



## The MRT-RRT Monthly Decisions Bulletin

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

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# MIGRATION REVIEW TRIBUNAL DECISIONS

## Business and Skilled visas

071139406

22 November 2007, Melbourne

Mr N Pullen, Member

**SKILLED – INDEPENDENT OVERSEAS STUDENT (RESIDENCE) (CLASS DD) – SUBCLASS 880 (SKILLED – INDEPENDENT OVERSEAS STUDENT) – VISA REFUSAL – CL.880.230 – APPLICABILITY OF RETROSPECTIVE AMENDMENTS – CL.880.223 – VOCATIONAL ENGLISH** – The applicant applied for a Skilled – Independent Overseas Student (Residence) (Class DD) visa on the basis of her skills assessment from Trades Recognition Australia. The applicant gave evidence that she had completed a qualification in Australia and was tested under the International English Language Testing System (IELTS). A delegate of the Minister for Immigration and Citizenship refused to grant the visa. The delegate was not satisfied that the applicant met cl.880.230 because the course undertaken by the applicant was not a registered course.

**Held:** Decision under review set aside

Clause 880.230 was inserted into the *Migration Regulations 1994* by *Migration Amendment Regulations 2005* (No. 3) and applied only to applications made on or after 1 July 2005. The visa application was made before cl.880.230 was inserted and accordingly that clause was not a criterion for the grant of the visa at the time of application. The *Migration Amendment Regulations 2006* (No. 4) contained further amendments which expressly applied to applications not finally determined before 1 July 2006. The Tribunal considered that the 2006 amendments only applied to visa applications to which the 2005 amendments applied. Accordingly, the Tribunal found that cl.880.230 was not a relevant criterion, either at time of visa application or time of decision. Accordingly, the applicant was not required to meet cl.880.230. The Tribunal found that the applicant had vocational English based on her IELTS test results and satisfied cl.880.223 for the grant of the visa.

N0505568

27 November 2007, Sydney

Ms N Dougall, Member

**BUSINESS SKILLS – ESTABLISHED BUSINESS (RESIDENCE) (CLASS BH) – SUBCLASS 845 (ESTABLISHED BUSINESS IN AUSTRALIA) – VISA REFUSAL – CL.845.215 – TOTAL VALUE OF NET ASSETS OWNED BY APPLICANT IN MAIN BUSINESS** – A delegate of the Minister for Immigration and Citizenship refused to grant the applicant a Business Skills – Established Business (Residence) (Class BH) visa because the delegate was not satisfied that the applicant met cl.845.216. The issue before the Tribunal was whether the applicant met cl.845.215. The applicant submitted various documents and gave oral evidence relating to her ownership interest and managerial role in a business called SK. She also provided business documents relating to the businesses SK and EG, including details of SK's assets and various financial and accounting records.

**Held:** Decision under review affirmed

The Tribunal found that business EG was not a qualifying business as defined in r.1.03 of the *Migration Regulations 1994* as it was not operated for the purpose of making a profit through the provision of goods or services. Clause 845.215 requires that the total value of the net assets owned by the applicant in the main business (SK) is and had been at least \$100 000 throughout the period of 12 months immediately preceding the visa application. Total assets, including cash assets and other receivables, fluctuated over time. There was no evidence to indicate that the reduction in other receivables or cash at bank assets were made up by another asset. The Tribunal was not satisfied that the net assets of SK owned by the applicant were at least \$100 000 during the relevant period. Accordingly, the Tribunal found that at the time of visa application the applicant did not meet cl.845.215 for the grant of the visa.

## Partner and Family Visas

071693627

29 November 2007, Sydney

Mr R Derewlany, Member

**CHILD (MIGRANT) (CLASS AH) – SUBCLASS 102 (ADOPTION) – VISA REFUSAL – CL.102.211 – RESIDING OVERSEAS FOR MORE THAN 12 MONTHS** – A delegate of the Minister for Immigration and Citizenship found that the visa applicant's adoptive parents had not resided overseas for more than 12 months at the time of applying for a Subclass 102 (Adoption) visa and that the adoptive father's residence overseas was specifically for the purposes of the visa application. The review applicant submitted evidence to the Tribunal of her husband's business activities in China, including his role as Managing Director, legal representative, majority shareholder and Chairman of Taifeng Textile Group Pty Ltd. The review applicant stated that her husband had been and continued to reside in China because of his business obligations. While the visa applicant was cared for during the week by her husband's sister and a babysitter, her husband spent time with the visa applicant on weekends. The review applicant's husband stated that he had acquired a shareholding in Taifeng Textile Group Pty Ltd in 2001 and had been responsible as Managing Director. He also travelled to Australia for business and family purposes.

**Held:** Decision under review set aside

The Tribunal was satisfied that the adoptive parents had lawfully acquired full and permanent parental rights through adoption. It found that the review applicant's husband had been residing in China prior to the date of application, apart from visits he made to Australia and the USA for business and family reasons. The Department's policy guidelines indicated that short visits to Australia that are incidental to residence overseas may be counted towards the 12 month period. The Tribunal was satisfied on the evidence that the review applicant's husband had been residing overseas for more than 12 months at the time of application. The Tribunal was also satisfied that at time of adoption, the review applicant and her husband held Australian permanent visas. The Tribunal also considered evidence that the review applicant's husband was actively engaged as Managing Director of Taifeng Textile Group and was satisfied that this commitment was the main reason why he had been residing in China for 12 months prior to the visa application. The Tribunal was satisfied that this circumstance was not contrived in order to circumvent the requirements for entry to Australia of children for adoption. The Tribunal accordingly found that the visa applicant met cl.102.211 for the grant of a subclass 102 (Adoption) visa.

**060521862**

**3 December 2007, Melbourne**

**Mr G Haddad, Member**

**OTHER FAMILY (MIGRANT) (CLASS BO) – SUBCLASS 115 (REMAINING RELATIVE) – VISA REFUSAL – REMAINING RELATIVE – CL.115.211** – The visa applicant applied for an Other Family (Migrant) (Class BO) subclass 115 (Remaining Relative) visa on the grounds that the review applicant was the remaining relative of her biological half-brother. A delegate of the Minister for Immigration and Citizenship refused to grant the visa because the delegate was not satisfied that the applicant met the definition of remaining relative under r.1.15 of the *Migration Regulations* 1994. The visa applicant had been adopted as a child. The relevant adoption laws indicated that a child who was adopted ceased to have a legal relationship with their biological parents but were silent on the status of other familial relationships.

**Held:** Decision under review set aside

The question for the Tribunal was whether the adoption laws that severed the legal relationship between the visa applicant and her birth parents also severed the relationship between the visa applicant and review applicant. This would have the effect of disqualifying her from meeting the definition of 'remaining relative'. In *Liang v MIAC* [2007] FMCA 1288 the Court held that the particular provision under consideration required careful interpretation to determine the precise relationship addressed. On the basis of the available evidence, the effect of the various legal provisions on the circumstances of the visa applicant, the submissions made by the review applicant's migration agent and in light of *Liang*, the Tribunal was satisfied that the review applicant was the brother of the visa applicant for the purposes of r.1.15(1)(a). Accordingly, the visa applicant satisfied cl.115.211 for the purposes of the grant of the visa.

**071162609**

**10 December 2007, Melbourne**

**Mr G Haddad, Member**

**AGED PARENT (RESIDENCE) (CLASS BP) – SUBCLASS 804 (AGED PARENT) – VISA REFUSAL – CL. 804.222 – NOMINATION** – The applicant was nominated by her son, an Australian citizen, for a Subclass 804 Aged Parent visa. However, the nominator died as a result of an accident before the visa application was determined. A delegate of the Minister for Immigration and Citizenship refused the applicant's visa because he was not satisfied that the applicant's sponsorship, required by cl.804.212, was still in force at the time of decision: cl.804.222. The applicant submitted that the delegate applied the current regulations rather than the criteria that applied at the time of application, which referred to the applicant's 'nomination' as opposed to 'sponsorship'. She drew a distinction between 'nomination' and

'sponsorship' and submitted that nomination continues unless withdrawn whereas sponsorship requires a continuum. The applicant further submitted that the nominator's death does not break the link between him and herself and that she remained the aged parent of her son even though he is no longer alive.

**Held:** Decision under review set aside

The Tribunal considered the applicant's submission and did not accept that the proposition applied to the *Migration Regulations* 1994 generally. However, the Tribunal accepted that in relation to the particular regulations under consideration, it may be argued that the change in wording sought to put beyond doubt the intention of the requirement therefore implying that doubt existed. Having regard to the merits of the case and the unusual delay of more than eight years before the visa application was decided which saw the accidental death of the applicant's son and nominator, the Tribunal accepted the applicant's construction of the regulations. The Tribunal was therefore satisfied that the applicant met cl.880.212 at time of application and cl.804.221 and 804.222 at the time of decision.

**060769813**

**10 December 2007, Melbourne**

**Mr D Young, Member**

**OTHER FAMILY (RESIDENCE) (CLASS BU) – SUBCLASS 835 (REMAINING RELATIVE) – VISA REFUSAL – OVERSEAS NEAR RELATIVE – R.1.15 – ADOPTION OF REMAINING RELATIVE – EFFECT OF ADOPTION OF ADULT – R.1.04** – The applicant applied for an Other Family (Residence) (Class BU) visa on the basis that he was the remaining relative of the sponsor, an Australian citizen. A delegate of the Minister for Immigration and Citizenship found that the applicant did not satisfy cl.835.212 of Schedule 2 to the *Migration Regulations* 1994 (the Regulations) and was not a remaining relative within the meaning of r.1.15. The delegate pointed to the existence of an overseas near relative, the review applicant's sister. The applicant provided the delegate with a deed formalising the adoption of his sister by another family and claimed to have no sister as an overseas near relative. The delegate noted that the adoption occurred when the applicant's sister was over 18 years of age and concluded that r.1.04 precluded recognition of the adoption as valid for the purposes of the application. Upon review, the applicant claimed that his sister had been customarily adopted prior to the legal formalisation of the adoption after age 18.

**Held:** Decision under review affirmed

The Tribunal found that the applicant's sister had not been validly adopted in accordance with Hindu or Indian law at any time prior to turning 18. The Tribunal noted that r.1.04 precluded recognition of any adoption occurring after the putative adoptee's 18th birthday as valid under Australian migration law. For this reason, the Tribunal found the applicant's sister to be an overseas near relative within the meaning of r.1.15(2)(a). As both the applicant and his sister were usually resident in India, the applicant was precluded by r.1.15(1)(c)(i) from being a remaining relative of the sponsor. Accordingly, the Tribunal concluded that the applicant did not satisfy the requirements of cl.835.212 and cl.835.221 for the grant of the visa.

## Student visas

**071476439**

**21 November 2007, Sydney**

**Ms S Pinto, Member**

**STUDENT (TEMPORARY) (CLASS TU) – SUBCLASS 573 (HIGHER EDUCATION SECTOR) – VISA CANCELLATION – CONDITION 8202(3)(a) – SCHEDULED CONTACT HOURS** – A delegate of the Minister for Immigration and Citizenship cancelled the applicant's Subclass 573 visa on the basis that the applicant had breached condition 8202(3)(a) in relation to attendance. The applicant was notified by his education provider that he attended only 41% of the scheduled contact hours in the relevant term. The applicant provided information that his father was hospitalised with back problems in India and submitted that he had permission to return to India for two weeks. The delegate revised his attendance to 67.4%. Before the Tribunal, the applicant claimed that he was marked absent during periods when he was conducting a project at a restaurant. The applicant submitted that this period, if taken into account, would have lifted the applicant's attendance to 82% of the scheduled contact hours.

**Held:** Decision under review set aside

The Tribunal accepted evidence provided by the applicant - including a letter from the restaurant and a copy of his project – that he was mistakenly assessed as absent. The Tribunal also accepted that the applicant was given permission to leave Australia for two weeks to travel to India. The Tribunal was accordingly satisfied that the

applicant's attendance for the relevant term was 82% of the contact hours scheduled. Therefore, the applicant had complied with condition 8202(3)(a) of his visa and the decision to cancel under s.116(1)(b) of the *Migration Act 1958* was set aside.

**071506329**

**10 December 2007, Sydney**

**Ms A Duffield, Member**

**STUDENT (TEMPORARY) (CLASS TU) – SUBCLASS 572 (VOCATIONAL EDUCATION AND TRAINING SECTOR) – VISA CANCELLATION – CONDITION 8105 – NOT ENGAGE IN WORK FOR MORE THAN 20 HOURS PER WEEK** – A delegate of the Minister for Immigration and Citizenship cancelled the applicant's Subclass 572 visa under s.116 of the *Migration Act 1958*. The delegate found that the applicant breached condition 8105 of his visa because he worked in excess of twenty hours per week during the school term. The Tribunal wrote to the applicant about payslips which revealed three periods where this occurred. The applicant acknowledged that he had worked more than twenty hours per week during school term, but claimed that it was because he was incorrectly advised by his agent.

**Held:** Decision under review affirmed

The Tribunal found that payslips from his employer indicated that on three occasions the applicant had worked more than twenty hours per week. According to evidence he gave at hearing, the applicant was not on holiday during these periods. The Tribunal found that the applicant had not complied with condition 8105. Accordingly the Tribunal was satisfied that the ground for cancellation in s.116(1)(b) existed and such a ground involved circumstances that required cancellation of his visa under s.116(3) of the Act.

**071761359**

**11 December 2007, Sydney**

**Mr D O'Brien, Principal Member**

**STUDENT TEMPORARY (CLASS TU) – SUBCLASS 573 (HIGHER EDUCATION SECTOR) – VISA CANCELLATION – CONDITION 8202(3)(a) – CERTIFIED AS NOT ACHIEVING SATISFACTORY COURSE PROGRESS** – The applicant's visa was cancelled by a delegate of the Minister for Immigration and Citizenship because he had failed to comply with condition 8202 of his visa. The delegate found that the education provider had certified him as not achieving satisfactory course progress and that no exceptional circumstances applied. The education provider sent the applicant a letter advising that it was required to report him for not achieving satisfactory academic progress. The applicant did not appeal that decision and transferred to another education provider. The applicant claimed before the Tribunal that exceptional circumstances applied because he was unfairly treated by his education provider with respect to his exam results, review of those grades and access to his examination papers. The applicant had exercised his right to seek redress through his education provider's Student Ombudsman. The applicant also made claims regarding difficulties when seeking to change course provider after his first term and instructions given to him to transfer his studies to another campus. The applicant gave evidence that his mother was suffering depression as a result of the mental harassment the applicant was experiencing from his education provider. Whilst the applicant claimed his mother's condition affected his studies he did not give any medical certificate regarding his own state of health.

**Held:** Decision under review affirmed

The version of condition 8202 in force as at 1 July 2007 applied to the applicant because the breach of condition 8202 occurred after that date: r.5 of the *Migration Amendment Regulations 2007* (No. 5). The applicant's education provider had certified that the applicant did not achieve satisfactory course progress and on that basis the Tribunal found that the applicant had not complied with condition 8202(3)(a). The Tribunal considered the applicant's claims that his non-compliance was due to exceptional circumstances beyond his control but found that such circumstances did not arise. The applicant's claims that he was poorly treated by his education provider were not borne out in the evidence he supplied and was refuted by his education provider. It was clear that the applicant was aware of his right to seek redress through the education provider's complaint processes and had raised matters with the Student Ombudsman. The Tribunal found no suggestion that the applicant's unsatisfactory academic progress was caused by his mother's illness. Having found the applicant in breach of condition 8202, in the absence of exceptional circumstances, the Tribunal found that s.116(3) of the *Migration Act 1958* required his visa to be cancelled.

**071566171**

**27 December 2007, Melbourne**

**Ms J Ellis, Member**

**STUDENT TEMPORARY (CLASS TU) – SUBCLASS 573 (HIGHER EDUCATION SECTOR) – VISA CANCELLATION – CONDITION 8202(3)(b) – ACADEMIC RESULT** – A delegate of the Minister for Immigration and Citizenship cancelled the applicant’s Subclass 573 Higher Education Sector visa under s.116(1)(b) & (3) of the *Migration Act 1958* on the ground that the applicant breached condition 8202(3)(b) of his visa. The applicable version of condition 8202(3)(b) required the applicant to achieve an academic result that was certified by the education provider to be at least satisfactory. The applicant’s education provider sent him a notice under s.20 of the *Education Services for Overseas Students (ESOS) Act 2000* stating that he had failed to achieve satisfactory academic results in the course because he had failed six out of seven subjects in which he was enrolled and had been suspended from his course. Before the delegate, the applicant claimed that the non-compliance was due to exceptional circumstances beyond his control but provided no evidence to substantiate his claims. The applicant did not respond to the Tribunal’s letter inviting him to comment on relevant information or to provide evidence of exceptional circumstances beyond his control in relation to his non-compliance.

**Held:** Decision under review set aside

The Tribunal noted that the applicant was issued with a s.20 notice by his education provider stating that his academic results during the relevant term and semester were not satisfactory. Furthermore, the applicant had not produced any evidence to the Tribunal that the education provider had certified his academic results for the relevant period to be satisfactory. However, the Tribunal found that it was bound by *Dai v MIAC* [2007] FCAFC 199 to find that the power to cancel the applicant’s visa was not engaged in relation to a breach of the applicable version of condition 8202(3)(b). Accordingly, the Tribunal was not satisfied that grounds for cancellation existed.

# REFUGEE REVIEW TRIBUNAL DECISIONS

## Bhutan

071626084

21 November 2007, Sydney

Mr S Roushan, Member

**BHUTAN – ETHNIC NEPALIS – RELIGION – CHRISTIANITY** – The applicant claimed to fear persecution as an ethnic Nepali living in Bhutan on the basis of his ethnicity and religion. The applicant claimed that his family's house and land had been confiscated by the Bhutanese army, his mother had been raped and beaten, and that he had been forced to leave Bhutan for a refugee camp in India and subsequently Nepal. The applicant further claimed that under Bhutan's citizenship laws he no longer had a right to re-enter Bhutan, and that he would face further persecution upon return because of his conversion to Christianity

**Held:** Decision under review set aside

The Tribunal found the applicant to be a reliable, truthful and genuine witness. The Tribunal accepted that the applicant was stateless, assessing his claims against the country of Bhutan as his country of former habitual residence. The Tribunal accepted that the applicant's treatment by the Bhutanese army had left him homeless, destitute and with no choice other than to follow other expelled ethnic Nepalis to refugee camps in India and Nepal. It also accepted that the loss of the right to Bhutanese citizenship and right to return amounted to persecution for the Convention reason of ethnicity. The Tribunal accepted that the applicant's conversion to Christianity whilst in Australia was not an attempt to bolster his refugee claims and that his ethnicity and Christian faith would place him at real risk of harm in Bhutan. The Tribunal was not satisfied that he had a right to enter or reside in any other country. Accordingly, the Tribunal found that the applicant had a well-founded fear of persecution for a Convention reason.

## Brazil

071743935

12 November 2007, Sydney

Ms K Raif, Member

**BRAZIL – PARTICULAR SOCIAL GROUP – HOMOSEXUAL – SERIOUS HARM – WELL-FOUNDED FEAR** – The applicant claimed to fear persecution for reasons of her homosexuality. The applicant claimed that people in Brazil were Catholic and against homosexuals. Although she had a university degree, she claimed that she would have no opportunities and not get a job in her chosen field because she had no connections. The applicant also claimed her mother attended church three times a week asking God for help and did not want to talk to the applicant or know about her. She claimed everyone talked about her which was uncomfortable. She further claimed that if she was to return to Brazil she would have to live the life her parents wanted her to live. She said that she wanted to be herself and that if she lived in Brazil she would be unhappy for the rest of her life.

**Held:** Decision under review affirmed

The Tribunal accepted that the applicant was a homosexual and that she wished to practise her homosexuality. It also accepted that the applicant's parents and family did not support her and she would be ostracised from family and friends. The Tribunal noted that Brazil is a Catholic country, societal attitudes may be against homosexuality and that the applicant may face social discrimination. It accepted that the applicant may be unhappy in Brazil and may remain single. The Tribunal found that, although the applicant would suffer alienation and ostracism, discrimination, dislike and an inability to lead a happy life, this did not amount, singularly or cumulatively, to 'serious harm'. It did not accept this harm was of such a magnitude as to prevent the applicant from earning a livelihood, threaten her capacity to subsist or deny access to basic services. It also noted laws generally enforced by the federal and state governments prohibit discrimination based on sexual orientation. Accordingly, the Tribunal was not satisfied that the applicant had a well-founded fear of persecution for a Convention reason.

## Cameroon

071604056  
15 November 2007, Sydney  
Mr J Silva, Member

**CAMEROON – POLITICAL OPINION – MEMBER OF OPPOSITION POLITICAL PARTY – FAILED ASYLUM SEEKER** – The applicant claimed to fear persecution on the basis that he was an activist for the main opposition political party in Cameroon and a member of a banned separatist movement. The applicant claimed that he was an office bearer for the opposition party and that after leaving it he organised rallies and promoted the agenda of the separatist movement. He claimed that he was frequently arrested, detained and tortured by the police because of his position and involvement in the party. The applicant also gave evidence that his family was persecuted and a member of his family was killed by the authorities. The applicant further claimed that because of his profile as a political activist he would be arrested on his return as a suspected asylum seeker.

**Held:** Decision under review set aside

The Tribunal accepted that the applicant had a well-founded fear of persecution. Despite rejecting some evidence as unreliable and embellished, it was satisfied that the applicant would face a small, but real, chance that the Cameroon authorities would persecute him if returned based upon his local political profile and status as a failed asylum seeker. Independent information supported the finding that opposition supporters may be at risk of arrest or violence and that authorities detain failed asylum seekers in certain circumstances. The Tribunal found that despite the low likelihood authorities would identify the applicant as having sought asylum, they would consider the applicant to be an opponent, presume he made refugee claims and detain him for damaging Cameroon's reputation. The Tribunal found the harm upon his return would constitute persecution for the essential and significant reason of his actual and imputed political opinion. The Tribunal accordingly found the applicant was a person to whom Australia had Convention obligations.

## China

071537790  
29 October 2007, Sydney  
Mr R Derewlany, Member

**CHINA – RELIGION – CHRISTIAN – POLITICAL OPINION** – The applicant claimed to fear persecution on the basis of his Christian beliefs and practice as a Catholic in China. The applicant claimed that he was a member of the underground church in China and that he was arrested and detained by the authorities after being baptised. In his evidence, the applicant submitted a letter sent to the Minister of Immigration and Citizenship which stated that he was a Buddhist. The applicant claimed he did not know what was contained in the letter. The applicant also claimed to have been involved in the 1989 pro-democracy movement as a student. As a result, his home had been 'investigated and prosecuted' and the applicant had been detained.

**Held:** Decision under review affirmed

The Tribunal found the applicant not to be a credible witness. The applicant demonstrated a limited knowledge of significant aspects of Christianity and Catholicism that was not consistent with his claims to be a practising Catholic before arriving in Australia. Furthermore, the applicant's statement in his letter that he was a Buddhist cast doubt on his claims. The Tribunal accepted that the applicant may have participated in the pro-democracy movement, but did not accept that the applicant was involved at such a level that he would have come to the attention of the authorities. The Tribunal found that there was no real chance that the applicant would be subjected to harm if he returned to China on the basis of his religion or political opinion. Accordingly, the Tribunal concluded that the applicant did not have a well-founded fear of persecution for a Convention reason.

071606657  
7 November 2007, Sydney  
Ms B Forsyth, Member

**CHINA – RELIGION – POLITICAL OPINION – FALUN GONG** – The applicant claimed to fear persecution in China because of her practice of Falun Gong. The applicant claimed that she started practicing Falun Gong in 1998 because she heard from a friend it was good for her health, and that her health had improved with her continued practice. She claimed that she had practiced from 1998 onwards, but that after there was a crackdown in 1999 she would only practice in private. She claimed to have been arrested, detained and abused by the police on one occasion, detained for a short period without arrest on another, and continually monitored and questioned by police and her

neighbourhood community about her involvement. The applicant claimed to have continued to study and practice Falun Gong whilst in Australia. The applicant gave evidence regarding her practice and understanding of Falun Gong at her hearing, demonstrated her ability to perform the exercises and explained their purpose. The applicant was supported at her hearing by two witnesses who claimed that from their discussions with her at weekly study sessions she demonstrated a deep knowledge consistent with that of a long term practitioner.

**Held:** Decision under review set aside

The Tribunal found the applicant to be a compelling and sincere witness, who would not have been able to meaningfully respond to its questions in the manner she did, unless she had genuinely studied Falun Gong and understood its teachings. The Tribunal considered that the applicant's witnesses were credible and that they were telling the truth. The Tribunal accepted that the applicant had been a practitioner of Falun Gong since 1998, had continued with her practice since arriving in Australia and would face persecution by the Chinese authorities if she was to return. The Tribunal considered that the applicant's conduct in Australia was not engaged in solely for the purpose of strengthening her claims and found that adequate state protection or relocation were unavailable to her. The Tribunal accordingly concluded that the applicant had a well-founded fear of being persecuted for a Convention-related reason.

**071673563**

**9 November 2007, Sydney**

**Mr C Packer, Member**

**CHINA – POLITICAL OPINION – ANTI-GOVERNMENT** – The applicant claimed to fear persecution for reasons of his actual or imputed anti-government political opinion. The applicant claimed that he and a relative pursued a provincial organisation over a debt, but a court refused to accept the legal action. He claimed his lawyer was then arrested and they and their workers staged public protests. The applicant further claimed this led to their arrest and detention where they were ill-treated. After their release they anonymously put up anti-government posters which led to the applicant's relative and some workers being re-arrested. The applicant fled to other provinces by changing his household registration. Because his relative had been re-arrested the applicant believed the police considered him a key leader of the anti-government protest and were searching for him to arrest him. He also claimed his family and friends were investigated.

**Held:** Decision under review affirmed

The Tribunal found that the applicant was not a credible witness as there were significant differences between his application and evidence at hearing. It found that he fabricated his story for the purposes of claiming refugee status. When his evidence was tested he gave a confused and changing account and the Tribunal did not accept his various explanations for these changes. The Tribunal rejected all the applicant's claims concerning his reasons for departing China including those concerning the provincial organisation debt, the lawyer's arrest, his arrest and release, the incriminating posters leading to his relative's re-arrest, his decision to flee China and his hiding in another province. It did not accept the government, Public Security Bureau or any other authorities had any interest in him before leaving China because of his political or imputed political opinions. Accordingly, the Tribunal was not satisfied that the applicant had a well-founded fear of persecution for a Convention reason.

**071652176**

**22 November 2007, Sydney**

**Mr D Dobell, Member**

**CHINA – RELIGION – ROMAN CATHOLIC** – The applicant feared persecution by the Chinese authorities because he was a Roman Catholic Christian and a member of an underground church. He claimed to have assisted a church leader by spreading the gospel and organising 'Catechumen' classes. He claimed that he was arrested, detained and tortured by the National Security Bureau as a result of these activities. The applicant claimed to have been released from detention after he saved the life of a prison guard. When he was released his passport was accidentally returned to him, the applicant believing that this 'was the work of God'. The applicant again came to the attention of the authorities and fled to Australia where he had previously visited with his family. The applicant also claimed to have regularly attended church since he arrived.

**Held:** Decision under review set aside

The Tribunal found that the applicant's evidence on the whole was coherent, consistent and detailed. However, the Tribunal had some doubts about the applicant's evidence concerning his release from detention and the return of his passport. The Tribunal considered that if he was just looking for an opportunity to apply for a protection visa he could

have done so when he first visited Australia. The applicant's claim that he had regularly attended church since he arrived in Australia was supported by two Catholic priests. Accordingly, the Tribunal found that the applicant had a well-founded fear of persecution for a Convention reason.

**071739399**

**29 November 2007, Sydney**

**Ms J Marquard, Member**

**CHINA – IMPUTED POLITICAL OPINION – FALUN GONG** – The applicant claimed to fear persecution on the basis that she was a Falun Gong practitioner. She claimed that following the official crackdown on Falun Gong in the 1990s, she had been dismissed from her employment, subjected to surveillance, detained and assaulted by Chinese authorities. The applicant claimed that she practiced and studied Falun Gong and distributed Falun Gong-related information. She claimed that she experienced difficulties finding and retaining employment as a result. She further claimed to have bribed authorities in order to obtain a passport and that she would be arrested if she were to return to China because of her ongoing commitment to practicing Falun Gong. At the hearing, the applicant gave evidence regarding her understanding of Falun Gong, demonstrated the exercises and explained their purpose. The applicant also submitted photographs, details of protests and statements from other Falun Gong practitioners attesting to her involvement in Falun Gong activities.

**Held:** Decision under review set aside

The Tribunal was satisfied that the applicant was a genuine Falun Gong practitioner, based on her detailed knowledge of Falun Gong principles and exercises, as well as evidence from witnesses and independent information. It accepted her claims that she had been dismissed from employment and detained and assaulted by Chinese authorities. This harm amounted to persecution because it involved a threat to her life and liberty. The Tribunal found that the applicant was persecuted for her imputed political opinion because the Chinese government is concerned by the threat to its authority from Falun Gong practitioners. It further found that the applicant's imputed political opinion was the essential and significant reason for her persecution and the harm she faced was deliberate and intentional. The Tribunal considered that there was a real chance that the applicant would be detained or assaulted if returned to China because of her dedication to practicing Falun Gong. Furthermore, it would not be reasonable for the applicant to relocate to another part of China. The Tribunal accordingly found that the applicant was a person to whom Australia had protection obligations under the Convention.

## Nigeria

**071602371**

**13 November 2007, Sydney**

**Ms C Long, Member**

**NIGERIA – PARTICULAR SOCIAL GROUP – IBO ETHNIC GROUP – POLITICAL OPINION** – The applicant claimed to fear persecution on the basis that he belonged to the ethnic group Ibo, and supported their cause for a separate state of Biafra. The applicant also claimed that he was a member of a proscribed organisation called Massob. The applicant claimed that he had been threatened, detained, tortured and ill-treated by the authorities because of his Massob membership. He also claimed to have been deprived of an education due to this involvement and because he was Ibo. The applicant claimed that following his detention, he went into hiding in Nigeria before arriving in Australia. The applicant further claimed that he feared harm should he return as he remained a person of interest and would not receive protection in Nigeria.

**Held:** Decision under review affirmed

The Tribunal accepted independent information concerning violence and human rights abuses perpetrated by Nigerian authorities against Massob and the Ibo people. However, the Tribunal did not accept that the applicant was harmed, threatened and detained because of his involvement with Massob or that he was Ibo. The Tribunal did not accept that he left Nigeria for these reasons, nor did it accept that he feared further harm should he return. The Tribunal found that the applicant gave untrue evidence to assist his protection application. The Tribunal also noted that the applicant could provide little detail of his circumstances during the lengthy period in which he claimed to be in hiding. The applicant did not reasonably explain how he had left Nigeria, given that he claimed to be a person of interest. The Tribunal did not accept that there was a real chance that the applicant would be persecuted for reasons of his ethnicity or political opinion should he return. Accordingly, the Tribunal concluded that the applicant did not have a well-founded fear of persecution for a Convention reason.

## The Philippines

071687545

30 November 2007, Sydney

Ms J Ciantar, Member

**THE PHILIPPINES – POLITICAL OPINION – MEMBERSHIP OF PARTICULAR SOCIAL GROUP – KAMPI SUPPORTER** – The applicant claimed he was an ordinary member of the *Kabalikat ng Malayang Pilipino* (KAMPI) political party. He was actively involved in campaigning for it during a local election when he and a local fellow member were attacked and beaten by Nationalist Party Coalition (NPC) members. The applicant claimed that he was hospitalised and when he returned home found that his house had been damaged. A neighbour told him that this was done by NPC supporters who sought to kill him. The applicant claimed he reported the matter to the police but they took no action and that the NPC enjoyed their support. The applicant claimed that he was terrified and went into hiding, living with different friends and could not work as he feared being located. The Tribunal put to the applicant that it seemed unlikely that the NPC would target ordinary party members and queried how it would be able to distinguish him from others. Independent information also suggested that KAMPI was part of the ruling coalition and enjoyed in power locally.

**Held:** Decision under review affirmed

The Tribunal accepted that the applicant was a member of KAMPI and was actively campaigning when injured in a clash at a political rally. However, the Tribunal was not satisfied that the applicant had a political profile of any kind or was of interest to the NPC. The Tribunal found the applicant's account of his experiences were not credible, vague and lacking in detail. The Tribunal found the applicant's explanation that he was targeted was not plausible as it was highly unlikely that the NPC would target ordinary members of KAMPI for no particular reason. Independent information indicated that KAMPI is likely to be in a comparatively powerful position. The Tribunal was not satisfied that the police failed to protect the applicant for a Convention reason or would fail to do so in the future because of his political opinion, membership of KAMPI or for any other Convention reason. Accordingly the Tribunal was not satisfied that the applicant was harmed in the past or that there was a real chance that he would be harmed for a Convention reason if he were to return to The Philippines now or in the reasonably foreseeable future.

## FEDERAL COURT JUDGMENTS

**SZJSP v MIAC**

**[2007] FCA 1925**

**Federal Court of Australia, Madgwick J, NSD 1575 of 2007, 22 November 2007.**

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

The appellant named an authorised recipient on the Tribunal application form lodged in 1997. The street address and fax number for the authorised recipient's firm were given. Following an affirm decision by the Tribunal, the matter was remitted back to the Tribunal and the new Tribunal wished to conduct a hearing. The Tribunal sent the notice by post in an envelope that contained the name of the firm and the address provided in the original application. The authorised recipient's name did not appear on the envelope but did appear on the letter. On 1 August 2006, the principal of the firm rang the Tribunal and then notified it in writing that the authorised recipient no longer worked at the firm. The Tribunal sent the notification to the appellant at a residential address provided through previously made consent orders and to two other previous residential addresses. The appellant attended the hearing accompanied by his new migration agent.

The appellant contended before the Federal Magistrates Court that the Tribunal erred by failing to notify the appellant's authorised recipient in the prescribed manner of the notice to attend a hearing. The Federal Magistrate dismissed the application on the basis that there was no authorised recipient after 1 August 2006 and accordingly, the letter sent to the appellant at his last known address complied with the notification provisions under the *Migration Act 1958* ('the Act').

**Held:** Appeal dismissed

- (i) The Tribunal failed to comply with s.441G of the Act, however, relief should be refused in the Court's discretion.
- (ii) The Federal Magistrate was incorrect to conclude that the notification from the principal of the firm, that it was no longer authorised to act in the proceedings, was enough to constitute a withdrawal of the notice given to the Tribunal in 1997. The scheme of the Act is that there be a named individual who is to be the authorised recipient. The principal of the firm was never that person. He did not purport to speak for the authorised recipient nor for the purposes of the Act could he have done so unless specifically authorised by her.
- (iii) The Tribunal did not send the notice to the authorised recipient. There was no evidence that the letter was sent in an envelope which named the intended recipient as the authorised recipient.
- (iv) Factors relevant to the exercise of discretion in this case are that the Tribunal's default was patently one of a mere clerical oversight; the appellant had actual notice of the invitation as had a person in whom the appellant had confidence; the appellant acted on the notice and secured for himself every right and opportunity of substance which s.441G envisaged for him. There was adequate and due notice of the hearing and an unmistakably clear and adequate opportunity to attend before the Tribunal and for him to put his case, all of which opportunities the appellant took up.

**Obiter:**

- (v) It may possibly be that there can, for the purpose of the Act, simply cease to be an authorised recipient if it is clear beyond question that the person who was an authorised recipient has abandoned that role.

**SZFNX v MIAC**

**[2007] FCA 1980**

**Federal Court of Australia, Besanko J, NSD 194 of 2007, 13 December 2007**

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

The Tribunal sent letters to the address provided to the Department and the Tribunal by the appellant on 2 November and 8 November advising him of the review process and inviting him to a hearing. No response was received and the letters were not returned unclaimed. The Tribunal checked its file and the Department files, but the appellant had not provided another address, nor was there a phone number for the appellant, nor had the appellant notified the Tribunal of an authorised recipient. The Tribunal proceeded to affirm the delegate's decision under s.426A.

Before the Federal Magistrates Court, the appellant submitted that a Mr Lue had assisted him with his protection visa and review applications. Mr Lue never told him about the Tribunal hearing, and he claimed that if he had been told he would have attended. Relying on the Full Court of the Federal Court decision in *MIMA v SZFDE* (2006) 154 FCR 365, the Federal Magistrate found that Mr Lue's conduct, whether fraudulent or not, in failing to inform the appellant of the hearing of which notification had been given did not give rise to jurisdictional error. No finding was made in relation to whether Mr Lue's conduct was in fact fraudulent.

The appellant contended on appeal that the Federal Magistrate erred in finding that the Tribunal was entitled to proceed to determine the application for review.

**Held:** Appeal allowed. Orders of Federal Magistrate set aside and application remitted to the Federal Magistrates Court for reconsideration.

- (i) The Federal Magistrate did not make findings on whether Mr Lue was actually fraudulent in his dealings with the appellant, and whether this had affected the process described in the Act. Therefore, the question of fraud and its effects on the processes prescribed by the Act must be considered.
- (ii) The effect of the High Court decision in *SZFDE v MIAC* (2007) 81 ALJR 1401 is that if an agent is fraudulent in his or her dealings with an applicant and that results in an applicant not being heard by the Tribunal then the Tribunal's decision may be void, the Tribunal's jurisdiction being "constructively unexercised".
- (iii) The judgments in *SZFDE* indicate that an applicant's failure to appear before the Tribunal by reason of bad or negligent advice, as distinct from fraudulent advice or conduct, is not without more sufficient to constitute jurisdictional error.

# FEDERAL MAGISTRATES COURT JUDGMENTS

**SI607 of 2003 v MIAC & Anor**

**[2007] FMCA 1740**

**Federal Magistrates Court, Turner FM, SYG 1023 of 2007, 9 November 2007**

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

The Tribunal had previously made a decision in relation to the applicant which was set aside and remitted for reconsideration by the Court. Following the remittal, the Tribunal was constituted by a different member for the purposes of the review.

By letter dated 25 October 2006, the applicant advised the Tribunal that he was not fit to attend the hearing scheduled for 30 October 2006 but asked that the Tribunal put in writing matters that could be part of the reason for a decision that he is not a refugee. On 2 January 2007, the Tribunal put its concerns to the applicant in a letter under s.424A of the *Migration Act* 1958 ('the Act') and requested him to respond to it by 25 January 2007. On 24 January 2007, the applicant responded in detail and asked the Tribunal to request more specific information if it needed it. On 10 February 2007, the Tribunal proceeded to make its decision.

The applicant argued, amongst other things, that the Tribunal failed to give him a real opportunity to comment on adverse information contained in s.424A letter as the information to be given in response to the letter was to come from outside Australia; therefore the prescribed period was 28 days (r.4.35(5)) and not 14 days (r.4.35(3)) under the *Migration Regulations* 1994 ('the Regulations'). Further, the applicant argued that the Tribunal was not properly reconstituted according to s.422A and therefore lacked jurisdiction.

**Held:** Application dismissed.

- (i) The Tribunal decision was not infected with jurisdictional error
- (ii) The invitation under s.424A was to provide comment on the information in the letter. That comment was to be provided by the applicant who was in Australia, and therefore the time limit under r.4.35(3) of the Regulations is 14 days after the day on which the invitation is received, which, by s.441C(4) is taken to be 7 days after the date of the letter. The letter was dated 2 January 2007, which means receipt by 9 January 2007; 25 January 2007 gave 14 days to respond. No breach occurred.
- (iii) A member of the Tribunal became unavailable. The power to reconstitute the Tribunal is in s.422(1) of the Act. The Principal Member had the power to issue the direction as to the constitution of the Tribunal. That power was exercised but the incorrect section was stated; that does not invalidate the appointment. A breach of this section has not been established.

**Leng v MIAC & Anor; Moha Sombat Pty Ltd v MIAC & Anor**

**[2007] FMCA 1961**

**Federal Magistrates Court, Riethmuller FM, MLG 229 & 230 of 2007, 23 November 2007**

The applicants sought judicial review of decisions of the Migration Review Tribunal ('the Tribunal') affirming a decision of the Minister's delegate that Moha Sombat Pty Ltd ('the sponsor') did not meet the criteria for approval as a business sponsor, for the purpose of sponsoring the visa application of Mr Leng and the associated decision affirming the delegate's decision to refuse to grant Mr Leng a Subclass 457 Business (Long Stay) visa.

The Tribunal found that the sponsor was not able to meet the undertakings required of it pursuant to r.1.20D(2)(f) of the *Migration Regulations* 1994 ('the Regulations'), namely that the sponsor pay Mr Leng a salary of \$80,000 per annum during the period of the sponsorship. In assessing the capacity of the sponsor to meet these undertakings, the Tribunal considered the past operations and financial statements of the sponsor. The Tribunal concluded that the sponsor did not have the financial capacity to pay Mr Leng such a salary and therefore did not meet the criteria for approval as a business sponsor. As the business sponsorship was not approved, the Tribunal found that Mr Leng was unable to satisfy cl.457.223(4) of Schedule 2 to the Regulations for the purposes of his visa application.

The issue before the Court was whether the Tribunal had erred in its assessment of the sponsor's capacity to meet the required undertakings.

**Held:** Tribunal decisions quashed and remitted for reconsideration

- (i) The Tribunal failed to ask itself the correct question under r.1.20D(2)(f) of the Regulations by failing to consider precisely what the sponsor's undertakings were and failed to identify whether the sponsor was able to fulfil its undertakings from the date of the grant of the visa until the end of sponsorship. In assessing whether or not the sponsor had the capacity to meet the undertakings based on its past capacity, the Tribunal made a jurisdictional error.
- (ii) The correct question in relation to the undertaking was whether or not the sponsor would be able to fulfil the obligations as and when they fell due.
- (iii) In relying on the refusal of sponsorship that contained a jurisdictional error, the Tribunal took into account an irrelevant consideration in considering Mr Leng's application.
- (iv) Applying the 'forward-looking test' Mr Leng's application was not futile: *Lee v MIAC* [2007] FCAFC 62. If the application for sponsorship approval was accepted on remittal, this would allow Mr Leng's application to succeed.

**SZFTD v MIAC & Anor**

**[2007] FMCA 1930**

**Federal Magistrates Court, Turner FM, SYG 1659 of 2007, 6 December 2007**

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

The Tribunal had previously made a decision in relation to the applicant which was set aside and remitted for reconsideration by the Court. The Tribunal, differently constituted, again affirmed the decision of the delegate (second decision).

The applicant argued that there was no evidence that the procedures required by ss.422 and 422A of the *Migration Act* 1958 ('the Act') had been followed in relation to the reconstitution of the Tribunal following the remittal by the Court. Evidence of a direction referring to s.421 of the Act, as the section pursuant to which the Tribunal was reconstituted for the purposes of the second review, was placed before the Court. The applicant argued that Tribunal had failed to follow the correct procedure as s.421 was the 'wrong power' to use to reconstitute the Tribunal on remittal.

**Held:** Application dismissed

- (i) The Principal Member had the power to issue the direction as to the constitution of the Tribunal. That power was exercised. Even if an error was made by referring to s.421 of the Act in the form, that does not mean that the power to issue a direction as to who was to constitute the Tribunal had not been validly exercised.
- (ii) The reference to s.421(2) by McHugh J in *MIMA v Wang* [2003] HCA 11 in considering the reconstitution of the Tribunal in that matter can be taken as confirmation that s.421 of the Act gives the Principal Member power to issue a direction as to the constitution of the Tribunal, where a matter is remitted to it for determination.
- (iii) Based on the presumption of regularity, the Tribunal was validly constituted by the direction. It may be presumed that s.422A of the Act was complied with as there is no evidence to rebut this.

**SZHYW v MIAC & Anor**

**[2007] FMCA 2113**

**Federal Magistrates Court, Nicholls FM, SYG 3607 of 2006, 20 December 2007**

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

The Tribunal set out the applicant's claims to fear persecution as provided by the applicant's adviser as: a known history of Awami League involvement; known involvement in a multi-faith group; an arrest warrant on a false arms case; membership of the Hindu minority and religion; and known mixed marriage to a Muslim woman who converted to Hinduism. The Tribunal had concerns with the applicant's credibility for various reasons and ultimately found that it

was not satisfied there was a real chance the applicant would face serious harm amounting to persecution for his political activities or his religion. The nature of the Tribunal's reasons as expressed in its decision record was the issue before the Court.

The applicant contended that the Tribunal's reasons were so meaningless and impenetrable that the Tribunal could not be said to have given proper, genuine and realistic consideration to the claims and had not conducted a review in accordance with s.414 of the *Migration Act 1958*.

**Held:** Tribunal decision quashed and remitted for reconsideration

- (i) The Tribunal decision did not demonstrate a proper consideration of the applicant's claims amounting to jurisdictional error. The Tribunal's stated reasons for its decision were "impenetrable".
- (ii) While addressing other aspects of the applicant's claims based on religion, the Tribunal did not properly consider, beyond mere mention, the issue of the conversion of his previously Muslim wife to Hinduism and the consequence of this in the context of his claimed fear of Muslim fanatics or those opposed to his marriage.
- (iii) One or two typographical errors, or oversights, should not attract any adverse comment whatsoever. But the frequency of such deficiencies in the Tribunal's decision record strongly supported the submission that the decision record was not discernible of such meaning such that it could be said that the Tribunal gave proper consideration to the applicant's claims.
- (iv) Putting to one side the lack of paragraphing, typographical errors and the inappropriate stream of consciousness style, what was left was a jumble of ideas and concepts which could not be explained simply on the basis that the Tribunal, having identified the applicant's claims, only failed to deal with these claims without any structure in its approach. Examples of the deficiencies identified in the applicant's submissions related to matters of substance, rather than structure or style.

## 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

There has been no legislation relevant to the Tribunals passed since the last edition of Précis.

### Legislation Pending

There is currently no legislation relevant to the Tribunals pending before Parliament.

The 41st Parliament was prorogued on Monday 15th October 2007 and the House of Representatives dissolved on Wednesday 17th October 2007 for the general election held on Saturday 24th November 2007. All bills before the House and Senate lapsed at prorogation. As such the following bills relevant to the Migration and Refugee Review Tribunals have lapsed.

Migration Amendment (Sponsorship Obligations) Bill 2007 (Bill - C2007B00148)

Migration (Climate Refugees) Amendment Bill 2007 (Bill – C2007B00149)

Migration Legislation Amendment (Restoration of Rights and Procedural Fairness) Bill 2007 (Bill – C2007B00165)

The 42nd Parliament will meet on 12 February 2008. If this Parliament desires to proceed with the proposed amendments in the above lapsed bills, then new bills would need to be introduced.

## CASELOAD OVERVIEW

### MRT Decisions - January 2008

Decision Category	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Bridging refusal	4	6	3	0	13
Visitor refusal	6	7	0	1	14
Student refusal	17	8	5	4	34
Temporary business refusal	5	8	2	8	23
Permanent business refusal	4	1	0	1	6
Skill linked refusal	27	14	1	5	47
Partner refusal	80	41	5	3	129
Family refusal	18	28	4	3	53
Student cancellation	49	29	1	2	81
Sponsor approval refusal	1	2	0	0	3
Other	10	16	3	7	36

## RRT Decisions - January 2008

Country	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Afghanistan	1	0	0	0	1
Albania	1	1	0	0	2
Bangladesh	2	6	0	6	14
Benin	0	2	0	0	2
China (PRC)	13	41	0	5	59
Colombia	1	0	0	0	1
East Timor	0	3	0	0	3
Egypt	0	0	1	0	1
Ethiopia	1	0	0	0	1
Fiji	1	4	0	0	5
Gambia	1	0	0	0	1
India	1	26	0	1	28
Indonesia	0	12	0	0	12
Iran	1	2	0	0	3
Korea, Republic Of	0	3	0	0	3
Lebanon	2	9	0	0	11
Lithuania	0	1	0	0	1
Malaysia	0	5	0	0	5
Nepal	1	5	0	0	6
Norway	0	1	0	0	1
Pakistan	1	7	0	0	8
Papua New Guinea	0	1	0	0	1
Philippines	0	1	0	0	1
Russian Federation	1	1	0	0	2
Sri Lanka	0	2	0	0	2
Taiwan	0	1	0	0	1
Tanzania	0	2	0	0	2
Thailand	0	2	0	0	2
Tonga	0	1	0	0	1
Turkey	1	2	0	0	3
Ukraine	1	1	0	0	2
Uzbekistan	0	1	0	0	1
Vietnam	0	1	0	0	1
Zimbabwe	0	3	0	0	3

# PUBLICATION OF TRIBUNAL DECISIONS

The Migration Review Tribunal and Refugee Review Tribunal are required to publish decisions that are considered to be of 'particular interest'.

Decisions which are regarded 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 up to 20% of decisions made.

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.

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

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