as it was able to find in favour of the applicant on the basis of the material before it, including material relating to the grant of the Subclass 309 visa to the applicant. Having had regard to all of the circumstances of the relationship, including the aspects set out in the definition of 'spouse' in r.1.15A(3), the Tribunal was satisfied that the parties were in a spousal relationship at some time prior to the applicant seeking an intervention order against the sponsor. Having had regard to the 'Police Report to Court on Status of Complaint and Warrant for an Intervention Order', the Tribunal was satisfied that the sponsor was served with a copy of the Complaint for an Intervention Order and bailed to appear in Court. As the sponsor failed to appear and the Court granted the applicant an Intervention Order against him, the Tribunal was also satisfied that a court order was made against the alleged perpetrator (the sponsor) for the protection of the alleged victim (the applicant) from violence, after the sponsor had an opportunity to be heard by the Court in relation to the matter. The Tribunal found that under these circumstances, domestic violence was taken to have occurred under r.1.23(1)(d) of the Regulations. Accordingly, the Tribunal found that as the relationship between the applicant and sponsor had ceased and the applicant had suffered domestic violence as committed by the sponsor, the applicant met the requirements of cl.100.221(4)(b) and (c) of the Regulations.

0808684

7 May 2010, Melbourne

Ms L Kirk, Senior Member

PROSPECTIVE MARRIAGE (TEMPORARY) (CLASS TO) – SUBCLASS 300 – CL.300.216 – CL.300.221 – GENUINE INTENTION TO LIVE TOGETHER AS SPOUSES – The delegate refused the application for a Subclass 300 visa on the basis that the visa applicant did not satisfy cl.300.216 and cl.300.221, because the delegate was not satisfied that the parties genuinely intended to live together as spouses. The review applicant claimed that he was introduced to the visa applicant by the visa applicant's aunt, and that they began to communicate with each other by email and webcam. The review applicant claimed that he then went to Vietnam with his aunt and met the visa applicant, where they talked and went out together. The review applicant claimed that they kept in touch via webcam, and that about twelve months later he realised that their relationship was serious, and he subsequently proposed marriage to her when he was in Vietnam on a second visit which lasted for five weeks. He claimed that they held an engagement party on his third visit a few months later which was attended by his two step-brothers, his grandparents and an uncle, as well as many members of the visa applicant's family. The review applicant

claimed that when he returned to Australia he continued to stay in contact with the visa applicant by phone, email and letter, and that they were unable to see each other for more than twelve months at this point due to school and work commitments, as well as the fact that they were waiting for a visa for the visa applicant. He claimed that he then travelled to Vietnam for two months for work, but he did not see much of the visa applicant as he was based in Ho Chi Minh City, and the visa applicant's father would not allow her to come and stay with him as he was very strict. He claimed that he sent her about \$200-\$300 every two or three months through his grandmother via his aunt. The visa applicant gave evidence to the Tribunal in relation to the chronology of how they met and how their relationship developed, and a Statutory Declaration was received confirming that the review applicant's aunt was involved in transferring funds to the visa applicant on behalf of her nephew.

Held: Decision under review set aside.

The Tribunal found that both the review applicant and the visa applicant were able to provide a generally consistent explanation of their future intentions as to financial, living and personal lives which, in the Tribunal's assessment, was consistent with a genuine commitment to live together as spouses in what they anticipated to be a long term relationship. The Tribunal noted that whilst the parties lived in different countries which made it difficult for them to effectively pool or combine their finances, the review applicant had provided financial assistance over the past year to the visa applicant to assist her with her everyday expenses. The Tribunal accepted that the parties had maintained regular and frequent contact with each other by internet and phone communication, as evidenced by phone bills showing phone calls and the print out of emails between them, and that they presented together socially as a couple as supported by photographic evidence showing them together in Vietnam and in other social activities. The Tribunal found that the attendance of relatives of both the review applicant and the visa applicant at their engagement party was consistent with the assertion that other people recognised and accepted the existence of a relationship between them. The Tribunal accepted that the review applicant had travelled to Vietnam to visit the visa applicant on several occasions, and also noted various Statutory Declarations from friends and family which went to the genuineness of the relationship, which had now endured for almost four years. Having considered the evidence, the Tribunal found on balance that, at the time of application, the parties had a genuine intention to live together as spouses and that they continued to hold this intention. Therefore, the applicant met the requirements for the grant of a Prospective Marriage visa.

Student visas

0902874

18 May 2010, Sydney

Mr I Hasan, Member

STUDENT (TEMPORARY) (CLASS TU) – SUBCLASS 572 – VOCATIONAL EDUCATION AND TRAINING SECTOR – CL.572.235 – SUBSTANTIAL COMPLIANCE – CONDITION 8516 – A delegate of the Minister refused to grant the applicant a Subclass 572 visa on the basis that the visa applicant did not satisfy cl.572.235 of the Regulations because she had not complied substantially with condition 8516 (the holder must continue to be a person who would satisfy the primary or secondary criteria, as the case requires, for the grant of the visa) of her last substantive visa. Departmental records showed the applicant previously held a Subclass 573 (Higher Education Sector) visa which had a number of conditions attached to it, including condition 8206, which stated that the holder must not change education provider within 12 months if the course duration was more than 12 months, or before the end of the course if the course duration was less than 12 months. The delegate found the Subclass 573 visa was granted so that the applicant could undertake a package course of prerequisite English followed by a Bachelor of Accounting of three years duration. The delegate found that the visa applicant completed her English course and then commenced her Accounting course, which she studied for a period of 8 months before being granted a deferment for around 3 months in order to visit her father who was ill in India. On her return, the applicant continued her Accounting course but ceased after a further four months, at which time she enrolled with another education provider to undertake an Advanced Diploma in Hospitality Management which was of two years duration. The delegate noted that the applicant did not notify the Department when she changed her course and education provider, and that the change of enrolment subsequently meant she needed to change her visa from a Subclass 573 (Higher Education Sector) to a Subclass 572 (Vocational Education and Training Sector) visa.

Held: Decision under review set aside.

The Tribunal found no evidence which indicated the applicant did not satisfy the conditions attached to her Subclass 573 visa. The Tribunal found on the evidence, that the visa applicant did not fail to comply with condition 8206 because she changed her principal course of enrolment to another education provider after the end of the first 12 months. The Tribunal's view was that condition 8516 required the applicant to continue to satisfy the primary criteria for the grant of the Subclass 573 visa from the time it was granted until it ceased. The Tribunal found that by changing her bachelor course to a diploma course she did not strictly comply with condition 8516, since her diploma course was not a course that was specified for her Subclass 573 visa. The Tribunal considered that as the applicant continued to satisfy all criteria except 573.231, she had complied substantially with the conditions of her last substantive visa. The Tribunal considered that substantial compliance requirements permitted some degree of non-compliance with the visa conditions. The Tribunal noted that the applicant had only changed her course level and provider, and that there was no evidence she had deliberately flouted the condition. The Tribunal observed that it was possible she had failed to appreciate she was in breach of the condition and there was no reason why, if she made a fresh visa application, it would not have been granted. The Tribunal found the applicant had substantially complied with condition 8516 of her last substantive visa. The Tribunal noted that the delegate claimed the applicant had not notified the Department of her change of enrolment, however, the Tribunal considered that even if it accepted this point, the applicant did not breach any of her last substantive visa conditions by this conduct. Accordingly, the Tribunal found that the applicant met the requirements of cl.572.235 of the Regulations.

0807813

3 May 2010, Sydney

Ms G Cullen, Member

STUDENT (TEMPORARY (CLASS TU) – SUBCLASS 573 – HIGHER EDUCATION SECTOR – CL.573.211 – CRITERION 3005 – SCHEDULE 3 CRITERIA PREVIOUSLY RELIED ON – A delegate of the Minister refused to grant the applicant a Subclass 573 visa as a visa had been previously granted to the applicant on the basis of satisfying criteria set out in Schedule 3 of the Regulations. The application was accompanied by a submission explaining that the applicant had known his visa was due to expire on 30 September 2008, so at 11:17 am he had lodged an online application and paid the \$450 application fee via BPay. He also provided the payment receipt to the Tribunal which showed the payment was made on that date and time. He claimed that on 17 October 2008, he contacted the Department and was informed that he was unlawful. He stated that on 20 October 2008 he attended the Department and submitted a further application form and a cheque for \$450. In a submission to the Tribunal, the applicant acknowledged that on a previous occasion he had relied upon satisfying criteria set out in Schedule 3 to be granted a student visa after having ceased to hold a substantive visa. He emphasised that based on previous experience, he had thought a payment made by BPay before 5pm would be processed on the same day. The Tribunal undertook enquires with the Department as to whether the application of 30 September 2008 was a valid application. In an email response the Department indicated that if the payment had not been received until after 30 September 2008, then the electronic application was invalid and the 'client did not hold a substantive visa at time of lodgement'. A further response indicated that the BPay payment was received on 1 October 2008 at 10.00 am. This response also explained that due to a fault in the Department's system, the BPay payment by the applicant was not matched to the applicant's application until 11 November 2008. At the Tribunal hearing the applicant indicated that he was married to an Australian citizen who was pregnant and that he had discussed with the Department applying for a visa.

Held: Decision under review affirmed.

The Tribunal found the applicant to be credible and honest and his claims as to the submission of his application on 30 September 2008 were supported by Departmental evidence. The Tribunal accepted, based on the evidence before it, that the applicant submitted an application including the required additional documents via the internet on 30 September 2008, and paid the required fee for the visa via BPay on the same day. The Tribunal noted that evidence indicated that the fee was received by the Department from the Commonwealth Bank on 1 October 2008. The Tribunal referred to Regulation 2.12JA, which specified that the charge was taken not to have been received until the payment was electronically matched to the applicant's internet application form. As this did not occur until 11 November 2008 due to a fault in the

Department's system, the Tribunal found that the relevant visa application was made on 20 October 2008, the date the applicant submitted a further application and payment. The Tribunal therefore found that at the time of application, the applicant was not the holder of a substantive visa. Further, as the applicant had previously been granted a visa on the basis of satisfying criterion 3005 of Schedule 3, the Tribunal found that he was unable to meet the requirements of this criterion, which required that a visa had not previously been granted to the applicant on the basis of satisfying the criteria set out in Schedule 3. The Tribunal refrained from referring this matter to the Department for the attention of the Minister, noting that the Minister had indicated that it was inappropriate for him to consider cases where it may be open to a person to make a valid application for a Partner visa onshore. The Tribunal therefore affirmed the decision not to grant the applicant a Student visa.

REFUGEE REVIEW TRIBUNAL DECISIONS

Afghanistan

1000358

30 April 2010, Perth

Mr T Caravella, Member

AFGHANISTAN – ETHNICITY – HAZARA – RELIGION – SHIA – CREDIBILITY – The applicant claimed to fear persecution and serious harm from a politician who had taken over his father's land. He further claimed that the police would not provide protection from this threat because of his Hazara and Shia background. The applicant claimed that in about 1989 or 1990, his father left Afghanistan to go to Pakistan because the Hazaras were being killed by the Pashtuns, Tajiks and Uzbeks. When his father left Afghanistan, his mother took all of the children to Pakistan illegally. The applicant claimed he did not remember what happened because he was a boy at the time but he later found out that there was a feud over land between his family and a politician who was a member of the Nazar Party. In this dispute, his elder brother, who was about 17 or 18, was killed. When his mother took them to Pakistan by car one of his brothers disappeared. His parents believed that he was kidnapped by the Pashtuns. Since that time, the applicant's family had remained illegally in Pakistan. The applicant claimed his father arranged for a false passport on which he travelled to Australia. He claimed that when he returned to Pakistan in 2009 to visit his family, he found the situation had become far worse and many Hazara people were being killed. He claimed that he faced persecution as a Hazara and a Shia Muslim in Afghanistan and also in Pakistan.

Held: Decision under review set aside.

Based on Departmental records and after conducting two hearings, the Tribunal was satisfied that the applicant was an Afghan national of Hazara ethnicity and that the Department's investigative work had correctly identified him as entering Australia under a false name and living in Australia for around two years. As the applicant admitted that he had fabricated an identity to obtain a student visa under an alias, the Tribunal considered his claims for protection required thorough examination. The Tribunal accepted that the applicant's fear of persecution due to his Hazara ethnicity and his Shia religion were consistent and plausible. It also considered his claim that his family were victims of a land dispute which turned violent and resulted in the death of his brother and his claims of serious harm as a member of the Hazara and Shia minority were consistent. The Tribunal was ultimately satisfied that the applicant had a well founded fear of persecution and it acknowledged that some applicants may, due to fear, desperation, uncertainty, or some other factor, present claims that may not be valid or truthful, but may still support the claim of a genuine well founded fear of persecution. In this case, the Tribunal found that the applicant's claims, which were made subsequent to his admission that he had fabricated an identity and lived as an impostor on a false passport, were genuine. The Tribunal found that country information indicated that land disputes in Afghanistan predated the land reform programmes of the 1980's and that contested claims over land often go back generations. Based on this, the Tribunal was satisfied that the Hazara and Shia people in Afghanistan still suffer a real chance of serious harm from other and more powerful ethnic groups in Afghanistan. The Tribunal found that country information supported the applicant's claims that Hazaras in Quetta had been targeted, and responsibility for many targeted killings had been accepted by a banned Sunni organisation.

Country information also indicated that the Hazara community in Quetta was subject to targeted killings, with some taking place in the streets. The Tribunal found, based on the applicant's evidence of his experiences in Pakistan and the country information available to it, that the applicant had a well founded fear of serious harm amounting to persecution based on his Hazara ethnicity if he were to return to Pakistan. The Tribunal found that the effect of this was that subsection 36(3) did not apply and therefore did not remove Australia's protection obligations in this case. The Tribunal was satisfied that the applicant had a well founded fear of persecution amounting to serious harm or death if he were to return to Afghanistan and that one of his brother's was killed at the hands of a politician or his followers and that a second brother fell into serious harm or death, having been missing for twenty years when the family were fleeing from Afghanistan to Pakistan. The Tribunal accepted that there was a real chance of serious harm aimed at Hazara and Shia in Afghanistan as supported by the country information. The Tribunal also found that the applicant would be motivated, if he was forced to return to Afghanistan, to resume possession of his father's

land from which his family had been dispossessed. The Tribunal found that this would present a real chance of serious harm or death at the hands of the politician or his followers. The Tribunal considered internal relocation in Afghanistan would not make the applicant safe because it is likely he would seek to take possession of his family's land from the politician and this would put him in a position of a real chance of serious harm without adequate state protection. Furthermore, on the basis of the applicant's Hazara ethnicity and Shia religion, the Tribunal found that the persecution directed at members of these groups appeared to be widespread throughout most of Afghanistan. Therefore, the Tribunal was satisfied that the applicant was likely to be denied state protection because of his Hazara and Shia membership and this amounted to persecution under the Convention. Accordingly, the Tribunal remitted the matter for reconsideration with the direction that the applicant was a person to whom Australia had protection obligations under the Refugees Convention.

China

1001325

11 May 2010, Sydney

Mr B MacCarthy, Member

CHINA – IMPUTED POLITICAL OPINION – ANTI GOVERNMENT – SPOUSE IN DETENTION IN CHINA – EEL FARMERS SEEKING COMPENSATION – CREDIBILITY – The applicant claimed that she had arrived in Australia on a Student Guardian visa with her son in 2008. She claimed that her husband was a businessman who had previously run a business in Southern Africa and had returned to China in September 2008 because of the global recession. The applicant claimed that when her husband returned to China he started a new business for the purpose of cultivating eels, and that the local government authorities had subsequently built a highway and bridge over the river which changed the conditions and promoted floods. She claimed that there was a storm which created flooding over the eel fields, as well as houses and other nearby areas, and that as a result her family lost 3 million RMB [about \$475 000], and other families also lost their assets. She further claimed that two elderly people and a child had disappeared in the floods. The applicant claimed that these events provoked the anger of those affected who wanted to sue the local government authorities. She claimed that due to her husband's standing in the community, the villagers appointed him as their representative and they provided a protest letter and sought compensation which resulted in the authorities persecuting people. The applicant claimed police subsequently came to their home and took her husband away as the representative of the group, and that he had been in detention since that time. She claimed that in 2009 she was located by immigration officers and her visa was cancelled as she had been working and that given that her husband remained in detention in China she had no choice other than to seek asylum. The applicant claimed that because she and her husband owed money, the people who had lent them money for the business would be looking for her and would "hunt her down."

Held: Decision under review affirmed.

The Tribunal found that the applicant's claims were largely assertions which were supported only by copies of photographs that had been submitted to the Department. The Tribunal stated that it gave these photos no weight because they did not show any damage consistent with a flood, or indeed any sign that the buildings and properties depicted were immersed in a flood, and that none of the photographs submitted showed anything resembling pools or ponds in which eels could have been kept. The Tribunal noted that the applicant had presented no evidence to support her claim that her husband had been in detention, and that had he been in detention for the period claimed, the Tribunal would have expected there to have been some official document attesting to this fact. The Tribunal found that the applicant had provided no evidence which would confirm that her husband had ever operated an eel farm, and that had there been any documentation, such as a relevant business licence which the applicant had claimed existed, the Tribunal would have expected her to have obtained and presented it. The Tribunal accepted the applicant's evidence that she sought work in *early* December 2008 and that she did so because she was no longer receiving money from her family in China, and that given that evidence, the Tribunal did not accept that the financial difficulties faced by her family resulted from a flood in *late* December 2008. The Tribunal found that it did not accept that the family had an eel farming business which was destroyed by a flood in December 2008, and consequently it did not accept that the applicant's husband was involved in protests about the circumstances leading to such a hypothetical flood, nor did it accept that her husband had been detained in China. Therefore, the Tribunal found that the applicant did not have a well-founded fear of persecution.

Colombia

0908353

17 May 2010, Sydney

Ms D Dimitriadis, Member

COLOMBIA – POLITICAL OPINION – REVOLUTIONARY ARMED FORCES OF COLOMBIA – The applicant claimed that Revolutionary Armed Forces of Colombia (FARC) guerrillas forcibly removed the applicant's family and others from their village in order to increase their influence and exert pressure on the government. She also claimed that they threatened her father with death if they returned. The applicant stated that the guerrillas forced people off farms and out of the villages where they were moved to the outskirts of Bogota. The applicant claimed that the government made various agreements with the guerrillas to cease the unrest and displacements, but due to corruption they reneged on these agreements and the guerrillas resumed their campaigns of violence and intimidation. She claimed that there were no political avenues she could pursue to improve her family's situation, and that the government was unable to help because of the sheer scale of the problem, with the only option available being for people to live in squats in crime ridden areas. The applicant claimed that her husband had lent a friend a large sum of money which was subsequently used as a ransom in order to have a FARC member released from prison, and that if they or an intermediary tried to retrieve the money they feared that they would be harmed. The applicant further claimed that the biological father of her older child was a member of a paramilitary group, and that he had threatened her and had threatened to take the child.

Held: Decision under review affirmed.

The Tribunal found that the applicant's claim that she and her family were forcibly removed by FARC from their village and that her father was threatened with death if they returned was so remote that it did not accept it. The Tribunal was not satisfied that the applicant's claim that her husband was unable to retrieve money owed to him by a friend, who used it to pay for the release from jail of a woman who was a member of FARC, was Convention related. The Tribunal had significant concerns about the applicant's claim that the biological father of her older son was not her husband, who appeared on the child's birth certificate, but another person who she claimed was an active member of a paramilitary group, given that this claim was not made until after the application for review was lodged. A further concern for the Tribunal was that the applicant came to Australia with her younger child and left her older child, the child that she claimed was at risk from an active member of the paramilitary, in Colombia. The Tribunal found that it was not credible that if the child was at risk of being abducted or harmed in any way, the applicant would have left him in Colombia for approximately 7 months and travelled to Australia without him. The Tribunal noted the independent country information which it found was inconsistent with the applicant's evidence that the Colombian government made various agreements with the guerrillas to cease the unrest, and that the government reneged on these agreements which led to the guerrillas resuming their campaign of violence and intimidation. The Tribunal was not satisfied that the applicant had given truthful evidence, and hence it was not satisfied that the applicant had a well founded fear of being persecuted for a Convention reason.

Egypt

0806670

6 May 2010, Melbourne

Ms L Kirk, Senior Member

EGYPT – RELIGION – COPTIC CHRISTIAN – The applicant claimed that he was born into a Christian family in Egypt and that he regularly attended church. He claimed that in 2002 he went to a nearby village which was inhabited mostly by Muslims, to attend the opening of a new church. The applicant claimed that the Muslim villagers were angry that the church was opening, and that whilst in attendance he had heard a big bang outside the door which resulted in one of his friends being injured. He claimed that other people were throwing stones at the church and so he and his father left and returned home. He claimed that since this incident he had stopped going to church because he became scared at the increasing incidence of attacks on churches. He claimed that his fears increased every time he heard about attacks on Christian homes, shops and churches. The applicant claimed that when he was at university he feared attacks from

Muslims because the city in which he was studying was full of hostility between Muslims and Christians. The applicant claimed that in 2002 he joined the armed forces to complete his compulsory military service and that he served under a Muslim soldier who hated Christians. He claimed that the soldier would make the applicant do extra night service, and that one night when he refused to serve his night duty, the Muslim soldier took out his knife and tried to kill him. The applicant claimed that he was still under call from the Egyptian army and that he had received calls while he was in Australia to return. He claimed that he feared going back to the army in case this happened to him again.

Held: Decision under review set aside.

The Tribunal accepted the applicant's evidence that he was an Egyptian citizen who was a practicing Coptic Christian, and that in 2002 the church that he attended was attacked, causing him to stop going to church because he was afraid of the increasing incidence of these attacks. The Tribunal also accepted that while the applicant was at university he feared attacks from Muslims due to there being a great deal of hostility between Muslims and Christians, and that the applicant was still under call from the Egyptian army and had received calls since he had been in Australia asking him to return. The Tribunal further accepted that when he was completing his military service he was harassed and, on one occasion threatened, by the Muslim soldier under whom he served. The Tribunal accepted the independent information which indicated that Coptic Christians could be mistreated in Egypt by non-State actors, including Muslims within the community; that sectarian violence appeared to be increasing in Egypt and that violence had been directed recently against Christian Copts. The Tribunal also found that Egyptian law clearly discriminated against various groups, including Christians, and that the legal position was reflected in the discriminatory and sometimes persecutory attitude of government officials against Coptic Christians in Egypt. Whilst the Tribunal acknowledged that Egypt was a heavily populated country with large cities with substantial Coptic Christian communities, it accepted that the applicant could be traced in even a large city through his affiliation with the Coptic Church, and it could not be satisfied that the applicant would be safe from harm anywhere in Egypt. The Tribunal was satisfied that there was a real chance that the applicant would be persecuted if he returned to Egypt now or in the reasonably foreseeable future, and that given that the Tribunal had found that the harm the applicant feared was from the State, the Tribunal was further satisfied that State protection would not be available to the applicant under the circumstances. Accordingly, the Tribunal found that the applicant had a well-founded fear of persecution.

India

1000664

7 May 2010, Sydney

Mr R Derewlany, Member

INDIA – POLITICAL OPINION – BHARATIYA JANATA PARTY SUPPORTER – The applicant claimed to fear persecution for reasons of his political opinion. He claimed that he was a target because he was a youth official in the Bharatiya Janata Party (BJP) and that his father and uncle had been killed by opposition politicians when he was three years old. He claimed to have been attacked on several occasions since 2004, and that he had no support from the police as the Congress Party were currently in power. The applicant gave evidence at the Tribunal hearing that his father had been a leader and active member of the Telugu Desam Party (TDP) and had been killed by political opponents. He claimed that some of the family's relatives who were in the Congress Party had been involved. He stated that when these relatives had been unable to get his father to join the Congress Party, they decided he was 'in the way' and killed him with 'knives and sticks'. The applicant also claimed that he joined the BJP in Hyderabad in 2004, and that since that time there had been people from opposing political parties, including relatives involved in his father's death, trying to get him and to scare him. He claimed to have been attacked on four occasions, and that on one such occasion he was left in a coma for one month. Two letters on BJP Hyderabad letterhead were provided in support of the applicant's claims.

Held: Decision under review affirmed.

The Tribunal found that the applicant had not given a truthful account of his circumstances in India, the reasons why he left India, and the reasons he feared returning. The Tribunal considered that the applicant's evidence in relation to his membership of the BJP was not consistent with his claim to have been an active

member of the Party since 2004. For instance, the Tribunal found it adverse to his claims of involvement in the BJP as an office holder that he was unable to describe the BJP's philosophy when asked at the hearing. The Tribunal also considered that the applicant's evidence of the circumstances surrounding him being targeted and attacked in the years from 2004 lacked credibility. It noted that although he had claimed that a group of people were intent on killing him and that one of the attacks had left him in a coma for a period of one month, he was unable to give a credible explanation for why they had not been able to achieve their aim over such a considerable period. The Tribunal also considered the letters submitted by the applicant on BJP Hyderabad letterhead and found these highly problematic in terms of supporting evidence. It noted that the second letter was dated in June 2003, whereas the applicant had consistently claimed that he was appointed as a youth official immediately on joining the Party in early 2004. Further, the Tribunal did not accept that the applicant's father and uncle were killed as a result of political violence by opponents from the Congress Party, which may also have included distant relatives, on account of their involvement with the TDP. The Tribunal therefore did not accept that there was any real chance that the applicant would experience serious harm amounting to persecution as a result of his general support for the BJP if he returned to India. Neither did the Tribunal accept that there was any real chance that the applicant would experience serious harm amounting to persecution for any reason connected with his father's death. Accordingly, the Tribunal did not accept that the applicant had a well founded fear of being persecuted on account of his political opinion, or any other Convention reason.

1001826

17 May 2010, Sydney

Ms L Mojsin, Member

INDIA – PARTICULAR SOCIAL GROUP – PARAVAN CASTE – The applicant claimed that she was a member of the Paravan caste, who are a scheduled caste in India. She claimed that while she was away studying she met a man from an upper caste and they began a relationship which eventually resulted in marriage. The applicant claimed that her husband's parents did not approve of the relationship, and that they tried to prevent the marriage, resulting in the applicant and her husband eloping. She claimed that while they were away her husband's parents attacked the applicant's family, threatening that they would kill the applicant if the marriage continued. The applicant claimed that her husband was cut off from all financial support and was subsequently brainwashed by his parents into leaving the applicant, however, she claimed that she was able to convince him to return to her and leave India to come to Australia. The applicant claimed that her husband remained in contact with his parents, and that this caused his attitude towards her to change, resulting in him beginning to abuse and mistreat her. She claimed that a short time later, he left her and returned to India where she later found out he had married a woman from an upper caste. The applicant stated that because they were legally still married that if she went back to India she would be attacked and killed by his family and that they continued to threaten her own family. She claimed that she would not receive protection from the police because her husband's new wife had strong connections to the Bharatiya Janata Party (BJP).

Held: Decision under review affirmed.

The Tribunal did not accept that the applicant was a witness of truth and was satisfied that she had created her claims in order to obtain a protection visa. The Tribunal noted that the applicant did not suffer discrimination in her education in India, and that while she came from a poor family, she was able to attend two separate tertiary institutions at the expense of the Indian government. The Tribunal found that the applicant's evidence in relation to her marriage to her husband was unconvincing and unsatisfactory. It found that the applicant was unable to explain the circumstances of how she met her husband, nor could she explain the development of the relationship in any great depth. The Tribunal noted that the applicant had not produced a marriage certificate or any other information, such as photographs or declarations from friends, to support her claim of marrying in India. Given that the Tribunal found that the applicant was not a witness of truth, it further found that the applicant was not from the Paravan caste; that she was not married to this man as claimed; that her parents were not attacked and harmed by her husband's family; and that she was not threatened or harmed by his parents. It did not accept that she had been divorced and that her husband had remarried, or that his new wife and her parents were seeking to harm her or that any other person or group in India were seeking to harm her. Therefore, the Tribunal did not accept that the applicant had a well-founded fear of being persecuted for reasons of her membership of a particular social group or any other Convention related reason if she were to return to India.

Lebanon

1001150

19 May 2010, Sydney

Ms R Mathlin, Member

LEBANON – POLITICAL OPINION – FATAH AL ISLAM – The applicant claimed to be a stateless Palestinian who was born and had resided in Lebanon. He claimed that following the invasion of South Lebanon by Israel in July 2006 which had resulted in many residents being displaced to the north, a militant Islamist group had emerged called Fatah Al Islam (FAI). He claimed that the organisation began to recruit young males and that it was dangerous to refuse to join or support them. The applicant claimed that on one occasion, three men came to visit him while he was working in a shop owned by his neighbour, and that they tried to recruit him however he told them that he was still at school. He claimed that FAI militants attacked Lebanese Army posts on the outskirts of his refugee camp, and that the Lebanese Armed Forces (LAF) responded by firing missiles and bombs which caused many civilians to be killed. The applicant claimed that a number of days later a group of seven FAI militants forced their way into the applicant's home and demanded that they leave due to the fact that their house was on a hill with good visibility. The applicant and his family went to another camp where they were told that their former neighbour had been arrested by the LAF on suspicion of being a member of FAI. He claimed that after the conflict had ended, the LAF had started arresting men suspected of membership, or of having helped, FAI and that these men were subjected to torture. The applicant claimed that due to this activity he had decided to obtain a student visa to study in Australia and borrowed money from a friend of his father for this purpose. He claimed that after arriving in Australia, the applicant's mother had phoned him and told him that his two brothers had been arrested and subsequently released by the LAF, and that they had been subjected to severe torture resulting in ongoing medical problems. He claimed that his mother had told him that the family had been accused of helping FAI, as they had used their house as an ammunition depot and a base for launching attacks on the LAF. The applicant claimed that he was told that he was especially at risk because he had worked for his former neighbour who was still being held in detention.

Held: Decision under review set aside.

The Tribunal found that the applicant was a stateless Palestinian whose country of former habitual residence was Lebanon, and that his claims to refugee status would be assessed against Lebanon for this reason. The Tribunal found that the applicant's evidence was broadly consistent with independent country information, and that he had provided a number of documents which appeared to provide some objective support for his claims, including medical reports stating that his two brothers were suffering from injuries caused by beatings inflicted while they were in detention; letters from a solicitor stating that he was retained by the applicant's mother in relation to the detention of her sons; and letters from the Palestinian Liberation Organisation administration in Lebanon confirming the essential details of the applicant's employment and that his brothers had been detained on two occasions. The Tribunal noted that country information indicated that a man with the same name as the applicant's former employer and neighbour had been detained as a suspected member of FAI, and it found that country information also indicated that members of FAI were still of interest to the Lebanese security forces because of the perceived risk to internal Lebanese security posed by FAI and other similar groups. The Tribunal noted that whilst it had some doubts about the credibility of the applicant's account, its reservations were relatively minor, and that while it was not convinced that the man referred to in the report submitted by the applicant was indeed his former neighbour and employer, it could not find with certainty that this was not the case. Given the level of documentary evidence in support of the applicant's account and its broad plausibility and consistency with independent information, the Tribunal was prepared to accept the applicant's account of the events which led to his departure from Lebanon, and in these circumstances it could not discount as remote the possibility that he would be of adverse interest to the Lebanese security authorities as a suspected member or supporter of FAI should he return to Lebanon, and that he would, as a consequence, be arrested and detained, possibly for a lengthy period, without charge. The Tribunal was therefore satisfied that the applicant had a well founded fear of persecution based on his imputed political opinion.

Malaysia

1001018

6 May 2010, Sydney

Ms J Ciantar, Member

MALAYSIA – RELIGION – CATHOLIC – POLITICAL OPINION – ANTI-ISLAMIC/ANTI-GOVERNMENT – The applicant claimed to fear persecution for reasons of his Christian religion and his anti-Islamic and anti-Government political opinion. On his visa application the applicant stated that he was Christian and Tamil and that he had arrived in Australia in August 1999. He claimed that he left his country because of his faith and feared returning to Malaysia because he would be killed by Islamic fanatics and fundamentalists. He also stated that he left Malaysia legally and that there were anti-Islamic and anti-Government charges against him. The applicant claimed, at both the Departmental interview and Tribunal hearing, that he had been involved in church activities and proselytising, and because he proselytised, he had been threatened and assaulted by Muslim Malaysians. He claimed that he was assaulted a number of times between 1995 and 1999. He claimed that he had been proselytising on behalf of the Catholic Church, handing out pamphlets and speaking on the streets using a megaphone, telling people to come to church. He claimed at first that he had not attended church in Australia since 2000, but subsequently claimed that he had attended church each Christmas.

Held: Decision under review affirmed.

The Tribunal found that the applicant was not a credible, truthful or reliable witness and came to the conclusion that his claims were fabricated. The Tribunal noted that despite claiming to have been baptised as a Catholic and to have proselytised for the Catholic Church, the applicant could not recall the name of the church he attended or describe what happened at a Catholic Mass other than making general statements about prayers and blessings. It also noted that the applicant's evidence about the assaults and threats he claimed to have received in Malaysia were vague and lacking in any detail. The Tribunal referred to independent country information indicating that there was a large Christian population in Malaysia and that there was little, if any, targeting of Christian people by Muslims in Malaysia. Further, the Tribunal did not accept that the Malaysian authorities or anyone else had any interest in him for his express or imputed political opinions, and noted that at the hearing he had denied that there were any "anti-government" charges against him and could not recall having made such claims. The Tribunal also referred to the applicant's 10 year delay in applying for a protection visa and found that this cast serious doubt on the genuineness of his fear of persecution and the truthfulness of his claims. The Tribunal noted that the applicant had not claimed to have been engaged in any kind of proselytising activity over the last 10 years in Australia and it was not satisfied that he would engage in proselytising the Christian or Catholic faith if he were to go back. Therefore, the Tribunal was not satisfied on the evidence before it that the applicant had a well founded fear of persecution for a Convention reason.

1001133

24 May 2010, Sydney

Ms P Leehy, Member

MALAYSIA – ETHNICITY – TAMIL – RELIGION – CATHOLIC – The applicant claimed that he was a Catholic of Tamil ethnicity who left Malaysia because the Malaysian Islamic Court had issued an arrest warrant against him, and that an Islamic radical group had tried to kill him. The applicant claimed that he had faced discrimination since childhood due to his religion and skin colour. He claimed that he had a relationship with a Malay Muslim girl and that as a result, the police accused him of anti-Muslim activities culminating in him being detained for seven days in a cell, continually tortured, and eventually forced to sign a false statement. He claimed that he was given a six month sentence in a juvenile detention centre where he witnessed Muslim teenagers bashing, abusing and sexually assaulting Indian and Chinese inmates. The applicant claimed that one of the prison officers told him he had to convert to Islam so he decided to do so in order to escape scrutiny. He claimed that on one occasion after his release, he was attending Mass when he was pulled out of church and surrounded by angry Muslims who attacked and beat him, causing him to be hospitalised for an extended period. The applicant stated that he was not able to visit his parents because his family would be targeted by Muslim fanatics who expected them all to convert to Islam, and that he was not allowed under Malaysian law to convert back to Christianity. He claimed that he was still

psychologically and emotionally affected by his experience in prison, and that his parents helped him to apply for a passport in his original Christian name to leave Malaysia. The applicant claimed that he could not go back to Malaysia because he would be tortured and persecuted, and that he would be forced to practise Islam. He claimed that he would not be able to work to support himself because of his criminal record as a result of the charges fabricated against him, and that he wanted to stay in Australia as it was a safe place to stay and practise his religion.

Held: Decision under review affirmed.

The Tribunal noted that the applicant had provided no documentary evidence in support of his claim to have been imprisoned in a juvenile detention centre, and it doubted the veracity of many of his claims due to inconsistencies in his evidence, considering many of them to be exaggerated. It found that in seeking to support his claim of converting to Islam, he had submitted an identification card in a Muslim name which was issued in February 2001, a date which was inconsistent with his claim to have been released from 6 months imprisonment in October 2001 and to have converted to Islam while in prison. The Tribunal also noted that the applicant claimed to have met the Muslim girl with whom he had a relationship in January 2000, but claimed that this did not result in any adverse consequences for more than 12 months. The Tribunal considered it unlikely that the girl's family would have delayed so long before taking action against the applicant if it disapproved of their relationship. The Tribunal noted that all identification documents and educational qualifications submitted by the applicant, with the exception of one alleged identification card, were in the applicant's Christian name, which indicated that the government and educational authorities in Malaysia accepted him as a Christian. The Tribunal was also concerned that the applicant had waited seven years before applying for protection in Australia, and it did not accept the applicant's explanation that he was traumatised and was unaware that he could apply for protection as an adequate explanation for the delay. Despite these concerns, the Tribunal accepted from the detailed evidence that the applicant had spent some time in jail, that he was mistreated during that time, that as a way of securing an easier time in prison he agreed to convert to Islam, and that he was mistreated in prison in part for reason of his ethnicity as an ethnic Tamil, and for reason of his religion as a Christian. The Tribunal further accepted that there was institutional discrimination in favour of native born people in Malaysia, and that the applicant had been subjected to discrimination in the past on the basis of his ethnicity. However, the Tribunal found his experience of serious harm was localised, and that given a period of 8 years had elapsed since the applicant left Malaysia, it was unlikely the applicant would again be harmed by individuals in his area. The Tribunal considered that it was reasonable for the applicant to relocate from his local area where he had experienced problems with local Muslim gangs to other areas of Malaysia to avoid such problems given that he was highly educated and fluent in English. The Tribunal was not satisfied that there was a real chance that the applicant would be persecuted within the meaning of the Convention if he returned to Malaysia, and it was not satisfied that the applicant had a well-founded fear of persecution.

Philippines

1000666

11 May 2010, Sydney

Mr R Wilson, Member

PHILIPPINES – NO CONVENTION NEXUS – FEAR OF RETRIBUTION FOR MONIES OWED – The applicant claimed that when he and his wife started a small jewellery business they had been lent a large amount of jewellery to sell by a jewellery owner, to the value of about \$25,000AUD. He claimed that they sold less than half of what they had been given, and that they returned the remaining jewellery. The applicant claimed that he had sold the jewellery to three separate people and that they had issued him with post dated guaranteed cheques which were designed to facilitate payment every month, however when the applicant began to deposit these cheques they bounced. The applicant claimed that for this reason he did not have any money to pay the principal owner of the jewellery who was a rich and powerful woman in their province, and that she had sued the applicant and his wife, along with threatening both himself and his family. The applicant claimed that he had contacted the police and he had attempted to issue a letter of demand on those that had taken the jewellery, but the letters had not been accepted which deemed them worthless. He claimed that he could not relocate to another part of the Philippines as the jewellery owner was a powerful woman and had plenty of connections, and that if he went back there he would be killed.

Held: Decision under review affirmed.

The Tribunal accepted the applicant's claims, however, it noted that Section 91R(1)(a) of the Migration Act referred to a Refugee Convention reason having to be the essential and significant reason for the persecution. In the applicant's case, the Tribunal found that his fear of harm was that his creditors were going to kill him, and that this was the basis of his fear. The Tribunal noted that the Convention reasons related to race, religion, nationality, membership of a particular social group, or political opinion, and it found that the applicant's claim did not fall into one of those categories. The Tribunal found that this was a private, commercial, or criminal matter. It found that while the applicant might have been a member of various particular social groups such as "businessmen in the Philippines", or "debtors in the Philippines", the harm the applicant claimed to fear arose out of his personal actions and business transactions with certain individuals, and the evidence did not indicate that any harm would be directed at him for reasons of membership of any particular social group, or any other Convention reason. Accordingly, the Tribunal was not satisfied that the applicant was a refugee.

Sri Lanka

0905013

4 May 2010, Sydney

Ms C Long, Member

SRI LANKA – POLITICAL OPINION – LIBERATION TIGERS OF TAMIL EELAM SUPPORTERS – ETHNICITY – TAMIL – BRAHMIN – The applicants claimed to fear persecution for reasons of their Tamil ethnicity and their imputed political opinion. The first named applicant claimed that he feared returning to Sri Lanka as he and his wife had suffered harm at the hands of paramilitaries, police and members of the security forces in the past and feared the resumption of this treatment on return. He described numerous difficulties he had encountered in Sri Lanka over the past 30 years due to the ethnic conflict there and explained that he had been forced to relocate on several occasions. He claimed that unidentified parties had subjected them to ill-treated and extorted money from him and his wife because they were Tamils, originally from the north of Sri Lanka, and because he was perceived to support the LTTE. He claimed that since retiring, he had given advice to Tamil youths at his home and that personnel in police uniform questioned him and his wife about this, accusing them of being LTTE supporters. In a submission to the Tribunal, the applicants claimed that the extortion attempts were exacerbated recently when suspected paramilitaries who raided their house discovered evidence linking them to the LTTE and evidence that their son was working in Australia. He claimed he was threatened and ill treated on several occasions some years ago and also again more recently when security forces in police uniform questioned him and his wife at their home in relation to Tamil men visiting them. The applicant also claimed that as they were Brahmins they had been treated more harshly than other Tamils. He claimed that he could not get protection against the harm he feared in Sri Lanka. Attached to the application were numerous articles of country information in support of the applicants' claims. A psychologist's report for both applicants was also provided which stated that they were suffering from "post traumatic symptomatology including hyper vigilance, anxiety and depression" as they had lived through years of abuse because of their ethnic background and because they had resided in areas of conflict.

Held: Decision under review set aside.

The Tribunal found that the applicants had embellished their claims before the Tribunal and noted specifically that in a submission sent to the Tribunal shortly before the hearing, they claimed for the first time that parties raiding their house six months after the initial extortion attempt had discovered information which linked them with the LTTE. The Tribunal found that if these claims had been genuine, the applicants would have made them earlier given the importance of this evidence. Nevertheless, having had regard to all of the evidence before it, including the country information relating to the serious difficulties faced by many Tamils in Sri Lanka which generally supported the applicants' claims, the Tribunal gave the applicants the benefit of the doubt. The Tribunal referred to country information which indicated that it was not only young male Tamils who were targeted in Sri Lanka, as well as UNHCR advice that suggested it was not possible to identify particular categories of Tamils from the north who would not have a reasonable possibility of experiencing serious harm. The Tribunal also noted that the psychologist's reports were consistent with the applicants' evidence in relation to what they had experienced in Sri Lanka. Thus, though not without some doubt, the Tribunal accepted that the first named applicant was targeted for extortion and threats of harm in

Sri Lanka several years ago, and then again six months later, because he was accused of connections to the LTTE. Accordingly, the Tribunal was satisfied that the first named applicant faced a real chance of serious harm amounting to persecution from paramilitaries, security personnel, police and others in Sri Lanka for the reasons that he claimed, namely because of his ethnicity and his imputed political opinion. The Tribunal found therefore that he had a well founded fear of persecution for a Convention reason. The Tribunal also noted that the second named applicant would be entitled to a protection visa as a member of the same family unit as the first named applicant.

Stateless

0908992

14 May 2010, Perth

Mr T Caravella, Member

STATELESS – NATIONALITY – STATELESS ETHNIC CHINESE – FORMER HABITUAL RESIDENCE –

The applicant entered Australia in October 1985 on a Hong Kong Certificate of Identity with a visitor visa valid for a stay of two weeks. He remained in Australia after the expiry of the visa and had not left Australia since his arrival. He claimed he was born in East Java, Indonesia and that his ethnicity was Han Chinese. He claimed that his mother and father, who were both born in China, were deceased and that their citizenship or nationality was "stateless". He claimed that he departed Indonesia in 1967 due to anti-Chinese riots and unrest and went to China to study. He claimed his Indonesian residency permit was seized on departure, as ethnic Chinese returning to China were considered Communist sympathisers. The applicant claimed that when he arrived in China he was not permitted to study because those with overseas connections were not trusted, so in 1971 he left and went to live in Hong Kong as he was unable to return to Indonesia. He claimed he had no right to a Chinese or Hong Kong passport and that he was issued with a Hong Kong Certificate of Identity, which he used as a travel document. He stated that he had never been issued with a passport and was stateless. He feared he may suffer discrimination and hardship if he returned to China as he was not born there and that he speaks Mandarin and Cantonese with a heavy Indonesian accent. He said the Chinese Government did not accept overseas born Chinese; they were discriminated against and had difficulty finding work. He stated that if he returned to China the authorities would not protect him because they tolerate discrimination against minority groups. He claimed he would face similar hardship and discrimination if he returned to Hong Kong. The applicant's representative submitted that the applicant's case was exceptional given that he had been in Australia for over 24 years and had worked, paid taxes, and integrated into the Australian community during that time. He also requested that the Tribunal refer the case to the Department for the Minister's attention in the event the review was unsuccessful.

Held: Decision under review affirmed.

The Tribunal found the applicant open and frank in providing evidence and it was satisfied that his evidence was truthful and credible. In order to determine the applicant's country of nationality, the Tribunal consulted a wide range of independent information, including the relevant laws of nationality and citizenship of China and Indonesia, as well as information about the 'Right of Abode' in the Hong Kong Special Administrative Region. In light of the information consulted, the Tribunal found that the applicant was not a national of Indonesia, China or of the Hong Kong Special Administrative Region. The Tribunal also found that although the applicant had claimed the British Overseas Territory of Hong Kong as a country of former habitual residence, the applicant's inability to return there was simply a result of the British Overseas Territory of Hong Kong, as a country, having ceased to exist. The Tribunal concluded that the applicant did not have a nationality and therefore found that he was stateless. The Tribunal noted that applicants who were stateless must be considered in relation to their country or countries of former habitual residence and it went on to assess the applicant's claims against each of these countries. While the Tribunal accepted that the applicant's return to any one of the three countries of his former habitual residence would be disruptive and difficult, it was not satisfied that these disruptions and difficulties would amount to persecution for a Convention reason. The Tribunal also referred to country information which suggested that returnees to the Hong Kong Special Administrative Region, the People's Republic of China or Indonesia were not subject to adverse treatment or denied protection by the authorities. Accordingly, the Tribunal was not satisfied that there was a real chance of persecution consisting of serious harm, now or in the foreseeable future, if he were to return to any of the countries of his former habitual residence. The Tribunal did, however, refer the

applicant's case to the Department to be brought to the Minister's attention for possible Ministerial intervention.

COUNTRY ADVICE

China

CHN35859 – Yiguan Dao – Fujian – 8 January 2010

Provides advice on Yiguan Dao general practices and the treatment of practitioners/followers.

CHN35972 – Journalists – Press Freedom – Corruption – Consumer Protection – 19 January 2010

Provides advice on freedom of the press in China and the treatment of journalists reporting on corruption.

CHN35997 – Hui Muslims – Police – State Protection – Domestic Violence– 6 January 2010

Provides advice on the levels and types of discrimination and prejudice against Hui Muslims in China, with a focus on Henan province. Information is also provided on access to police protection for victims of domestic violence.

Guinea

GIN35987 – Foulah/Fulani – Opposition Groups – 15 January 2010

Provides advice on the Foulah ethnic group in Guinea and how they are treated by the current junta.

India

IND35920 – Mumbai – Ahmedabad – Stock Market – Money lenders – Debtors – Police – State Protection – 18 January 2010

Provides advice on violence perpetrated by money lenders against debtors, and whether money lenders pursue applicants; police action and inaction in pursuing money lenders for alleged violence; and information on the growth of the Indian stock market in 2005.

Korea

KOR36030 – Methadone – Treatment of Heroin Addicts – 20 January 2010

External advice from the Korean Association Against Drug Abuse (KAADA) on the availability of methadone for heroin addicts in South Korea.

Malaysia

MYS35845 – Police – Crime – State Protection – 11 January 2010

Provides advice on the levels of police protection in Malaysia; crime, protection, capabilities, and crime statistics.

Nigeria

NGA35982 – Ijaws – Ijaw Militias – Joint Task Force – Camp 5 – Gbaramatu – Ethnic Conflict – Housing – Land Ownership – 12 January 2010

Provides advice on the main Ijaw militias in the Niger Delta; examines the issue of whether they forcibly recruit Ijaws; and provides information on their current activities. The response also examines the 'Camp 5' militia and the events of 13 May 2009.

Pakistan

PAK35842 – External Advice – Women – Veil / Purdah – Marriage – 9 December 2009

Provides advice on the situation in Pakistan with regard to women; the wearing of the veil and marriage, sourced from ANU's Dr Shakira Hussein. The situation of women who transgress expectations with regard to dress and marriage are discussed in detail along with the issue of state protection.

PAK35880 – Swat Valley – PML-N – Tehrik-e-Nifaz-e-Shariah-Mohammadi – Landowners – April 2009 Army Offensive – Internal relocation – Asylum seekers – 23 December 2009

Provides advice on the rise of the TNSM in the Swat Valley and the Pakistan government's decision to retake the valley in April 2009; the law and order situation in Swat since the April 2009 offensive and whether the Taliban still pose a threat; and the issue of relocation of Pastuns from Swat to elsewhere in Pakistan.

Serbia

SRB36154 – Serbian Volunteer Guard – Arkan's Tigers – International Criminal Tribunal for the Former Yugoslavia – War Crimes – Organised Crime – 5 March 2010

Provides advice on the Serb Volunteer Guard (SDG) and Arkan's Tigers; the post war reconstruction of Serbia (1996- 2010) with particular reference to rule of law, prosecution for war crimes and the relationships between government, paramilitary and organised crime.

Thailand

THA36025 – Women – Domestic Violence – Sexual Assault – Sexual Slavery – State Protection – 18 January 2010

Provides advice on the situation for women subjected to domestic violence in Thailand; the availability of state protection; the general attitudes towards victims of domestic violence by the police; and advice on the trafficking of young girls into the sex industry.

FEDERAL COURT JUDGMENTS

MIAC v SZNSP

[2010] FCAFC 50

Federal Court of Australia, North, Lander and Katzmann JJ, NSD 1374 of 2009, 4 June 2010

This was an appeal from a judgment of the Federal Magistrates Court quashing a decision of the Refugee Review Tribunal (the Tribunal) affirming a decision to refuse to grant a Protection visa.

The respondent, a national of the People's Republic of China, claimed to fear persecution because she had aided two Falun Gong activists. At the Tribunal hearing, the respondent had provided a witness statement that purported to corroborate her claims. The Tribunal did not believe her claims and, given its adverse credibility finding, gave no weight to the document.

At first instance, the Court held that *Re MIMA; Ex parte Applicant S20/2002* (2003) 198 ALR 59 (*S20/2002*) did not support a suggestion that corroborative evidence can be ignored if the Tribunal comes to a preliminary view that an applicant's evidence cannot satisfy it that that person is owed protection obligations without first deciding that the applicant has lied.

On appeal, the Minister argued that *S20/2002* does not stand for the proposition that the Tribunal must make a positive finding that an applicant has lied before applying the principle in that case.

Held: Appeal allowed.

per North and Lander JJ (Katzmann J agreeing)

- (i) Consistently with *S20/2002*, it was open to the Tribunal to assess the credit of the respondent and then, in the light of that assessment, consider what weight should be given to the witness statement. Moreover, it was open to the Tribunal to conclude that, in view of all the evidence in the case, no reliance should be placed on the witness statement. The witness statement did not amount to corroborative evidence in the absence of proof of the provenance of the document and the reliability of the author.
- (ii) It is not necessary to find expressly that a party has lied before concluding that a piece of evidence which might corroborate the party's account should be rejected. A finding of fabrication is enough to allow the Tribunal to consider whether the evidence which has been tendered in support of the applicant's case has the capacity to affect the Tribunal's assessment of the applicant's credibility. Even if it is a precondition, a finding that the respondent had fabricated her claim is tantamount to a finding of lying.
- (iii) When a decision maker has conducted a hearing and reached the tentative conclusion that the applicant's claims have been fabricated, the decision maker is entitled to reject evidence which would, if accepted, have corroborated the applicant's account. That does not mean that any evidence of corroboration could be rejected. It would depend on the nature, content and quality of the corroborative evidence before a decision maker could determine to reject it out of hand. In circumstances where the provenance of a document is unproved, but it is proffered by a witness whose credibility has been destroyed, the document has no more credit than the person proffering it.
- (iv) *S20/2002* does not relieve the Tribunal from giving consideration to corroborative evidence. It concerns only the timing of that consideration. The case establishes that the Tribunal does not act irrationally, and thereby fall into jurisdictional error, by first making an assessment of the applicant's credit and then giving attention to the corroborative evidence.

**MIAC v SZNPG
[2010] FCAFC 51**

Federal Court of Australia, North, Lander and Katzmann JJ, NSD 1442 of 2009, 4 June 2010

This was an appeal from a judgment of the Federal Magistrates Court allowing an application for judicial review of a Refugee Review Tribunal (the Tribunal) decision affirming a decision to refuse to grant the respondent a protection visa.

The respondent, a national of India, claimed to have been persecuted because he was a Christian. In support of his claims, he provided two documents including a document purporting to be a baptism certificate. However, the Tribunal considered his claims were not credible and was not prepared to give the documents sufficient weight to overcome its concerns. It was not satisfied that he was baptised, a Christian or a promoter of Christianity.

At first instance, the Court held that as the Tribunal's findings did not place the case within the "poisoned well" class of case identified in *Re MIMA; ex parte Applicant S20/2002* (2003) 198 ALR 59 (*S20/2002*), the Tribunal needed to engage in an active intellectual process of considering the corroborative material so as to avoid an apprehension of bias, which it failed to do. On appeal, the Minister contended that the Court erred by finding that the Tribunal's decision was vitiated by an apprehension of bias, and in failing to recognise that the weight to be attached to the evidence was within the Tribunal's jurisdiction.

Held: Appeal allowed.

per North & Lander JJ (Katzmann J agreeing)

- (i) The Tribunal did not fall into jurisdictional error. It weighed a particular piece of evidence against other evidence but was not persuaded by that particular piece of evidence enough to alleviate its concerns in relation to the whole of the evidence. Where the Tribunal has conducted an inquiry in accordance with the Act and reached a state of satisfaction that the claims have no foundation, it is not obliged to reach a different conclusion because there is a piece of evidence supporting the applicant's case.
- (ii) This was not a case of the kind referred to in *S20/2002* where the Tribunal gave the evidence no weight. The weight to be given to the baptismal certificate was a matter for the Tribunal. It is not a precondition to the consideration of the weight to be given to any particular piece of evidence that the Tribunal find the applicant is a liar. Indeed, the Tribunal should not be encouraged to make findings of that kind. It is enough if the Tribunal is not persuaded that the claims have been made out for it to say so.
- (iii) If the Tribunal rejects a claim and fails to give sufficient weight to the piece of evidence relied on so as to allow an application, that is not evidence of either pre-judgment or apprehended bias.

The brevity with which the Tribunal dealt with the corroborative evidence was unsatisfactory, but did not justify the conclusion that it fell into jurisdictional error. The Tribunal does not fall into jurisdictional error if it fails to express its reasons for rejecting corroborative evidence with full clarity.

**AYE v MIAC
[2010] FCAFC 69**

Federal Court of Australia, Spender, Lander and McKerracher JJ, NSD 1031 of 2009, 11 June 2010

This was an appeal from a judgment of the Federal Court dismissing an application for judicial review of a decision of the Minister for Foreign Affairs (the Foreign Minister) to the effect that the appellant's presence in Australia was contrary to Australia's foreign policy interests, and a decision of the Migration Review Tribunal (the Tribunal) affirming a decision to cancel the appellant's student visa.

The appellant, a citizen of Myanmar, was the daughter of a senior member of the Burmese regime who, together with his wife, was identified on a financial sanctions list which restricted travel in relation to senior members of the Burmese regime and their associates, including close family members. Consistently with that policy, the Foreign Minister determined that the appellant was a person whose presence in Australia is or would be contrary to Australia's national interest. On two subsequent occasions, after considering arguments

and submissions by the appellant, he decided that the determination should remain in place. Under s.116(1)(g) of the *Migration Act 1958* and r.2.43(1)(a)(i)(A) and (3) of the Migration Regulations 1994 such a determination was a prescribed circumstance in which the appellant's visa had to be cancelled.

The only attack upon the Tribunal's decision was that the Foreign Minister's decision was a nullity and therefore could not form the basis for a decision under s.116 to cancel the appellant's visa. The question for determination on appeal was whether the decision made by the Foreign Minister was justiciable and if so, whether it failed to accord the appellant procedural fairness.

Held: Appeal dismissed.

per Spender & McKerracher JJ

(i) The decision made by the Foreign Minister was the application of foreign policy, which was a political matter and not justiciable.

per Lander J

(ii) The decision made by the Foreign Minister was justiciable. It did not involve any policy considerations but implemented a previous decision based upon policy considerations, and it directly affected the appellant by depriving her of a right to continue to reside in Australia in accordance with the terms of her existing visa.

per Lander J (Spender & McKerracher JJ agreeing)

(iii) No breach of procedural fairness could be sustained. The Foreign Minister remedied his earlier failure to accord the appellant procedural fairness by later considering arguments and submissions in respect of his decision.

The content of the duty to accord procedural fairness was limited to allowing the appellant to make representations as to whether she was the daughter of an identified person and thus caught by the policy which embraced the immediate family members of senior Burmese officials. This was never in issue.

MZYFH v MIAC & Anor

[2010] FCA 559

Federal Court of Australia, Bromberg J, VID 863 of 2009, 4 June 2010

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) affirming a decision not to grant the appellant, a citizen of India, a protection visa.

The appellant claimed to fear persecution from Hindu activists because of his Christian religion. He claimed that through his church he was encouraged to join the group travelling to Australia for the World Youth Day Conference. The appellant also claimed that the Father of his church told him to leave for Australia, and that the Church would take care of his family.

The Tribunal obtained oral evidence from two Fathers during the hearing. The Fathers gave evidence to the effect that the appellant's claims were all lies; and that nobody had been attacked by Hindus or was being looked after by the Church. The Tribunal's decision record indicated that it invited the appellant to comment on the evidence of the Fathers orally under s.424AA of the *Migration Act 1958*. It noted that the evidence of the Fathers suggested that the appellant had not in fact been attacked by Hindus and that his wife and children were not being looked after by the church. The Tribunal indicated that this was relevant because it undermined the appellant's protection claims, and could therefore form the reason, or part of the reason, for affirming the decision under review. It then relied on this information to find that the appellant was not a credible witness and rejected all his claims.

The issue before the Court was whether the Tribunal had met the requirements of s.424AA.

Held: Appeal allowed. Tribunal decision remitted to be determined according to law.

(i) The Tribunal failed to ensure that the appellant could understand both the relevance and consequence of the information, which denied him the proper opportunity to comment on or

respond to the information that s.424AA intended that he should have. Because the Tribunal failed to comply with s.424AA, it was required to comply with s424A(1), and it did not.

- (ii) The Tribunal did not provide clear particulars of the information it considered would be a reason or part of the reason for affirming the decision under review. There was not sufficient specificity, and the Tribunal's wording lacked the necessary clarity. The Tribunal was required to identify clearly whether its concern related to the whole of the evidence of the Fathers, or simply that part of it which directly refuted what was said by the Tribunal to be the appellant's claims.
- (iii) The Tribunal failed to ensure that the appellant understood why the information was relevant to the review. To simply say that the information undermines an applicant's case is far too general, and does not satisfy the requirement of s.424AA(b)(i).
- (iv) Paragraph 424AA(b) speaks of both relevance and consequences of the information. The appellant was misled as to what that consequence would be. In order to meet its obligation to ensure that the visa applicant understands the consequence of the information, it is incumbent on the Tribunal to tell the visa applicant that the information which it has particularised would be the reason, or part of the reason, for affirming the decision under review, unless it is persuaded not to do so by any response that the applicant can make to the information. By telling the applicant that the information "could" form the reason or part of the reason, the Tribunal failed to ensure that the appellant understood the view that the Tribunal had arrived at, and the full gravity of the consequence of that view upon his claim.

**SZNZL v MIAC
[2010] FCA 621**

Federal Court of Australia, Barker J, NSD 14 of 2010, 21 June 2010

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 it did not have jurisdiction to conduct a review because the review application was filed late.

In his protection visa application, the appellant gave his address as Rolfe Avenue, Gungahlin ACT 2912. In making the application, the appellant undertook "to inform the Department of Immigration and Citizenship if I intend to change my address for more than 14 days while my application is being considered". This was repeated in the Department's acknowledgment letter, which also stated that any communication with the Department must be in writing and that Form 929 should be used for a change address. The appellant was invited to an interview by a letter dated 6 April 2009 which was sent to the address given in the form. The appellant did not receive the letter as it appeared that he had moved address. A departmental file note recorded that the applicant had telephoned the Department on 29 April 2009 advising that his current address was in Inglewood Street, Gungahlin. The appellant was subsequently notified of the decision to refuse the visa by letter dated 5 June 2009 sent a letter to Inglewood Street address. The appellant was apparently not living at the Inglewood Street address when the letter of 5 June 2009 was sent but was residing at another residence on Rolfe Avenue, Gungahlin. He did not notify the Department of this address until 10 July 2009 when he lodged a Form 929.

The Federal Magistrates Court held that the Tribunal correctly declined to exercise jurisdiction and accepted that the telephone advice of the appellant concerning his change of address was effectual. On appeal, the Federal Court raised the proper construction of s.52(3A) of the *Migration Act 1958* (the Act), and whether it permitted the provision of telephone advice in light of the primary obligation under s.52(1) and the Regulations to provide advice to the Minister in writing.

Held: Application dismissed.

- (i) The Tribunal was correct in refusing to deal with the appellant's review application. The notice of decision was validly sent, and deemed to have been received on or about 16 or 17 June 2009. The review application was required to be filed by the 15 or 16 June but was not lodged until 31 July 2009, outside the prescribed period.
- (ii) The effect of s.52(3) of the Act is that ordinarily communications with the Minister by a visa applicant must be in writing. However the failure to make the communication in writing does not

mean that another form of communication, for example, by telephone, is not effective where the Minister in fact receives it. Here the evidence was that the Minister in fact received the telephone communication, being a communication that the appellant intended (by inference) to reside at the Inglewood Street address for more than 14 days.

- (iii) For the purposes of r.2.16, ss.494B and 494(C), it was open to the Minister's delegate to cause the notification letter to be sent to the last residential address advised by the appellant, namely the Inglewood Street address.

FEDERAL MAGISTRATES COURT JUDGMENTS

Bhandari & Anor v MIAC

[2010] FMCA 369

Federal Magistrates Court of Australia, Barnes FM, SYG 3130 of 2009, 17 May 2010

The applicants sought judicial review of a Migration Review Tribunal (the Tribunal) decision affirming a decision of the Minister's delegate to cancel the first applicant's Subclass 572 Vocational Education and Training Sector visa.

The Tribunal found that the first named applicant did not comply with condition 8202 of his visa and that the non-compliance was not due to exceptional circumstances beyond his control. The Tribunal found the applicant's claims regarding exceptional circumstances were unreliable. At hearing, the Tribunal put information to the applicant purportedly pursuant to s.359AA of the *Migration Act 1958*, including evidence of the education provider's certification of the applicant's breach of visa condition, additional information that the education provider gave the Tribunal about its procedures, and evidence given by the applicant's witness at hearing that the Tribunal considered to be unreliable. In relation to the witness evidence, the applicant had initially asked for more time to respond, but when the Tribunal asked him why he needed more time, he said he would give his comments immediately.

The applicant claimed that the Tribunal failed to comply with s.359A or s.359AA in relation to the information from the education provider because it failed to ensure that he understood why the information was relevant and the consequences of the information being relied on or to advise the applicant that he may seek additional time to comment on or respond to the information. In relation to the witness evidence, he alleged that the Tribunal, by denying an adjournment, did not give him a real opportunity to respond.

Held: Application dismissed.

- (i) The evidence of certification by the education provider fell outside the obligation in s.359A(1) because it was information that the applicant gave the Tribunal, in that it was referred to in the delegate's decision and in the notification of cancellation, which he provided to the Tribunal.
- (ii) Alternatively, having regard to the whole of the Tribunal hearing and the discussion of this issue, the Tribunal complied with the manner in which such information may be given orally to an applicant under s.359AA.
- (iii) There was nothing factually in the additional information from the education provider that amounted to a rejection, denial or undermining of the applicant's claims. Rather, there was an absence of information supporting his contentions about exceptional circumstances. Moreover, as the Tribunal did not treat that material as of any significance in its decision it could be inferred that the Tribunal did not consider the information to be part of the reason for affirming the decision. In any event, the Tribunal gave clear particulars, and invited the applicant to comment or respond in the manner provided for in s.359AA.
- (iv) The exercise of the Tribunal's discretion to adjourn under s.359AA(b)(iv) did not miscarry. In the circumstances, it was open to the Tribunal to take the view that the applicant did not reasonably need additional time to comment or respond. When the applicant said he would respond now, it was open to the Tribunal to say 'Okay then. Okay, go ahead'.

LEGISLATION UPDATE

Legislative developments of relevance to the work of the Migration Review Tribunal and the Refugee Review Tribunal are noted below. The following Acts, Regulations and Instruments are accessible via the Commonwealth Law of Australia (COMLAW) website – <http://www.comlaw.gov.au>

Legislation Passed

ACTS

Anti-People Smuggling and Other Measures Act 2010 (Act No. 50 of 2010)

This Act amends a number of items of Commonwealth legislation, including the *Migration Act 1958*, to harmonise existing offences between Acts, create new people smuggling offences, enhance investigative tools, and extend the application of mandatory minimum penalties for aggravated people smuggling offences. This Act received the Royal Assent on 31 May 2010.

Freedom of Information Amendment (Reform) Act 2010 (Act No. 51 of 2010)

Australian Information Commissioner Act 2010 (Act No. 52 of 2010)

These Acts amend several existing Commonwealth Acts, including the *Freedom of Information Act 1982* to:

- establish a statutory framework for a publication scheme for certain Commonwealth agencies;
- establish the role and functions of an Information Commissioner;
- remove fees for applications under the Act;
- enable the Information Commissioner to extend time periods for processing requests in certain cases;
- provide for consultation processes when responding to onerous requests;
- provide that documents held by certain contracted service providers are subject to the Act; and
- limit access to certain intelligence agency information and documents of the Department of Defence.

Both of these Acts received the Royal Assent on 31 May 2010.

INSTRUMENTS

Specification under regulation 1.03 in Part 1 of the Migration Regulations 1994 - Appropriate Regional Authority - May 2010

The purpose of this instrument is to specify appropriate regional authorities for the purposes of the definition of "appropriate regional authority" in r.1.03. Its effect is to nominate State and Territory government appropriate regional authorities that are able to sign the sponsorship forms which are required to be lodged with certain visa applications.

Specification under regulation 1.15H in Part 1 of the Migration Regulations 1994 - Migration Occupation in Demand - June 2010

This instrument specifies each skilled occupation applicable to a person for the purposes of the definition of *migration occupation in demand* in r.1.15H.

Determination under paragraphs 134.228(b), 136.231(b), 137.230(b), 138.233(b) and 139.234(b) in Schedule 2 to the Migration Regulations 1994 - Maximum Number of Certain Skilled Visas That May Be Granted In The 2009-10 Financial Year - June 2010

This instrument provides the maximum number of visas that may be granted in the financial year 1 July 2009 to 30 June 2010 for applicants for Skilled - Independent (Migrant) (Class BN) and Skilled - Australian-sponsored (Migrant) (Class BQ) visas.

Specification under regulation 1.511, subregulation 2.26B(1), subparagraphs 1136(4)(b)(ii), 1136(5)(b)(ii), 1136(6)(b)(iii), 1229(4)(b)(ii), 1129(6)(b)(iii), 1229(7)(b)(ii) and items 6A11, 6A12 and 6A13 - Skilled Occupations, Relevant Assessing Authorities, Countries and Points for General Skilled Migration Visas and Certain Other Visas - June 2010

This instrument specifies the list of skilled occupations applicable to classes of persons, the bodies responsible for assessing an applicant's suitability for working in those skilled occupations in Australia and

the countries for which they are the relevant assessing authorities, and the points available for each skilled occupation under a points assessment conducted in accordance with Schedule 6A and Schedule 6B.

Specification under paragraphs 2.72(10)(aa) and 2.72(5)(ba) in Part 2 of the Migration Regulations 1994 - Occupations for Nominations in Relation to Subclass 457 (Business (Long Stay)) and Subclass 442 (Occupational Trainee) Visas - June 2010

This instrument specifies the occupations for the Temporary Business Long Stay Visa (Subclass 457) and the Occupational Trainee Visa (Subclass 442) by reference to the Australian and New Zealand Standard Classification of Occupation ('ANZSCO').

Specification under paragraph 2.72(10)(cc) in Part 2 of the Migration Regulations 1994 - 2.79(1A)(b) and subregulation 2.72(10AB) - Income Threshold and Annual Earnings - June 2010

This instrument revokes the previous Instrument and specifies the new temporary skilled migration income threshold to be \$47,480 and specifies annual earnings of \$180,000.

Specification under sub-paragraphs 2.72(10)(d)(ii)(B), 2.72(10)(d)(iii)(B), 2.72(10)(e)(ii)(B), 2.72(10)(e)(iii)(B), subregulation 2.86(2B) and subparagraph 457.223(4)(ba)(iv) in Part 2 of the Migration Regulations 1994 - Occupations for Nominations in Relation to Subclass 457 (Business (Long Stay)) for Positions other than in the Business of the Nominator - June 2010

This instrument specifies the occupations for nominations in relation to Temporary Business Long Stay Visa (Subclass 457) visas.

Specification under paragraph 5.36(1A)(a) in Part 5 of the Migration Regulations 1994 - Payment of Visa Application Charges and Fees in Foreign Currencies - June 2010; and Specification under paragraphs 5.36(1)(a) and 5.36(1)(b) in Part 5 of the Migration Regulations 1994 - Places and Currencies for Paying of Fees - June 2010

Respectively, these instruments specify the amounts in local currency that should be paid in respect of a visa application charge when applying for a visa to enter Australia; and the place and the relevant currency to use when paying a visa application charge for applicants applying in a foreign country for a visa to enter Australia.

Specification under paragraph 5.36(1A)(a) in Part 5 of the Migration Regulations 1994 - Payment of Visa Application Charges and Fees in Foreign Currencies Amendment Instrument

This Instrument, made under paragraph 5.36(1A)(a) of the Migration Regulations 1994, amends instrument IMMI 10/020 to correct an error.

Specification under subclauses 175.211(1), 176.211(1) and 475.211(1) of Schedule 2 to the Migration Regulations 1994 - Skilled Occupations for Skills Assessments - June 2010

This instrument specifies the same occupations by reference to the Australian and New Zealand Standard Classification of Occupation ('ANZSCO') and ASCO for when ANZSCO becomes the accepted descriptor of occupations and new applicants for GSM visas will need to nominate a skilled occupation by reference to the ANZSCO.

Approval under paragraphs 235(7)(a) and 245AF(a) of the Migration Act 1958 - Approval of Activities - June 2010

This Instrument specifies the list of approved activities that a person in immigration detention is able to participate in.

Specification under paragraph 457.223(6)(a) and subclause 457.223(11) of Schedule 2 to the Migration Regulations 1994 - Level of Salary and Exemptions to the English Language Requirements for Subclass 457 (Business (Long Stay)) Visas - June 2010

This instrument revokes the previous instrument and specifies the level of salary an applicant for a Subclass 457 (Business (Long Stay)) visa must be paid at or above in order to be exempt from the English language proficiency requirement at paragraph 457.223(4)(eb) of Schedule 2 to the Regulations. The Instrument also specifies the categories of other applicants who are exempt from the English language proficiency requirement.

REGULATIONS

Migration Legislation Amendment Regulations 2010 (No. 1)

These Regulations amend the Migration Regulations 1994 and the Immigration (Education) Regulations 1992 to:

- implement the first stage of the repeal of the Medical Practitioner (Temporary) (Class UE) visa;
- enable the collection of certain biometrics (for example, fingerprints or a photograph) from visa applicants who are lodging their applications overseas with a service delivery partner;
- increase visa application charges and fees so that they are in line with increases to the Consumer Price Index; and
- increase the second instalment of the visa application charge for a contributory parent visa in line with the Contributory Parent Visa Composite Index.

Migration Amendment Regulations 2010 (No. 6)

These Regulations make amendments to the Migration Regulations 1994 to:

- extend the definition of “skilled occupation” to allow the Minister to specify in an instrument in writing occupations that apply to different classes of persons including that an occupation is a skilled occupation for a person who is nominated by a state or territory government agency (state agency);
- require applicants for certain General Skilled Migration visas to be nominated by a state agency or to be sponsored by an eligible person in order to make a valid application to align with the relevant changes to the definition of “skilled occupation”;
- remove the changes that commenced on 8 May 2010 to allow applicants seeking to satisfy the primary criteria for a Subclass 175 (Skilled – Independent), Subclass 176 (Skilled – Sponsored) or Subclass 475 (Skilled – Regional Sponsored) visa, that allow for the grant of a visa outside of Australia, to be able to make a valid visa application on or after commencement of the Regulations;
- insert definitions of ASCO and ANZSCO and transition from the use of ASCO to ANZSCO in nomination criteria relating to the Subclass 442 (Occupational Trainee) and Subclass 457 (Business (Long Stay)) visas; and
- enable the Minister to refund the fee for nomination for the Subclass 457 – (Business (Long Stay)) visa where on or after 1 July 2010 the person nominates an occupation by reference to an ASCO code and withdraws the nomination for that reason before a decision is made.

Legislation Pending

Migration Amendment (Visa Capping) Bill 2010

Introduced in Parliament on 26 May 2010, this bill proposes to amend the *Migration Act 1958* to, among other things, allow the Minister to cap the number of visas that may be granted in a financial year by reference to both the class or classes of visas and the class or classes of applicants. Currently this discretion only extends to capping by reference to the class of visa. This bill has been referred to the Legal and Constitutional Affairs Legislation Committee and a report was due on 15 June 2010.

CASELOAD OVERVIEW

MRT Decisions – May 2010

Decision Category	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total	% Total
Bridging refusal	1	14	1	0	16	2.6%
Visitor refusal	36	18	2	7	63	10.3%
Student refusal	20	15	6	8	49	8.0%
Temporary business refusal	19	18	10	6	53	8.7%
Permanent business refusal	19	14	6	3	42	6.9%
Skill linked refusal	47	41	8	6	102	16.7%
Partner refusal	63	22	5	2	92	15.1%
Family refusal	22	23	3	4	52	8.5%
Student cancellation	21	34	5	2	62	10.2%
Sponsor approval refusal	4	11	6	1	22	3.6%
Other	22	19	7	9	57	9.3%
Total	274	229	59	48	610	100.0%

RRT Decisions – May 2010

Country	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total	% Total
China (PRC)	8	46	0	2	56	30.3%
Malaysia	0	25	0	0	25	13.5%
Indonesia	0	14	0	2	16	8.6%
Fiji	3	11	0	0	14	7.6%
India	0	10	0	0	10	5.4%
Lebanon	1	7	1	0	9	4.9%
Sri Lanka	3	4	0	0	7	3.8%
Egypt	4	1	1	0	6	3.2%
Bangladesh	0	3	0	1	4	2.2%
Pakistan	1	3	0	0	4	2.2%
Philippines	0	4	0	0	4	2.2%
Ethiopia	1	2	0	0	3	1.6%
Iraq	2	1	0	0	3	1.6%
Nepal	3	0	0	0	3	1.6%
Iran	2	0	0	0	2	1.1%
Korea, Republic Of	1	1	0	0	2	1.1%

Papua New Guinea	1	1	0	0	2	1.1%
Vietnam	0	2	0	0	2	1.1%
Zimbabwe	2	0	0	0	2	1.1%
Burma (Myanmar)	1	0	0	0	1	0.5%
Colombia	0	1	0	0	1	0.5%
Ghana	0	1	0	0	1	0.5%
Jordan	0	1	0	0	1	0.5%
Latvia	0	1	0	0	1	0.5%
Macedonia	0	1	0	0	1	0.5%
Palestinian Territory	1	0	0	0	1	0.5%
Stateless	0	1	0	0	1	0.5%
Tonga	0	1	0	0	1	0.5%
Turkey	0	1	0	0	1	0.5%
Ukraine	0	1	0	0	1	0.5%
Total	34	144	2	5	185	100.0%

PUBLICATION OF TRIBUNAL DECISIONS

The Tribunals publish decisions on AustLii that are considered to be of 'particular interest'. If you would like published decisions of a particular kind, or a particular decision, please let us know by contacting enquiries@mrt-rrt.gov.au.

Decisions which are regarded by the Tribunals as of particular interest are decisions: identified as representing a broad cross-section of decisions having regard to factors such as the visa subclass and the outcome of the review; or where there is detailed consideration of legal arguments or policy issues; or where the factual circumstances are complex or unusual or where there is or is likely to be significant external interest; or where there is clear precedential value. The Tribunals aim to publish at least 40% of decisions made by each Tribunal.

Between 1 January 2010 and 31 May 2010, 47% of all substantive decisions made have been published (46% of MRT and 50% of RRT). This does not include 'Withdrawn' or 'No Jurisdiction' cases.

MRT decisions are selected and vetted for publication each day, with publication delayed by approximately seven days to allow for applicants to be notified of the Tribunal's decision. RRT decisions are also selected daily for editing. Once edited, the decisions are quality checked and sent to AustLII for publishing on their website.

The Refugee Review Tribunal has a statutory obligation to ensure that the published version of a decision statement must not contain any information which may identify the applicant or any relative or other dependent of the applicant. Decisions that require extensive editing to meet this obligation may not be published. The Migration Review Tribunal is not similarly restricted but may direct that certain information in a decision not be published in the public interest.

If a published decision of the MRT or RRT causes concern to a person with a close interest or involvement in the decision, a request for deletion of portions of the decision or its withdrawal from AustLii may be made by request to enquiries@mrt-rrt.gov.au.

A selection of Tribunal decisions are available on the Migration Review Tribunal and Refugee Review Tribunal's website located at <http://www.mrt-rrt.gov.au/>.

The website also contains information about how to apply to the Tribunals, how the Tribunals are organised, the function of the Tribunals, caseload statistics, as well as copies of this and previous Bulletins. The website is updated on a regular basis.

The Migration Review Tribunal and the Refugee Review Tribunal is not 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.

Editor: Tracey MacMillan

Contributors:

Alana Gibson
Michael Haynes
Lynne Sonter
Anna Stephens

Enquiries regarding this publication may be directed to the Editor at enquiries@mrt-rrt.gov.au.

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