



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

071720960

24 September 2008, Sydney

Ms S Pinto, Member

SKILLED – NEW ZEALAND (RESIDENCE) (CLASS DB) VISA – SUBCLASS 863 – ONSHORE DESIGNATED AREA - SPONSORED NEW ZEALAND CITIZEN – CL.863.217 – EMPLOYMENT IN SKILLED OCCUPATION – A

A delegate of the Minister for Immigration and Citizenship refused the application for a New Zealand (Residence) (Class DB) visa on the basis that the applicant did not satisfy cl.863.217 of Schedule 2 to the Migration Regulations 1994 because he was not employed in the nominated skilled occupation of Property Manager. The applicant claimed that he was employed by a partnership comprising himself and his wife, which operated a farming/grain crop/lamb and wool business. The applicant claimed to have worked 70 hours a week for the business, out of which at least 20 hours was in the role of Property Manager as defined by the Australia Standard Classification of Occupations (ASCO) Dictionary. He carried out duties such as investigating proposals, assessing the viability of purchasing properties, budgeting and negotiating his lease agreement.

Held: Decision under review affirmed.

The Tribunal did not accept that the applicant was an employee of the partnership as the partnership only comprised himself and his wife and the applicant did not manage third parties' properties on behalf of the partnership. The Tribunal was also not satisfied that the applicant's duties during the relevant period were in the nature of a Property Manager as outlined in the ASCO Dictionary. The Tribunal considered that the description of the applicant's tasks more closely aligned to that of a Grain, Oilseed and Pasture Grower, which was not on the Skilled Occupation List. Accordingly, as the applicant was not employed in a skilled occupation, the Tribunal found that the applicant did not meet cl.863.217.

0803540

19 September 2008, Melbourne

Ms R Gagliardi, Member

TEMPORARY BUSINESS ENTRY (CLASS UC) – SUBCLASS 457 (BUSINESS (LONG STAY)) – S.109 – CANCELLATION –

A delegate of the Minister for Immigration and Citizenship cancelled the applicant's Subclass 457 (Business (Long Stay)) visa under s.109 of the *Migration Act 1958* (the Act). The delegate was satisfied that the applicant had not complied with ss.101, 102 and 105 of the Act as it found that he had provided false and misleading information to the Department. The applicant claimed that he had not provided the Department with details of his criminal record on the advice of his migration agent, who had advised him that convictions occurring more than 10 years in the past were not relevant. The applicant also claimed to have forgotten to include details of criminal convictions occurring less than 10 years ago, including 12 current charges and an outstanding warrant for his arrest in England. The applicant stated that he wanted to provide his children with an opportunity to work in Australia and asked the Tribunal to take into account his extensive work experience in the building trade as well as the fact that he had an unfortunate start to life which had led him to make mistakes he now regretted.

Held: Decision under review affirmed.

The Tribunal was satisfied that the delegate had reached the necessary state of mind to engage s.107 of the Act, that the notice issued under s.107 complied with the statutory requirements and that there was non-compliance by the applicant in the way described by s.107 notice. The Tribunal did not accept that the applicant's agent had advised him not to disclose criminal records greater than 10 years old, or that he had forgotten to disclose those occurring as recently as 2003. Further,

the Tribunal found that there was no evidence that the applicant would have voluntarily offered information of his convictions to the Department had it not investigated him, nor was he likely to have been granted a visa had the information been disclosed. Accordingly, having regard to all the circumstances, the Tribunal was satisfied that his Subclass 457 visa should be cancelled.

071870846

26 September 2008, Sydney

Ms B Connolly, Member

TEMPORARY BUSINESS ENTRY (CLASS UC) VISA - SUBCLASS 457 - CL.457.223(4)(d) - PERSONAL ATTRIBUTES AND EMPLOYMENT BACKGROUND - A delegate of the Minister for Immigration and Citizenship refused the application for a Temporary Business Entry (Class UC) Subclass 457 visa on the basis that the applicant did not satisfy cl.457.223(4)(d) of Schedule 2 to the Migration Regulations 1994 (the Regulations) because the applicant did not have the required skills, experience or employment background necessary to perform the nominated activity. A Departmental officer had confirmed that the applicant's qualification certificate was genuine. However, despite claiming he was a specialist in Min cuisine, during a phone interview, the applicant was unable to answer questions about famous Min dishes, the special cooking skills of that cuisine, or the common ingredients or condiments used in that style of cooking.

Held: Decision under review set aside

The Tribunal accepted the evidence of the sponsor's managing director about his observation of the applicant preparing and cooking Chinese dishes for him in China and his opinion that he considered the applicant to be experienced and skilled to the level expected of the nominated position. The Tribunal also accepted the evidence of the head chef of the restaurant at which the applicant was employed in China as to his experience, skills and expertise. The Tribunal placed less weight on the observations made by the Departmental officer, as it did not consider that the questions asked of the applicant were sufficient to make accurate judgments about the applicant's experience, skills and expertise. The Tribunal was satisfied that the applicant had personal attributes and an employment background which were directly relevant to and consistent with the activity of Cook. Therefore, the Tribunal found that the visa applicant met the requirements of cl.457.223(4)(d).

071911474

23 September 2008, Sydney

Ms K Raif, Member

SKILLED - INDEPENDENT REGIONAL (PROVISIONAL) (CLASS UX) VISA - SUBCLASS 495 - CL.495.219A - SPONSORED BY STATE OR TERRITORY GOVERNMENT AGENCY - The applicant applied for a Skilled - Independent Regional (Provisional) (Class UX) visa on 15 January 2007. A delegate of the Minister for Immigration and Citizenship refused to grant the visa on the basis that the applicant did not satisfy cl.495.219A of Schedule 2 to the Migration Regulations 1994 (the Regulations), because the delegate was not satisfied that he was sponsored by a State or Territory government agency at the time of the application. The applicant provided the Tribunal with a copy of a State Sponsorship Approval dated 18 January 2007 issued by the Small Business Development Corporation of Western Australia. Before the Tribunal, the applicant confirmed that the sponsorship from the Western Australian government agency was dated after the application but claimed that this was due to an error of his migration agent. The applicant claimed he was under the impression that his sponsorship had been approved and his agent had not informed him of the time limits of the sponsorship approval.

Held: Decision under review affirmed

The Tribunal found the letter dated 18 January 2007 from the Small Business Development Corporation of Western Australia did not equate to sponsorship as it was merely an agreement for the Western Australian government to sponsor the applicant in the future provided that he

completed other requirements such as the signing of the agreement. The Tribunal found that the application was lodged on 15 January 2007 and, therefore, the applicant was not sponsored by the Western Australian government agency at the time when his application was made. The Tribunal accepted the applicant's claim that the late provision of sponsorship was due to incorrect advice he received from his migration agent but found that it had no discretion in respect of this matter. Accordingly, it found that the applicant was not sponsored by a State or Territory government agency at the time of the application and did not meet cl.495.219A.

Partner and Family visas

071705181

25 September 2008, Sydney

Ms D Barnetson, Member

PARTNER (PROVISIONAL) (CLASS UF) – SUBCLASS 309 – CL.309.311 – R.1.12(1)(e)(ii) – MEMBER OF THE FAMILY UNIT – The visa applicant applied as a secondary applicant for a Partner (Provisional)(Class UF) visa. A delegate of the Minister for Immigration and Citizenship refused the visa on the basis that the applicant did not satisfy cl.309.311 of Schedule 2 to the Migration Regulations 1994 (the Regulations) because he was not a member of the family unit of the primary visa applicant. The applicant claimed the primary visa applicant was his sister and that he and the primary visa applicant lived together for approximately three and a half years and he was a member of her household. The applicant further claimed that before the primary and review applicants' marriage they lived at the review applicant's father's house. After the marriage they lived at rented premises.

Held: Decision under review affirmed.

The Tribunal found the applicant and the primary visa applicant were brother and sister. As such, the applicant was a "close relative" of the primary applicant and therefore a relative of the family head. However, the Tribunal was not satisfied that the applicant was "usually resident in the family head's household" as it found the applicants' evidence inconsistent. The applicants' claim that they lived together at the rented premises after the marriage was not made until the hearing. Prior to the hearing, statements from both the primary and review applicants indicated that the primary visa applicant lived with the review applicant's father after her marriage. The Tribunal found the applicant did not meet the requirements in r.1.12(1)(e)(ii) of the Regulations. Therefore, the applicant was not a member of the family unit of a person who satisfied the primary criteria in Subdivision 309.21 and he did not meet cl.309.311 for the grant of the visa.

071886241

3 October 2008, Melbourne

Mr D Lennon, Member

CONTRIBUTORY AGED PARENT (TEMPORARY) (CLASS UU) – SUBCLASS 884 – CL.884.212 – CL.884.313 – The applicant applied as a secondary applicant for a Contributory Aged Parent (Temporary) (Class UU) visa. The applicant's mother, who was the aged parent of the applicant's sister, was the primary visa applicant. The delegate assessed the applicant against the criteria for an Aged Parent (Residence) (Class BP) and refused the visa on the basis that the applicant did not satisfy cl.804.221 of Schedule 2 to the Migration Regulations 1994 (the Regulations) because he did not meet the definition of "Aged Parent". After a medical examination, a Medical Officer of the Commonwealth (MOC) found the applicant's mother did not meet PIC 4005(c)(ii)(A) as she had a disease or condition likely to result in significant cost to the Australian community. The primary applicant provided additional health information which did not change the MOC's opinion. The primary applicant passed away prior to the delegate's decision. The applicant conceded that he did not meet the criteria for the subclass but needed a Tribunal decision to allow access to the Minister under the discretionary provisions in s.351 of the *Migration Act 1958*.

Held: Decision under review set aside and substituted.

The Tribunal found that no application had been made for a Class BP visa, notwithstanding that the application had been assessed against that class. Having found that the applicants applied for a Class UU visa, the Tribunal noted that cl.884.212 required the primary visa applicant to be "the aged parent of a person (the child)" at the time of application and cl.884.221 required the primary visa applicant to continue to satisfy that criterion at the time of decision. The Tribunal held that, following her unfortunate death, the primary visa applicant was not able to satisfy the primary criteria. As such, the applicant was not a member of the family unit of a person who satisfied the primary criteria in Subdivision 884.21 and did not meet the requirements of cl.884.311. The Tribunal further found the applicant did not satisfy the primary criteria himself as he was not sponsored by a child. Nor, at age 47, was he a parent old enough to be granted an age pension under the *Social Security Act 1991*, being 65 or older, and so did not meet the definition of "Aged Parent". Accordingly, the Tribunal set aside the decision which purported to refuse to grant a Subclass 804 visa and substituted a decision that the applicant was not entitled to a Subclass 884 visa.

071657553

14 October 2008

Ms R Mathlin, Member

PARTNER (PROVISIONAL) (CLASS UF) – SUBCLASS 309 – CL.309.224 – R.1.15A - SPOUSE RELATIONSHIP-

A delegate of the Minister for Immigration and Citizenship refused the application for a Partner (Provisional) (Class UF) visa on the basis that the applicants did not satisfy cl.309.211 of Schedule 2 to the Migration Regulations 1994 (the Regulations) because the parties were not in a genuine and continuing spouse relationship. The delegate noted a number of inconsistencies in the parties' evidence and found that little was provided by way of evidence to support the claim that the parties were recognised by others as married. There was also no evidence of co-habitation or reasons for the transfer of monies between the parties. The parties claimed they met over the telephone in September 2005 after the review applicant responded to a personal advertisement placed in a Chinese newspaper. The parties claimed that one month after the first phone conversation, they decided to commit to a long-term relationship or to marry each other. On 14 October 2005, the review applicant travelled to China to meet the visa applicant. The review applicant returned to Australia on 23 October 2005 and the parties resumed their long phone conversations. The review applicant returned to China on 8 November 2008 and the parties were married.

Held: Decision under review affirmed

The Tribunal accepted that the applicant's marriage took place and was registered in China. She therefore met r.1.15A(1A)(a) for a married relationship. However, having regard to the factors set out in r.1.15(3), the Tribunal was not satisfied that the parties were in a 'spouse' relationship. The Tribunal accepted there were three large sums of money transferred from the review applicant to the visa applicant. However, it did not accept that this demonstrated commitment to the relationship. The review applicant was unable to explain why he sent such large sums of money for no specific purpose, or why he did not know or seek to find out what the visa applicant spent money on. The Tribunal did not accept that the parties had spent time together as claimed. As they claimed to have spent very little time together, the Tribunal expected that they would have a good recollection of these periods. Instead, there were significant inconsistencies in the parties' evidence, even in relation to the review applicant's most recent trip to China in 2008. The Tribunal also considered that the advertisement by the visa applicant indicated that obtaining a means to migrate to Australia was an important factor in her mind. Overall, the Tribunal was not satisfied that the parties had a mutual commitment to a shared life as husband and wife to the exclusion of all others, and that the relationship was genuine and continuing. The visa applicant did not meet cl.309.211(2).

0801384

23 September 2008, Sydney

Mr M Cooke, Member

CHILD (MIGRANT) (CLASS AH) – SUBCLASS 101 – CL.101.213 – DEPENDENT CHILD - A delegate of the Minister for Immigration and Citizenship refused the Child (Migrant) Subclass 101 visa on the basis that the applicant did not satisfy cl.101.211 of Schedule 2 to the Migration Regulations 1994 (the Regulations) because she was not a dependent child of the sponsor (her mother). The review applicant submitted to the Tribunal additional information to support the claim that the applicant met the definition of 'dependent' in r.1.05A. Following receipt of the additional information, the Tribunal considered it could make a decision favourable to the applicant and proceeded without recourse to a hearing.

Held: Decision under review set aside

Having regard to the documentary evidence of financial support, the Tribunal accepted that the visa applicant was dependent on the review applicant and was her dependent child. The Tribunal then considered whether the visa applicant met cl.101.213 of Schedule 2 to the Regulations. That is, whether since turning 18, or within 6 months or a reasonable time after completing the equivalent of Year 12 in the Australian school system, the applicant had been undertaking a full-time course of education at an educational institution leading to the award of a professional, trade or vocational qualification. Evidence before the Tribunal suggested that the applicant had undertaken a number of consecutive full-time courses. The Tribunal noted that cl.101.213(1)(c) refers to 'a' course of study and considered the reasoning in *Sok v MIMA* [2005] FMCA 190. However, the Tribunal found that *Sok* concerned an applicant who had attended several part-time courses concurrently and argued that the combination of those constituted a single full-time course. The Tribunal found that cl.101.213 allows for study in consecutive full-time courses. It accepted that the applicant was a full-time student at the time of application and remained so at the time of decision. The Tribunal was therefore satisfied that the applicant met cl.101.213(1)(c) at the time of application and continued to meet that provision at the time of decision for the purposes of cl.101.221(2)(b).

071614736

25 September 2008, Sydney

Mr D Lennon, Member

OTHER FAMILY (MIGRANT) (CLASS BO) - SUBCLASS 115 (REMAINING RELATIVE) – CL.115.211 – NEAR RELATIVE – R.1.15 – A delegate of the Minister for Immigration and Citizenship refused to grant the applicants Subclass 115 (Remaining Relative) visas on the basis that the primary applicant did not satisfy cl.115.211 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The applicant claimed she had divorced her husband in June 2006. However, after visiting her former matrimonial home, current home and her ex-husband's home in March 2007, Departmental officers formed the view that the applicant and her husband were still in a spousal relationship. The delegate found that the applicant and her husband were still in a spouse relationship and that the husband's relatives were the applicant's 'near relatives', which disqualified her as a 'remaining relative' in accordance with r.1.15 of the Regulations.

Held: Decision under review set aside

The Tribunal expressed a number of concerns about whether relationship between the applicant and her husband had ended. However, there was insufficient evidence upon which it could be satisfied to the requisite degree that the applicant was still in a spousal relationship with her former husband at the time of application and at the time of decision. The Tribunal found much of the evidence gathered by the Departmental officers to be equivocal and, having regard to the totality of evidence, was satisfied that the applicant and her husband had ended their spousal relationship. It found that his relatives could not, therefore, be treated as the applicant's 'near relatives' for the purposes of disqualifying her as a 'remaining relative'. Accordingly, the applicant satisfied cl.115.211 and cl.115.221 for the grant of the visa.

Student visas

0803339

26 September 2008, Melbourne

Ms M Hodgkinson, Member

STUDENT (TEMPORARY) (CLASS TU) – CANCELLATION – S.116(1)(b) – CONDITION 8202(3)(a) – SATISFACTORY COURSE PROGRESS – EXCEPTIONAL CIRCUMSTANCES – A delegate of the Minister for Immigration and Citizenship cancelled the applicant's subclass 573 visa under s.116(1)(b) of the *Migration Act 1958* (the Act). The delegate was satisfied that the applicant had not complied with condition 8202 as in force at 1 July 2007. The delegate found that the applicant's education provider had certified that the applicant had not achieved satisfactory course progress and further found that his non-compliance was not due to exceptional circumstances beyond his control. The applicant contended that his non-compliance was due to exceptional circumstances beyond his control, which included a medical condition (an infected wisdom tooth) that required dental surgery during the examination period.

Held: Decision under review set aside

The Tribunal found the education provider had certified the applicant as not achieving satisfactory course attendance for s.19 of the *Education Services for Overseas Students Act 2000* and standard 11 of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 and, therefore, the applicant had not complied with condition 8202(3). The Tribunal was satisfied that the ground for cancellation in s.116(1)(b) did exist. The Tribunal further found that the applicant was suffering from a condition which significantly affected his ability to perform in his examinations. The Tribunal was satisfied that the applicant's unsatisfactory academic progress and consequent non-compliance with condition 8202 was due to a medical condition which equated to exceptional circumstances beyond the applicant's control. Accordingly, the prescribed circumstances requiring mandatory cancellation of the visa in accordance with s.116(3) did not exist.

REFUGEE REVIEW TRIBUNAL DECISIONS

China

0804652

5 September 2008, Sydney

Mr A Jacovides, Member

CHINA – RELIGION – CHRISTIAN – The applicant claimed to be a devout and committed Christian and to have assisted in the distribution of religious literature and in organising religious activities in China. He claimed to have attended secret gatherings organised by an underground church where he was baptised. The applicant claimed he converted to Christianity to demonstrate his gratitude to a person who helped pay for an operation for his disabled child. However, he remained in the church because he loved God. He claimed to have become a person of interest to the authorities and to have later been detained and tortured by the authorities. The applicant claimed he was held for many days before he was released to seek medical attention for injuries he suffered in detention. He claimed that with assistance he fled the country as he was fearful that he would again be detained and mistreated by the authorities. The applicant also claimed to have regularly attended church in Australia.

Held: Decision under review set aside

The Tribunal accepted the applicant's claims. The Tribunal found that information from external sources supported the applicant's claim that persons involved in organising meetings and

distributing religious literature commonly attracted the adverse interest of authorities in China. The Tribunal was satisfied that the applicant was currently and, in the reasonably foreseeable future, at risk of harm, including imprisonment, for his religious activities. The Tribunal also accepted the applicant's claim that the church was unable to function freely in China and found he may be prevented by the authorities from participating in the church in China. The Tribunal found that such treatment amounted to persecution for Convention purposes and was satisfied that the applicant had a well-founded fear of persecution by the Chinese authorities for reasons of religion.

0803197

8 September 2008

Ms S Leal, Member

CHINA – RELIGION – CHRISTIAN – LOCAL CHURCH - The applicant claimed to fear persecution from the Chinese authorities for reasons of religion. The applicant ran a business in China and claimed she became friends with one of her customers, Ms A, who was a Christian and an active member of the Local Church. Due to her association with Ms A, the applicant claimed she was interrogated and detained for more than a week. Upon release, the applicant claimed she became depressed and her business struggled. Ms A sent a woman, Ms B, to help the applicant. Ms B arranged for the applicant to attend secret church meetings and eventually the applicant was baptised and became a formal member of the Local Church. It was claimed that Ms A went into hiding. The applicant secured accommodation for Ms A through her friend in a remote mountain village. The applicant claimed to have help Ms A set up a church in that village. She claimed to have distributed bibles, escorted elders of the Local Church to give sermons in the village and to have arranged for local people to accept religious training. After the arrest of Ms B, the applicant fled the country with the assistance of Ms A's son. The applicant claimed that since arriving in Australia she has been continually and actively attending the activities of the Local Church.

Held: Decision under review set aside.

The Tribunal found that the applicant gave detailed, consistent and credible evidence regarding her involvement with the Local Church in China. She was able to discuss in detail the principles upon which the Local Church was founded and was confident in her belief. The Tribunal accepted that as a result of her business association with Ms A, the applicant was detained and interrogated for her suspected involvement with the Local Church. It accepted that through her involvement with Ms B, the applicant became a member of the Local Church. It accepted her claimed activities in setting up the Local Church with Ms A in the village. The Tribunal accepted that the applicant had been regularly attending Church in Australia and was satisfied that her religious activity was not for the purposes of strengthening her refugee claims. The Tribunal found there was a real chance that the applicant may face interrogation leading to detention and that she may be harassed and physically abused on account of having been a member and organiser of the Local Church in China. The Tribunal was satisfied that the applicant's fear of persecution was well founded and that she was a person to whom Australia owed protection obligations.

0803916

8 August 2008

Mr C Packer, Member

CHINA – FALUN GONG – The applicant claimed to fear persecution from Chinese authorities as he was a Falun Gong practitioner. The applicant claimed he was introduced to Falun Gong in the early 1990's and practice was beneficial to his health. He claimed to have continued to practice privately after Falun Gong was banned in 1999. The applicant claimed he was reported to the Public Security Bureau (PSB) by a friend whom he had introduced to Falun Gong. He claimed he was beaten and detained for several weeks before being released with a fine. After his release, he continued to practice at home. The applicant first came to Australia for business and claimed to have picked up Falun Gong pamphlets which he took back to China. He and fellow Falun Gong practitioners photocopied and distributed the pamphlets. The applicant returned to Australia for a second trip and, on his arrival, telephoned home only to discover that his wife had been taken by

the authorities for questioning and that his fellow Falun Gong practitioners had been arrested and detained. The applicant feared that he would be detained and possibly tortured if he returned to China. Since arriving in Australia, the applicant claimed to have participated in Falun Gong activities.

Held: Decision under review set aside.

The Tribunal had several concerns about the applicant's story, including that he was able to get a passport without difficulty, despite his claimed arrest and detention; that he did not seek to leave China even after his passport was issued; that he would return to China after his trip after having found in Australia literature describing the persecution of Falun Gong practitioners in China. However, the Tribunal considered these concerns were outweighed by the fact that the Tribunal found no inconsistencies in the applicant's claims. The applicant showed credible and detailed knowledge of Falun Gong and its principles, and was able to name and demonstrate exercises nominated by the Tribunal. The Tribunal considered photographic evidence provided by the applicant showing he had participated in Falun Gong events in Australia was consistent with his claim to be a Falun Gong adherent. Overall, the Tribunal was satisfied that the applicant was a practising Falun Gong practitioner and that he may seek to practice Falun Gong if returned to China in the reasonably foreseeable future, and thus be at risk of serious harm. The Tribunal was satisfied that the applicant's fear of persecution was well founded and that he was a person to whom Australia owed protection obligations.

Bangladesh

0803611

10 September 2008, Sydney

Mr A Mullin, Member

BANGLADESH – RELIGION – HINDU – The applicant entered Australia on a Country A passport but claimed to be a national of Bangladesh. The applicant claimed to fear persecution in Bangladesh for reasons of his Hindu religion. He claimed to have suffered a range of harm in Bangladesh at the hands of Muslim fundamentalists. He claimed to have experienced discrimination and harassment from an early age. He claimed that his family lost its land to the Muslims. He claimed that he was an official and/or a member of a number of parties aimed at protecting Hindu rights and promoting Hindu welfare. He had also worked for the Awami League, which brought him to the adverse attention of Muslim fundamentalists. The applicant claimed that on a number of occasions he was beaten and threatened by Muslim fundamentalists and that other members of his family were also beaten and abused. He claimed that a relative had died after he was beaten in one of the incidents. The applicant was forced to go into hiding and, when he was detected there by one of his persecutors, went to Country A to save his life. He claimed that his Country A passport was false and the documents from Country A supporting his Australian visa application were false as well. The applicant provided the Tribunal with documentary evidence to corroborate his claims, which included evidence of medical treatment for his wife and child and letters from various Hindu/party leaders and officers of the Awami League.

Held: Decision under review set aside

The Tribunal found that the applicant was most probably not a Country A citizen and was instead a citizen of Bangladesh, notwithstanding its concerns about the authenticity of the documents submitted by him. While the Tribunal had concerns about the overall accuracy of the applicant's claims of past harm in Bangladesh, it was prepared to give him the benefit of doubt and accepted that he and other family members were harmed on a number of occasions by persons who were connected in some way to Islamic fundamentalist groups. It accepted these people were angered by the applicant's role in various community organisations devoted to preserving and celebrating Hindu religious and cultural practices. The Tribunal was also willing to accept that the incidents the applicant described - even making some allowance for exaggeration - constituted serious harm amounting to persecution. The Tribunal accepted that the applicant would seek to resume his

activities in Hindu organisations if he returned to Bangladesh and would be targeted by Islamic fundamentalists for this reason. It was satisfied that, if the applicant returned to Bangladesh, there was a real chance he would suffer serious harm amounting to persecution because of his Hindu religion. Accordingly, the Tribunal was satisfied the applicant had a well-founded fear of persecution for a Convention reason.

0803509

8 September 2008, Sydney

Ms A Younes, Member

BANGLADESH – POLITICAL OPINION – BANGLADESH NATIONALIST PARTY (BNP) – AWAMI LEAGUE -

The applicant claimed to fear persecution as a victim of political conflict between the Bangladesh Nationalist Party (BNP) and the Bangladesh Awami League. He claimed that he became anti-Awami League after he witnessed teachers and students suffer severe harassment. The applicant claimed that he joined the student wing of the BNP, Chattara Dal, when he was at college. He claimed that he became a target after an incident where the Chattara Dal clashed with the Chattara League and was well-known to the opposition party as a result of his political activities with Chattara Dal. He claimed that when the BNP lost the election and the Awami League formed government, Chattara League 'goons' ransacked his room and the police were looking for him. The applicant claimed that the Awami League made a list which included his name, and that Awami 'goondas' were killing without any justification. He claimed that he left Bangladesh to save his life but later returned to Bangladesh, got married secretly, then left for Country A again. The applicant claimed that his permit in Country A was due to expire with no option to renew.

Held: Decision under review affirmed.

The Tribunal found the applicant's evidence in relation to his political activities was vague, incoherent and lacked substantive details, which raised doubts about the veracity of his claims and his credibility generally. Despite these concerns, the Tribunal gave the applicant the benefit of the doubt and accepted as plausible that he held a position in the Chattara Dal and tried to motivate other students to join the BNP. It accepted that leaders of the Awami League made contact with him. However, the Tribunal did not accept that the applicant has ever been threatened, harassed, harmed or targeted in anyway for his political activities with the BNP or Chattara League. The Tribunal was satisfied that the applicant's involvement in politics was low key. The Tribunal was not satisfied that the applicant returned to Bangladesh secretly and considered the fact that the applicant renewed his passport through the Bangladesh authorities indicated that he did not fear persecution and that he and his family were not of any adverse interest to anyone, including the Awami League. The Tribunal was satisfied that the applicant would not engage in political or other types of activities that would lead to any chance of being harmed in the reasonably foreseeable future. Accordingly, the Tribunal found that the applicant did not have a well-founded fear of persecution for a Convention reason.

Fiji

0803680

8 September 2008, Sydney

Ms R Mathlin, Member

FIJI – POLITICAL OPINION – MILITARY SERVICE – The applicant claimed to fear persecution for reasons of his political opinion. He claimed to have served several months of an apprenticeship with the Fijian Armed Forces as a young man but did not wear a uniform or carry a weapon. The applicant claimed that a relative in Fiji told him that he could not return as he would be detained by the military and forced to fight. The applicant claimed that he did not agree with the Army's role in the December 2006 military coup and subsequent human rights abuses in which members of the Armed Forces were involved. He claimed he would refuse to serve which would lead to mistreatment and persecution.

Held: Decision under review affirmed

The Tribunal accepted that the applicant served several months of an apprenticeship with the Fijian Army Forces as a young man. It found that the applicant did not complete his apprenticeship and had no further involvement with the Army. The Tribunal was not satisfied that the applicant was ever a member of the Fijian Army Reserve. Referring to independent information, the Tribunal accepted that the applicant was informed by his family that Fijian Army reservists were called up around the time of December 2006 coup but did not find any evidence to suggest that reservists who did not respond to the call up have been mistreated or subjected to persecution. It further found that the state of emergency, in the context of which the former reservists were called upon, no longer existed. The Tribunal was satisfied that if the applicant were to return to Fiji now he would no longer be required to serve in the Army. Accordingly, the Tribunal was not satisfied that there was a real chance that the applicant would face persecution for a Convention reason if he were to return to Fiji now or in the reasonably foreseeable future.

Iran

0803337

27 August 2008, Sydney

Mr J Cipolla, Member

IRAN - RELIGION - CHRISTIAN - The applicant claimed to fear persecution as he had converted from Islam to Christianity. He claimed to have attended an Armenian Christian church in Iran with a Christian friend, although he was not allowed in as a Muslim. He also claimed to have read the bible and listened to stories of the bible on a CD provided to him by his friend. The applicant claimed to have attended a church in Australia, as well as bible study meetings and conferences. He submitted testimonials to the Tribunal and provided answers to the Tribunal's questions about his knowledge of Christianity at the hearing.

Held: Decision under review affirmed.

The Tribunal found that the applicant was not a Christian and did not practise Christianity in Iran, nor was he perceived to be a practising Christian by Iranian authorities. The Tribunal did not accept that the applicant had genuinely become a Christian in Australia. It was prepared to accept that he had attended a local church, but was not satisfied that the applicant, for the purposes of s.91R(3), attended church services in Australia otherwise than for the sole purpose of strengthening his claim to be a refugee. The Tribunal did not accept that his level of knowledge of Christianity was consistent with his claims to have attended church and to have extensively studied the bible. Accordingly, it found that the applicant did not have a well-founded fear of persecution based on his religion, now or in the reasonably foreseeable future.

Korea (Republic Of)

0803018

18 September 2008, Sydney

Ms K Raif, Member

KOREA, REPUBLIC OF - POLITICAL OPINION - LABOUR MOVEMENT - The applicant claimed to fear persecution for reasons of his political opinion. The applicant claimed he was subject to harm because of his involvement in a pro-democratic, anti-government, labour movement. He claimed that Korea was suffering from a brutal dictatorship, political corruption and labour issues which made the lives of normal citizens "absolutely uncomfortable". The applicant claimed a general strike was called to destroy the old political power and guarantee human rights. As a leader in the movement, he said he was captured and suffered inhumane torture. He also claimed he was targeted by secret police and could not find employment. The applicant claimed he managed to

survive “in a hidden place without even breathing in loudly” before leaving to evade the authorities. He feared being continuously supervised and threatened if he returned and claimed he would be harmed by secret police because he was still on a blacklist.

Held: Decision under review affirmed

The Tribunal did not find the applicant credible. He repeatedly failed to provide meaningful details about events in Korea, instead referring to the Labour Movement ideology. The Tribunal was of the opinion that had he been a leader he would have been able to provide some description other than broad policies. The Tribunal found the applicant’s evidence that he continued to work while in hiding inconsistent. It was of the view he could be expected to accurately recall an incident as significant as spending time hiding, particularly if it was part of the reason for leaving. It did not accept the effluxion of time since hiding was a reasonable explanation for his inability to recall details. The Tribunal found it significant that the applicant approached the Korean authorities in Australia to renew his passport. It also considered his migration history relevant as he remained in Australia unlawfully then sought other visas before applying for a protection visa. The Tribunal found that if the applicant was genuinely of any interest to the authorities and had suffered persecution resulting in his hiding and leaving Korea he would have taken steps to seek protection at an earlier opportunity and not voluntarily approached the Korean authorities in Australia to renew his passport. For these reasons the Tribunal rejected the applicant’s description of events in Korea. The Tribunal was not satisfied that the applicant had a well-founded fear of persecution for a Convention reason.

Lebanon

0804184

24 September 2008, Sydney

Mr S Norman, Member

LEBANON – IMPUTED POLITICAL OPINION – POLICE INFORMANT - The applicant claimed that he feared persecution because he and his wife had lived in apartment block in Tripoli where a leader of a militant group took refuge. The applicant claimed that his wife phoned the police who attended the apartment and arrested the militant group leader. The applicant claimed that the leader believed that his wife was the informant and they subsequently received threats. The applicant claimed that he and his wife and the other residents of the apartment block left soon after because they were frightened. The applicant and his wife went to live with one of their children, however, this created tensions and they returned to live in Tripoli, where the fighting continued and they were constantly required to seek refuge.

Held: Decision under review set aside.

The Tribunal accepted, based on country information, that serious outbreaks of violence continued in and around Tripoli and the militant group was still capable and willing to commit acts of violence. On that basis the Tribunal was satisfied that the harm the applicants feared was sufficiently serious to constitute persecution. The Tribunal found that, while it had little doubt that that a primary motivation for any harm directed at the applicant’s wife would be in order to exact revenge, given the context of the violence perpetrated in and around Tripoli, it was satisfied the essential and significant reason for the persecution would be the applicant’s and his wife’s perceived/imputed political opinion. The Tribunal found that while the applicant and his wife may be able to safely reside in their child’s village, it would not be reasonable in all the circumstances to expect them to do so. The Tribunal was not satisfied that the applicants’ age and infirmity, apparent lack of funds and the difficulties they may face in securing accommodation with anyone but their immediate family members, meant that in all the circumstances, it was not reasonable to expect the applicants to relocate within Lebanon. Accordingly, the Tribunal was satisfied that the applicant and his wife did have a well-founded fear of persecution for a Convention reason.

Sierra Leone

0803919

2 September 2008, Sydney

Mr G Short, Senior Member

SIERRA LEONE – POLITICAL OPINION – SIERRA LEONE PEOPLES PARTY (SLPP) – The applicants claimed to fear persecution for reasons of their political opinion. The applicants claimed they would suffer harm because of their association with the SLPP; because their fathers were wealthy men who had financially supported the SLPP and former president; and because they were from the same tribe as the former president. They claimed that, because their ethnic group, the Mandingo, had ruled and had the most financial power, they were not well loved. The applicant husband claimed his family was targeted by rebels because his father was a great SLPP supporter and they feared being killed by their fathers' enemies. The applicants further claimed that, while there was peace and the police and army were doing well, there were secret killings by people who held old grudges and bad things went unpublicised. The present government could send informers disguised as civilians to gather information and nothing could stop them persecuting their enemies for no reason. The applicant wife also claimed she would be persecuted because of her membership of the particular social group, Mandingo women. They also claimed a fear of persecution because the applicant child was a member of the particular social group, young children.

Held: Decision under review affirmed

The Tribunal accepted that the applicants' fathers were wealthy by the standards of Sierra Leone, supported the SLPP and former president and that the applicants would be identified as members of their respective families. It also accepted the applicants were from the same tribe as the former president. However, the Tribunal found there was no information available to suggest supporters or imputed supporters of the SLPP and former president were singled out to be attacked, persecuted or killed by the ruling party or its supporters. While it could not rule out that people may hold old grudges, the Tribunal was not satisfied there was a real chance the applicants would be persecuted for reasons of their imputed or actual political opinion. Having regard to country information, the Tribunal accepted violence and discrimination against women remained a problem but found that not all discrimination was persecution and there was no real chance the applicant wife would suffer harm amounting to persecution for reasons of her membership of the particular social groups, women in Sierra Leone or Mandingo women. The Tribunal also found no information to suggest young children were being singled out for persecution. The Tribunal was not satisfied that the applicants had a well-founded fear of persecution for a Convention reason.

HIGH COURT JUDGMENTS

Sok v MIAC

[2008] HCA 50

High Court of Australia, Gummow, Hayne, Heydon, Crennan & Kiefel JJ, M60/2008, 16 October 2008

This was an appeal against an order of the Full Federal Court that allowed the Minister's appeal from a judgment of Driver FM setting aside a decision of the Migration Review Tribunal (the Tribunal) that the appellant was not entitled to the grant of a Partner (Migrant) (Class BC) visa Subclass 100.

The Minister's delegate refused to grant the visa as he was not satisfied that the appellant was the spouse of the sponsor. The appellant submitted materials to the Tribunal claiming that he had been the victim of domestic violence at the hands of his sponsor. The materials met the requirements of r.1.23(1A)(b)(ii) and r.1.24 of the Migration Regulations 1994 (the Regulations). The Tribunal was not satisfied that the appellant had suffered relevant domestic violence and sought the opinion of an independent expert pursuant to r.1.23(1B) without inviting the appellant to attend a hearing. The independent expert found that the appellant had not suffered relevant domestic violence. A copy of the opinion was sent to the appellant and he made submissions in response. The appellant provided further evidence in support of his claim and a further opinion was sought from an independent expert. The second independent expert's opinion confirmed that the appellant had not suffered relevant domestic violence. The Tribunal sent a copy of the opinion to the appellant and invited the appellant to a hearing. The Tribunal found that it was required to take as correct the independent expert's opinion that the appellant had not suffered relevant domestic violence.

The Federal Magistrate set aside the Tribunal's decision on the basis that the Tribunal had failed to accord the appellant a hearing before referring to an independent expert for an opinion on the question whether he had suffered relevant domestic violence. The Full Federal Court allowed the Minister's appeal on the basis that the provisions made by Division 1.5 of the Regulations applied only to the original decision-maker and did not apply to the Tribunal in the exercise of its review function. The Full Court, in obiter, concluded that the Tribunal was not required by s.360 of the *Migration Act 1958* (the Act) to invite the appellant to appear before it before forming the view that it was not satisfied that the alleged victim had suffered relevant domestic violence and referring to an independent expert for an opinion.

Held: *per curiam*, appeal allowed

- (i) The Tribunal must consider a claim of domestic violence, made by an applicant for a visa of the kind here in question, even where no such claim was made before the Minister refused to grant the visa sought. The Tribunal is to determine whether the criterion in cl.100.221 that the appellant "has suffered domestic violence ..." is met. That criterion is met only if the appellant is to be taken under r.1.23, to have suffered domestic violence. In deciding that question, the Tribunal may exercise all of the powers and discretions conferred by Division 1.5 on the Minister.
- (ii) The Tribunal committed jurisdictional error in failing to conduct the review in accordance with the Act, in particular s.360.
- (iii) The Tribunal may not decide that it is 'not satisfied' of an applicant's claim to have suffered domestic violence before inviting the applicant to give evidence and present arguments at a hearing. The appellant raised a new issue when he made his claim to have suffered domestic violence. Once the claim was made, the Tribunal was bound by s.360 of the Act to invite him to appear before it to give evidence and present arguments relating to that issue.

FEDERAL COURT JUDGMENTS

SZKNX v MIAC

[2008] FCAFC 176

Federal Court of Australia, Sundberg, Emmett & Tracey JJ, NSD 1115 of 2007, 21 October 2008

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

The Tribunal made its decision on 26 February 1999 and sent a copy to the appellant on that day. After the decision, the appellant engaged solicitors, who requested Ministerial intervention under s.417 of the *Migration Act 1958* (the Act) on 17 March 1999, quoting an extract from the decision record. On 23 April 2007, the appellant commenced a proceeding in the Federal Magistrates Court seeking Constitutional writ relief in respect of the Tribunal's decision.

At first instance the Federal Magistrates Court upheld the Minister's contention that the Court lacked jurisdiction to hear the application on the ground that the proceeding was commenced out of time and the time during which an extension of time could be applied for had also expired. It was satisfied that the evidence allowed it to find that the appellant "was actually notified" of the Tribunal's decision at some time after 26 February 1999 and prior to 17 March 1999.

The appellant contended that, in light of the decision of the Full Court in *MIMA v SZKKC* (2007) 159 FCR 565, the decision of the Federal Magistrates Court was erroneous as in *SZKKC*, Buchanan J considered that the decision in *WACB v MIMIA* (2004) 79 ALJR 94 compelled the conclusion that the sole method of actual, as opposed to deemed, notification of a written statement is delivery by hand.

Held: *per curiam* appeal dismissed.

- (i) The Federal Magistrates Court did not err in concluding that it did not have jurisdiction to entertain the appellant's application for Constitutional writ relief in relation to the Tribunal's decision. Irrespective of how the Tribunal has complied with its obligation under s.430(2) to give the applicant a copy of the statement within 14 days after the decision is made, if an applicant has physically received a copy of the Tribunal's decision and reasons, as in the present case, there has been actual notification of the decision for the purposes of s.477.
- (ii) In *SZKKC*, *SZJMA* and *WACB*, the relevant applicant had commenced a proceeding within the specified time after coming into physical possession of the decision and records of the Tribunal. However, that was not this case.

FEDERAL MAGISTRATES COURT JUDGMENTS

SZIAR v MIAC & Anor

[2008] FMCA 1348

Federal Magistrates Court of Australia, Cameron FM, SYG 3730 of 2007, 14 October 2008

The applicant, a national of China, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations. The applicant claimed to fear persecution due to his practice of Falun Gong.

The applicant claimed that he practised Falun Gong in China from March to July 1999, stopped practising after that because he was scared that he would be arrested and resumed practise in Australia in 2005. The applicant provided a copy of a letter from Mr Deller, President of the Falun Dafa Association of NSW (the President) with the protection visa application. On 11 July 2007, the Tribunal emailed the President in relation to a facsimile from the applicant that the President knew

him. Mr Deller replied to this, and subsequent communication took place by email. None of the Tribunal's emails to Mr Deller specified the way in which he was to respond or the period within which he was to do so. The email address was not supplied by Mr Deller, but instead was obtained by the Tribunal through its own records. The Tribunal did not accept that the applicant was a genuine Falun Gong practitioner because of his lack of detailed knowledge of Falun Gong.

The applicant contended, among other things, that the Tribunal's enquiries of the President breached ss.424, 424B and 424(3) of the *Migration Act 1958* (the Act).

Held: application dismissed

- (i) No jurisdictional error on account of a breach of ss.424, 424B or 424(3) had been disclosed.
- (ii) The Tribunal's emails to Mr Deller provided an email address to which to reply, and sufficiently specified the way in which he might give the requested information. The failure of the Tribunal's emails to specify a period within which Mr Deller was to reply did not amount to jurisdictional error: *SZLWQ v MIAC* [2008] FCA 1406.
- (iii) In cases where the Tribunal is initiating contact with a third party for the purposes of a review, if the Tribunal is aware of a third party's address through its own records or researches, being the most likely one at which it can contact the intended recipient, rather than because that information has been supplied by the third party in connection with the review, the Tribunal's initial inquiries should not be taken to fall outside the scope of s.441A. Subsequent communications would have to be sent to any address identified by the recipient as the address to which communications ought be sent. The Tribunal's communications with Mr Deller met the requirements of s.441A, and therefore also the requirements of s.424(3). Relevantly for this case, the Tribunal sent an email to Mr Deller at an address contained in its records, to which Mr Deller replied and subsequent communications took place. The first communication satisfied s.441A(5) in a purposive sense and all subsequent communications met the subsection's terms strictly.

SZMZA v MIAC & Anor (No. 2)

[2008] FMCA 1418

Federal Magistrates Court of Australia, Smith FM, SYG 471 of 2008, 21 October 2008

The applicant, a national of China, sought judicial review of a Refugee Review Tribunal (the Tribunal) decision that he was not a person to whom Australia had protection obligations. The applicant claimed to fear persecution because he had attended "an underground church which belonged to the Shouter's sect".

The Tribunal rejected the applicant's claimed involvement with the Shouters or the Local Church, including among its reasons the fact that the applicant appeared to have had no interest in the Shouter church since his arrival in Australia. The applicant had given evidence that he had attended churches of different denominations in Australia. The Tribunal had regard to this conduct, having stated that it could not be satisfied that it had been undertaken for the purpose of strengthening his claim to be a refugee. In light of the applicant's lack of commitment to a particular type of church, the Tribunal found that the applicant could continue to attend the official church in China and therefore that there was no real chance that he would face Convention-related persecution if he were to return to China.

The applicant challenged the rationality of some of the Tribunal's reasoning, however, the Court identified the possibility of an error pursuant to s.91R(3) of the *Migration Act 1958* (the Act) following the Full Federal Court judgment in *SZJGV v MIAC* (2008) 247 ALR 451.

Held: RRT decision quashed and remitted to be determined according to law

- (i) The Tribunal's decision was affected by jurisdictional error through the erroneous application of s.91R(3) of the Act.

- (ii) The Tribunal proceeded upon an incorrect legal opinion that conduct is to be taken into account where it is left in doubt about an applicant's motives for engaging in activities in Australia. It did not appreciate that s.91R(3)(b) required it to be positively satisfied about the applicant's conduct in terms of paragraph (b), before it could take it into consideration as a reason for excluding a well-founded fear of persecution. It expressly identified and addressed the relevant issue, but did so in a manner which reversed the required state of satisfaction identified in the subsection.

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

Migration Amendment (Notification Review) Bill 2008 (Bill - C2008B00209)

This Bill seeks to provide greater certainty in respect of notification procedures, minimise errors and ensure visa applicants and visa holders are effectively notified of matters relevant to their dealings with the Department of Immigration and Citizenship, the Migration Review Tribunal and the Refugee Review Tribunal. The Bill has been passed by both Houses with government amendments and amends the *Migration Act 1958* (the Act) to:

- Provide, in certain cases, that where the Minister (or Tribunal member) forms a reasonable belief that an individual has care and responsibility for an applicant who is a minor, then the Minister or the Tribunal may communicate with that individual instead of the minor;
- Provide that if an error is made when giving a document to an applicant, the deemed receipt provisions in ss.379C, 441C and 494C of the Act will operate if the person nonetheless receives the document or a copy of it. However, if the person can show that the document was received after the time of deemed receipt, he or she will be taken to have received it at that later time.

The Bill is awaiting royal assent.

REGULATIONS

Migration Amendment Regulations 2008 (No. 7) (Legislative Instrument - F2008L03542)

These Regulations amend the Migration Regulations 1994 relating to Visitor (Class TV) and Subclass 651 (eVisitor) visas, Subclass 417 (Working Holiday) and Subclass 462 (Work and Holiday) visas; the Contributory Parent and Tourist (Class TR) visa application charges; Maritime Crew visas; and English language proficiency requirements for Subclass 485 (Skilled – Graduate) visas. The amendments took effect from 27 October 2008.

INSTRUMENTS

Migration Regulations 1994 – Specification under paragraph 1402(3)(a) – Classes of Persons and Addresses – October 2008 (Legislative Instrument - F2008L03770). This instrument, registered on 16 October 2008, provides that certain applications be made in a designated place in order to provide increased flexibility in the way the Department manages its processing workloads. Effective from 27 October 2008.

Migration Regulations 1994 – Specification under regulations 1.15C, 1.15D and clauses 485.215 and 487.215 – English Language Tests and Level of English Ability for General Skilled Migration – October 2008 (Legislative Instrument - F2008L03768). This instrument, registered on 16 October 2008, specifies what is a score for an Occupational English Language test at least equivalent to an International English Language Testing System score as set out in the Regulations as a score required for “competent English” or “proficient English”. Effective from 27 October 2008.

Migration Regulations 1994 – Specification under subregulation 2.26AA(6) – Professional Year Programs – October 2008 (Legislative Instrument - F2008L03767). This instrument, registered on 16 October 2008, specifies the professional year program run by Engineers Australia, which is available

to engineering graduates for the purposes of subregulation 2.26AA(6) of the Migration Regulations 1994. Effective from 27 October 2008.

Migration Regulations 1994 – eVisitor – Eligible Passports – October 2008 (Legislative Instrument - F2008L03771). This Instrument, registered on 24 October 2008, operates to inform applicants for a visa about which kinds of passports are eVisitor-eligible passports in relation to an application for a eVisitor visa. Effective from 27 October 2008.

Migration Regulations 1994 – Specification under paragraph 1227A(3)(d) – Addresses for Superyacht Crew Visa Applications – October 2008 (Legislative Instrument - F2008L03908). This Instrument, registered on 24 October 2008, specifies the postal address, hand delivery address, or fax number, to which applications for a Superyacht Crew (Temporary) (Class UW) visa must be sent. Effective from 27 October 2008.

Migration Regulations 1994 – Specification under regulations 1.03 and 1.15G – Definition of "Superyacht" – October 2008 (Legislative Instrument - F2008L03773). The Instrument, registered on 24 October 2008, specifies that a Superyacht is any high value luxury sailing ship or motor vessel which is 24 metres or longer in load line length and not carrying cargo and used for sport or pleasure. Effective from 27 October 2008.

Migration Regulations 1994 – Specification under subparagraph 1222(1)(aa)(i) – Classes of Persons – October 2008 (Legislative Instrument - F2008L03775). This Instrument, registered on 24 October 2008, specifies the classes of persons, in the case of an application made by an applicant applying in Australia for a Student (Temporary) (Class TU) visa, who can use form 157A or 157A (Internet). Effective from 27 October 2008.

Legislation Pending

Migration Legislation Amendment (Worker Protection) Bill 2008 (Bill – C2008B00224)

This Bill was introduced into the Senate on 24 September 2008. Schedule 1 of the Bill will amend the *Migration Act 1958* to enhance the framework for the sponsorship of non-citizens seeking entry to Australia. The Bill seeks to make amendments primarily to the business sponsorship scheme and ensure that the working conditions of sponsored visa holders meet Australian standards. The Bill will amend the sponsorship framework through four main measures: providing the structure for better defined sponsorship obligations for employers; by improving information sharing across all levels of government; expanding powers to monitor and investigate possible non-compliance by sponsors; and introducing meaningful penalties for sponsors found in breach of their obligations.

CASELOAD OVERVIEW

MRT Decisions – October 2008

Case category	Set Aside	Affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Bridging refusal	2	4	1	1	8
Visitor refusal	63	27	3	4	97
Student refusal	26	45	4	6	81
Temporary business refusal	31	30	11	7	79
Permanent business refusal	11	4	1	2	18
Skill linked refusal	55	49	9	7	120
Partner refusal	109	35	11	3	158
Family refusal	37	42	1	2	82
Student cancellation	22	14	0	3	39
Sponsor approval refusal	3	7	0	0	10
Other	32	35	5	5	77

RRT Decisions – October 2008

Country	Set aside	Affirmed	No jurisdiction Withdrawn	No Jurisdiction Other	Total
Bangladesh	0	7	0	9	16
Brazil	0	1	0	0	1
Burma (Myanmar)	2	0	0	0	2
China (PRC)	21	61	2	4	88
Colombia	0	1	0	0	1
Congo, Democratic Republic of	0	0	1	0	1
Egypt	4	2	0	0	6
Ethiopia	1	1	0	0	2
Fiji	0	3	0	0	3
Ghana	0	2	0	0	2
Guyana	0	1	0	0	1
India	2	19	1	4	26
Indonesia	2	10	0	1	13
Iran	1	1	0	0	2
Iraq	1	0	0	0	1
Jordan	1	1	0	0	2
Korea, Republic Of	0	6	0	0	6
Lebanon	5	5	0	0	10
Macedonia, Fmr Yugo Rep of	0	3	0	0	3
Malaysia	0	15	0	0	15
Moldova	0	1	0	0	1
Nepal	0	2	0	0	2
Nigeria	0	1	0	0	1
Pakistan	0	6	0	0	6
Palestinian Terr. (W.Bank/Gaza)	1	0	0	0	1
Philippines	0	1	0	0	1
Russian Federation	0	1	0	1	2
South Africa	0	1	0	0	1
Sri Lanka	3	6	1	0	10
Syria	1	0	0	0	1
Turkey	0	1	0	0	1

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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