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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. For your reference, 'the Act' refers to the *Migration Act* 1958 and 'the Regulations' refer to the Migration Regulations 1994.

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MIGRATION REVIEW TRIBUNAL DECISIONS

Business and Skilled visas

0800722
5 May 2009, Melbourne
Dr A Gregory, Member

SKILLED – AUSTRALIAN-SPONSORED (MIGRANT) (CLASS BQ) – SUBCLASS 139 (SKILLED – DESIGNATED AREA-SPONSORED) – CL.139.217 – SKILLED OCCUPATION – A delegate of the Minister refused to grant a Subclass 139 visa to the applicant on the basis that the delegate was not satisfied that he had undertaken the claimed duties for the nominated skilled occupation in the relevant period prior to the date of application. The applicant had nominated his skills under the category of Business and Information Profession with a travel agency, and claimed 50 points for this occupation. The delegate considered the tasks undertaken by the applicant equated to that of a travel agent which was not a skilled occupation in demand. The employer claimed that the applicant was a middle management executive who was initially employed for his Information Technology (IT) skills and that his duties were more than that of a travel agent. The applicant stated that his work mainly involved operations and management. He also claimed he had roles in budgeting, marketing and operational aspects, product development, market research, sales promotion and staff supervision.

Held: Decision under review set aside

The Tribunal found the applicant to be an open and credible witness. The Tribunal noted that no 'usual tasks' were listed under the ASCO code for a Business and Information Professional. Rather, a skill level entry requirement of a bachelor degree or higher qualification or at least 5 years' relevant experience was required to meet the skill level for this occupation. The Tribunal found that, although the visa applicant did undertake certain operational tasks which could be described as those of a travel agent, his major role in the company was of a higher level, using his IT skills for analytical purposes. Accordingly, the Tribunal found that the applicant's qualifications met the requirements of a gazetted skilled occupation which was in demand. The Tribunal also found that the applicant was employed in a skilled occupation for at least 12 months in the period 18 months immediately before the day on which the application was made. Therefore, the Tribunal was satisfied that the applicant met cl.139.217 of to the Regulations.

0806368
8 May 2009, Sydney
Mr C Packer, Member

SPONSOR APPROVAL BAR – S.140J – R.1.20CB(1)(J) – CHANGE OF EMPLOYMENT LOCATION – R.1.20CB(1)(F) – CESSATION OF EMPLOYMENT – R.1.20CB(1)(I) – MINIMUM SALARY LEVEL – A delegate of the Minister decided to take action under s.140L(c), (e) and (g) of the Regulations to bar the business sponsor for two years from: sponsoring more people under the terms of standard business sponsorship; making future applications for approval as a sponsor for Subclass 457 visas (approval as a standard business sponsor); and nominating a person or activity in relation to a temporary visa where the sponsor would otherwise be entitled to make the nomination under the Regulations. The delegate found that the applicant had breached the sponsorship undertakings listed in r.1.20CB(1)(j), (f) and (i) concerning the change of employment location of an employee, the cessation of employment of another employee, and the failure to pay the minimum salary level (MSL) to 9 employees. The sponsor claimed that the 9 employees in question were permitted to take one month's holiday to visit parts of Australia before commencing work. At the Tribunal hearing the sponsor then claimed that while the business had wanted the visa holders to commence work immediately, the visa holders demanded a holiday before commencing work. The sponsor later claimed that the visa holders knew each other in China and decided together to delay the start of their employment until the same date. The sponsor claimed that government policy did not point out that the visa holders had to be paid on arrival; they were to be paid as soon as they started work. The sponsor also back paid the relevant wages when they became aware of the issue.

Held: Decision under review varied

The Tribunal found that r.120CB(1)(j) (change of employment location) and (f) (cessation of employment) were not breached. In relation to the 9 employees which were deemed to have not been paid the MSL, the Tribunal rejected the sponsor's claim that 8 of the visa holders demanded to start work on the same day. The Tribunal found that the sponsor organised when the visa holders should arrive in Australia, met them at the airport and organised where they were to go in regional Australia. In those circumstances, the Tribunal concluded that each of the 9 visa holders occupied their nominated positions from the time they entered Australia and that the sponsor chose for them to live without pay for a number of weeks while they 'settled in'. The Tribunal thus found that in effect the visa holders were on leave without pay and that the undertaking in r.1.20CB(1)(i) (failure to pay minimum salary level) was therefore enlivened from the time of their arrival. The Tribunal concluded that the sponsor did not ensure the visa holders would be paid at least the MSL from the time of their arrival and thus breached the undertaking in r.120CB(1)(i) for each of the visa holders. In considering the severity of the breach, and in light of the multiple breaches for significant amounts, the Tribunal found that the breach of the undertaking was severe. The Tribunal considered the past conduct of the sponsor and noted that the review applicant made back payments to the visa holders when the breach was identified; that the visa holders had otherwise been paid the MSL since; and that the sponsor appeared to have co-operated with the Department and with the Tribunal during the review. The Tribunal decided that the actions set out in s.140L(c), (e) and (g) should be taken but, in light of its findings that the sponsor did not breach r.1.20CB(1)(j) and (f), that the duration of the actions should be lessened. The Tribunal therefore varied the decision under review and barred the sponsor from: sponsoring more people under the terms of standard business sponsorship to the end date of the sponsorship; making future applications for approval as a sponsor for Subclass 457 visas for eighteen months; and nominating a person or activity in relation to a temporary visa where the sponsor would otherwise be entitled to make the nomination under the Regulations for 18 months.

Partner and Family Visas

071892891
3 April 2009, Sydney
Ms N Dougall, Member

CONTRIBUTORY PARENT (MIGRANT) (CLASS CA) – SUBCLASS 143 (CONTRIBUTORY PARENT) – CL.143.311 – FAMILY UNIT – A delegate of the Minister refused to grant the secondary visa applicants Subclass 143 visas on the grounds that the primary visa applicant did not satisfy cl.143.311 of the Regulations because the secondary applicants were found not to be members of the primary applicant's family unit. The primary applicant's Subclass 143 application included her husband and his daughter (the secondary applicants), with an accompanying form 47A for a child or other dependent family member aged 18 years or over. The form stated that the dependent child had never worked and that her father provided all financial assistance. Supporting evidence was provided. Departmental officers conducted a site visit at the address where the visa applicants claimed to live together. The site visit concluded that the primary applicant's relationship with the secondary applicant, her husband, was not genuine. At review, the secondary applicants provided explanations for the adverse findings of the site visit. The review applicants provided evidence that they had known each other since 1974 and were best friends and that if they came to Australia they would like to open a small restaurant. She stated that if her husband was not granted a visa they would continue to apply. The Tribunal was also provided with copies of wedding photos, joint accounts for electricity, water, heating and gas and evidence of the primary applicant being financially supported by her husband since her arrival in Australia. The dependent child claimed she had graduated from university, was living with her father who supported her and was looking for work but had not yet found a job.

Held: Decision under review set aside

The Tribunal considered the Departmental site visit report and the primary applicant's response to this information at the hearing. While there were some differences in evidence provided by the visa applicants, the Tribunal found that this would not be accorded weight in light of the majority of the evidence. The Tribunal noted that family, friends, work colleagues and three neighbours had supplied statements in support of the genuineness of the couple's relationship. The Tribunal was satisfied that the husband had provided the primary applicant with financial support and that the couple had lived together for just under

two years, up until the primary applicant left for Australia. The Tribunal found that if the husband was granted a visa he would reside in Australia with the primary applicant and thus that they did not live separately and apart on a permanent basis. In light of these findings, the Tribunal found that the primary applicant's husband was a member of the primary applicant's family unit both at the time of the application and the decision. The Tribunal found that the secondary applicants were father and daughter, that the daughter had been for a substantial period immediately before the visa application, wholly or substantially reliant on her father for financial support to meet her basic needs for food, clothing and shelter and that her reliance on her father was greater than any reliance on any other person. The Tribunal therefore found that the daughter was a dependent child of her father and, as such, she was a member of the family unit of the primary applicant. The Tribunal consequently found that both secondary applicants satisfied the criteria in cl.143.311 as they were members of the family unit of, and made a combined application with, the primary applicant.

071967406
5 May 2009, Sydney
Ms L Mojsin, Member

PROSPECTIVE MARRIAGE (TEMPORARY) (CLASS TO) – SUBCLASS 300 (PROSPECTIVE MARRIAGE) – CL.300.216 – GENUINE INTENTION TO LIVE TOGETHER AS SPOUSES – A delegate of the Minister refused to grant the applicant a Subclass 300 visa on the basis that the primary applicant did not meet cl.300.216 of the Regulations as the parties did not genuinely intend to live together as spouses. The primary applicant claimed he met the review applicant and her daughter in a refugee camp in the Ivory Coast. After a brief courtship, he proposed marriage to her which she accepted. He claimed that, in accordance with their traditions, he introduced her to his family and he paid a dowry indicating their engagement. Furthermore, he informed the traditional court of their engagement and he received a document acknowledging this. The couple claimed that they lived together in the Ivory Coast and Guinea from 1999 to 2004. When they were displaced from the Ivory Coast by war, they travelled together to Guinea where they lived in a refugee camp and they were registered as a family by the United Nations High Commissioner for Refugees (UNHCR). The review applicant claimed that they had lived apart for a short period as the applicant had cheated on her at one time but she subsequently forgave him. She claimed her details, her daughter's and the visa applicant's details were considered for migration to Australia through the International Catholic Migration Commission in 2003. The review applicant claimed that she was the only family member called for each of the three migration interviews and that she had stated she had a fiancé but they were not living together at that time due to relationship difficulties. Only she and her daughter were granted migration visas. Evidence was also submitted indicating that the 8 named secondary applicants were the visa applicant's wards and that he had assumed responsibility for their care.

Held: Decision under review set aside

The Tribunal was satisfied that the parties had a genuine intention to marry and that they intend to marry within the visa period in accordance with cl.300.215. The Tribunal then considered cl.300.216 which required that the 'parties genuinely intend to live together as spouses'. The Tribunal had some doubts as to the veracity of the review applicant's claims in relation to how she obtained her migration visa but could not make an adverse finding with certainty and therefore, gave her the benefit of the doubt. The Tribunal found that the mandatory aspect of the term 'spouse' as defined in r1.15A did not apply to Subclass 300 visa applications; however, departmental policy provided that r.1.15A should be applied only in so far as it is applicable. The Tribunal found that since the parties were not yet married they had not had the opportunity recently to live together or to share domestic responsibilities other than for the periods when they resided together over 5 years ago. Accordingly, the Tribunal was satisfied that the visa applicant satisfied cl.300.216 of the Regulations.

0802922
11 May 2009, Sydney
Mr D O'Brien, Principal Member

OTHER FAMILY (MIGRANT) (CLASS BO) – SUBCLASS 115 (REMAINING RELATIVE) – CL.115.211 – R.1.15 – DEFINITION OF NEAR RELATIVE – A delegate of the Minister refused to grant Subclass 115 visas to the applicants on the basis that the delegate was not satisfied that the primary visa applicant was a

'remaining relative' of the review applicant within the meaning of r.1.15 of the Regulations. The delegate found that, as the secondary applicant had turned 18 at the time of application, she did not meet the definition of dependent child and therefore, she was a near relative of the applicant. The review applicant claimed that their son, the primary visa applicant, had severe medical problems as a result of an accident which had left him permanently disabled and that he did not work. She also claimed that he was divorced, he received a disability pension and that she and her spouse made 6 monthly trips to Canada to help look after him and his children. The review applicant claimed that the secondary applicant was a university student who stayed on campus during term because the family home was 3 hours away. She earned money from casual and part-time work which went towards her university tuition and living expenses. The secondary visa applicant claimed that, although her aunt had given her money as a birthday present and to assist with her education, she depended on her father for food, shelter and clothing and that he supported her financially and she relied on him for all her needs. Therefore, she claimed she was a dependent of the primary applicant and that she did not meet the definition of near relative.

Held: Decision under review set aside

The Tribunal was satisfied that the secondary applicant remained substantially reliant on the primary applicant for financial support to meet her basic needs for food, clothing and shelter and that the money she had received from her aunt was a birthday present. The Tribunal also found that her reliance on the primary applicant was greater than on any other person. Although she was earning extra cash to cover university expenses, the critical matter was the support she received from the primary applicant, not the extent of the need she might or might not have for that support. The Tribunal found that the applicant daughter's place of residence remained her father's house despite staying in residential accommodation at the university on the days on which she attended. The Tribunal was satisfied that the applicant daughter was not a near relative of the primary applicant and found that the primary applicant had no near relatives in Australia other than near relatives who were permanent residents or citizens. Accordingly, the Tribunal was satisfied that, at the time of application and at the time of decision, the visa applicant was a 'remaining relative' of the review applicant in accordance with r.1.15 and therefore, met cl.115.211 and cl.115.221 of the Regulations.

0803150
30 April 2009, Melbourne
Ms Genevieve Hamilton, Member

PARTNER (MIGRANT) (CLASS BC) – SUBCLASS 100 (SPOUSE) – CL.100.221(2) – R.1.15A – GENUINE AND CONTINUING RELATIONSHIP – A delegate of the Minister refused to grant the applicant a Subclass 100 visa on the basis that he did not meet cl.100.221(2) of the Regulations on the basis that he did not respond to an invitation to provide evidence of his ongoing relationship with the sponsor. The applicant claimed that he and his sponsor met in 2000 and that they had been a couple in Bosnia prior to the sponsor's departure. He claimed he took the sponsor to the airport when she migrated to Australia. He claimed that when she returned to Bosnia in December 2004 he was very happy and they announced their engagement on the same day. They married in January 2005 and several weeks later the sponsor returned to Australia to work. The applicant was granted a temporary partner visa and he joined the sponsor in Australia. In 2007, the Department wrote to the applicant inviting evidence regarding the ongoing relationship. The mail was returned unclaimed and the Department refused the permanent visa on the basis that they could not be satisfied the relationship was ongoing. The applicant claimed that he became aware of this a short time later and he contacted the Department to inform them of their new address. He also claimed that he advised the Department that he and the sponsor had 3 children and that their relationship was genuine and ongoing.

Held: Decision under review set aside

In considering the elements in r.1.15A, the Tribunal considered whether the applicant and sponsor had a mutual commitment to a shared life as husband and wife to the exclusion of all others, a genuine and continuing relationship and that they either live together or do not live separately and apart on a permanent basis. The Tribunal accepted the evidence provided concerning the financial aspects of the relationship, the nature of the household and evidence that the applicant and sponsor were named as parents living at a shared address on the birth certificates of their 3 children. The Tribunal also accepted that the marriage was well-recognised socially by the families on both sides and by friends. As for the nature of their commitment to each other, the inception and development of the relationship, its progression to marriage and the birth of

3 children, the Tribunal found that these elements all reflected a normal young family life and indicated that the couple derived a considerable degree of companionship and emotional support from each other and saw the relationship as a long-term one. Based on all the evidence, the Tribunal found that the applicant and the sponsor continued to have a mutual commitment to a shared life as husband and wife to the exclusion of all others, that the relationship between them was genuine and continuing and that they lived together or did not live apart on a permanent basis. Therefore, the Tribunal found that the applicant at the time of decision was a spouse within the meaning of r.1.15A. He continued to be married to the sponsoring spouse and consequently satisfied cl.100.221(1) of the Regulations.

Student visas

0807417
11 May 2009, Melbourne
Mr D Young, Member

STUDENT (TEMPORARY) (CLASS TU) – SUBCLASS 573 (HIGHER EDUCATION SECTOR) – CANCELLATION – S.116(1)(b) – CONDITION 8202(3)(a) – SATISFACTORY COURSE PROGRESS – A delegate of the Minister cancelled the applicant's Subclass 573 visa under s.116(1)(b) of the Act on the basis that he did not comply with Condition 8202 of the Regulations as his education provider had certified that he had not achieved satisfactory course progress under s.19 of the Education Services for Overseas Students Act 2000 and standard 10 of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (the National Code). The applicant claimed that he had failed the course because he had not been given performance feedback, that the teaching was third-rate and that his mother had been ill. A Department of Education, Employment and Workplace Relations report stated that the education provider had complied with all relevant requirements under the National Code and, specifically, that the applicant had been counselled on 3 occasions about his poor academic performance and that he had been sent a Notice of Intention to Report. The applicant denied that he had been counselled or sent a notice. He claimed he had not been advised or invited to participate in any complaints or appeal process and that his teacher had advised him that his attendance and progress were both satisfactory. The applicant claimed he had completed several tests and assignments but had never been given any results or marks and that the test papers were never handed back to students. He claimed that all members of the class were simply told that they had passed. Testimonials from fellow students of Meridian College were provided in support of the applicant's claims.

Held: Decision under review set aside

In deciding whether the applicant had breached Condition 8202(3)(a), the Tribunal considered whether the education provider's records were designed, administered and 'quality-assured' in a manner that would satisfy a reasonable and prudent decision maker that they had provided accurate and reliable evidence that the visa holder had been treated in accordance with the requirements of the National Code 2007. The Tribunal found the evidence provided by the applicant raised serious doubts regarding the accuracy of the education provider's claims and associated records and that the applicant's testimony was consistent with oral and documentary evidence presented by other students of the college. Despite evidence of having a record of the applicant's actual address, the Tribunal found that the education provider had misaddressed a number of letters and notices which were sent to the applicant. In addition, the Tribunal found that only one of the counselling forms was countersigned by the applicant. However, as the onus in establishing that grounds existed for the cancellation of the visa was on the Minister and the Tribunal, with the exception of a single signed counselling form, there was insufficient evidence for the Tribunal to counter the applicant's claims and sustain a decision for the visa to remain cancelled. The Tribunal accepted that the education provider may have designed and established procedures conforming to the relevant National Code requirements. However, and more relevantly, the Tribunal was not satisfied that the education provider's records and administrative practices were such as to provide credible evidence that the required safeguards and remedial processes were, in fact, made available to the applicant. Such evidence was critical in the contemplation of breach action. Since the education provider's records were the sole basis of the claim that there was compliance with the requirements of the National Code, the Tribunal was not satisfied that the visa had been properly cancelled. Therefore, the Tribunal set aside the decision under review and substituted a decision that the visa should not be cancelled.

0902123
7 May 2009, Sydney
Ms K Raif, Member

STUDENT (TEMPORARY) (CLASS TU) – SUBCLASS 573 (HIGHER EDUCATION SECTOR) – CANCELLATION – S.137J – SATISFACTORY COURSE PROGRESS – A delegate of the Minister refused to revoke the automatic cancellation of the applicant's subclass 573 visa under s.137J of the Act. The education provider sent the applicant a notice under s.20 of the Education Services for Overseas Students Act 2000 (the ESOS Act) certifying that he had not achieved satisfactory course progress which was a breach of condition 8202 of his student visa. When the applicant failed to respond to the notification within 28 days, his visa was automatically cancelled. The applicant made a request for revocation of the automatic cancellation and supplied evidence to the Department that he had sought release from his education provider, Griffith University, in June 2008 and that the University had agreed to a transfer. The applicant claimed he had then enrolled in a different course at TAFE QLD in July 2008. The delegate acknowledged that the applicant withdrew from the course at Griffith University in June 2008 and that he was enrolled with another education provider, but noted that he also withdrew from that provider and had not commenced study in another course. In support of the review, the applicant provided evidence that he had enrolled in TAFE QLD in July 2008, he withdrew from that course in October 2008 and he enrolled in another course commencing in April 2009.

Held: Decision under review set aside

The Tribunal considered whether the notice which Griffith University sent to the applicant in October 2008 was a notice under s.20 of the ESOS Act. The Tribunal also considered whether the applicant was an accepted student at Griffith University at the time the notice was sent or whether he had been 'released' from the University. The Tribunal accepted evidence that the applicant had been 'released' from Griffith University in June 2008 and that in July 2008 he was enrolled at TAFE QLD; however, he had commenced studies elsewhere. Accordingly, the Tribunal found he was not an 'accepted student' of Griffith University within the meaning of s.5 of the ESOS Act at the time of the breach. Thus, the s.20 Notice issued by the University was not sent to an 'accepted student'. The Tribunal was therefore of the view that s.137J was not enlivened and the applicant's visa should not have been cancelled automatically. The Tribunal considered that none of the matters raised by the delegate regarding the timing of the applicant's withdrawal from Griffith University, his failure of all four subjects in Semester 1, 2008 and his enrolment in a different course for which his studies had not commenced, were relevant to the review. The Tribunal found that sending a s.20 Notice to a former student who was no longer an accepted student and no longer enrolled in a registered course with the education provider, and a requirement for a student to maintain satisfactory course progress in a course in which the student was no longer enrolled, comprised exceptional circumstances beyond the student's control which led to the breach of condition 8202. Thus, even if there was a valid automatic cancellation of the student visa held by the applicant, the Tribunal found that the breach was due to exceptional circumstances beyond the student's control. Consequently, the Tribunal set aside the decision to cancel the applicant's Subclass 573 visa and substituted a decision that the visa was not cancelled.

Visitor visas

0901476
6 May 2009, Sydney
Ms P Wearne, Member

TOURIST (SHORT STAY) (CLASS TR) – SUBCLASS 676 (TOURIST) – CANCELLATION – S.116(1)(b) – CONDITION 8101 – NO WORK – A delegate of the Minister cancelled the applicant's Subclass 676 visa under s.116(1)(b) of the Act on the basis that the applicant breached Condition 8101 because he had engaged in work in Australia. Police records showed that the applicant was located with his truck and materials for bitumen work and drums of tar, work boots, tools and a contractor pass. The applicant claimed that the boots were for his classic cars hobby, that he had owned the tools for years, that the drums contained diesel and water and that the contractor pass was in the truck when he bought it. The police confirmed the drums contained tar and the applicant admitted to them that he had been working. The

tar and implements indicated he laid bitumen on road surfaces. The delegate found that this was an activity which normally attracted remuneration and that it constituted work. The applicant claimed to be in Australia to see the country. When asked the degree of hardship caused by the visa cancellation, the applicant indicated that his son was born in Australia and his family would be disappointed if his visa were to remain cancelled.

Held: Decision under review affirmed

The Tribunal considered whether to exercise its discretion not to cancel the visa. Information before the Tribunal indicated that the visa applicant had departed Australia following the lodgement of his application for review. Accordingly, the Tribunal proceeded to make a decision on the information before it. The Tribunal found that, based on the evidence, the applicant had engaged in an activity which normally attracted remuneration in Australia. Therefore, the Tribunal considered that this constituted 'work' and that the applicant had breached condition 8101 (no work) of his visa. Evidence before the Tribunal indicated that there were barrels of tar found in the applicant's car and this suggested a repetitive pattern of work. However, in the absence of further evidence, the Tribunal was unable to determine the extent of the breach. There was no information before the Tribunal regarding the existence of compelling or compassionate circumstances or details of the applicant's behaviour towards the Department. Consequently, the Tribunal was satisfied that the grounds for cancellation of the visa existed under s.116(1)(b) and that the visa should remain cancelled.

Other visas

0808289
30 April 2009, Sydney
Ms A MacDonald, Senior Member

CLASS 812 TRANSITIONAL PERMANENT – R.131A – R.9 – REMAINING RELATIVE – A delegate of the Minister refused to grant the applicant a Class 812 visa on the basis that the applicant did not satisfy r.131A of the Regulations as she did not meet the definition of a remaining relative as at the specified date of 15 October 1990. The original notification issued in 1995 refusing the grant of this visa was later found to be invalid and the applicant was re-notified in 2008. The applicant claimed that on 15 October 1990, she was a remaining relative of her sister and that she has continued to be so. She claimed that she entered Australia in 1982 and remained after her temporary entry permit expired. No further visas were granted to her. The applicant claimed that, at that time, her mother and 6 of her 7 sisters lived in Australia and were either Australian permanent residents or Australian citizens. The applicant's brother claimed he lived in Australia and became an Australian permanent resident in 1992 on the basis of his spousal relationship. The applicant claimed that, on 15 October 1990, one of her sisters was a Fijian citizen and a permanent resident of Germany who lived in London. She claimed this sister visited Australia on 5 occasions prior to the date of her visa application during which she saw and spoke with her as they were quite close. The applicant's representative requested referral to the Minister for consideration under s.351 of the Act based on compelling and compassionate circumstances, claiming that the delay in notifying the applicant of the decision had created a strong dependency by their now aged mother upon the applicant. The applicant claimed that her mother was 78 years old and in poor health and that she had lived with her for many years. The applicant claimed that she had lived in Australia for almost 27 years and that she had become well integrated into the Australian community during that time and that she had no immediate family remaining in Fiji.

Held: Decision under review affirmed

The Tribunal found that the applicant was a prohibited non-citizen before 18 December 1989 and met r.131A(1)(a). The Tribunal was satisfied that, on 15 October 1990, the applicant's brother's intention was to reside in Australia permanently having met his wife and having decided to marry her. The Tribunal found that he usually resided in Australia on 15 October 1990 and that he continued to do so. The Tribunal was satisfied that the applicant's sister, who was living in London, was an overseas near relative. Based on the information regarding her sister's visits to Australia, the Tribunal was satisfied that the applicant's contact with her was communication in the sense of a social relationship. The Tribunal found that the applicant was disqualified from being a remaining relative because she had contact with an overseas near relative during a

reasonable period preceding her application. Therefore, the Tribunal found she was not a remaining relative within the meaning of r.9 and that she did not meet the requirements of r.131A(1)(d)(iv)(D). Accordingly, the Tribunal found that the applicant did not meet r.131A of the Regulations for the grant of the visa.

REFUGEE REVIEW TRIBUNAL DECISIONS

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Bangladesh

0901219
7 May 2009. Sydney
Ms P McIntosh, Member

BANGLADESH – POLITICAL OPINION – JATIYATABADI JUBO DAL – The applicant claimed to fear serious harm for reason of his political opinion, namely his activities as a member of the Bangladesh National Party's (BNP) youth wing, Jatiyatabadi Jubo Dal and his links with two prominent Jubo Dal leaders. The applicant claimed to have been involved in BNP politics since he attended university and that he entered Jubo Dal politics after leaving College. The applicant claimed he was threatened by the Bangladesh Awami League while he was working as a Jubo Dal activist and that, when the BNP handed power to the caretaker government, he went into hiding. He claimed that during his absence Awami League activists came to his house looking for him, harassed and 'physically tortured' his family members, ransacked his house and threatened to take revenge and kill the applicant. The applicant claimed he had close working ties with two BNP leaders, who were arrested while the applicant was in hiding. He claimed the police intended to arrest and interrogate him about the activities of these two men. The applicant provided a letter from one of the BNP leaders stating that he had been arrested, that the applicant had worked as his assistant for a number of years and that since his arrest the authorities had been looking for the applicant. The BNP leader stated that he had advised the applicant to go into hiding until the political situation improved, that on one occasion the Awami League had beaten and wounded the applicant and had also filed a false case against him. The applicant also submitted a letter from the other BNP leader which he claimed to have ties with. A witness gave evidence at the applicant's hearing that he was a senior member of the Jubo Dal in Australia, had known the applicant by reputation in Bangladesh and had seen him at numerous demonstrations. The applicant claimed he would continue his involvement in politics if he returned to Bangladesh despite the risk involved.

Held: Decision under review set aside

The Tribunal found that the applicant was familiar with the BNP and Jubo Dal to a degree consistent with his claimed involvement with them and found his account of his confrontation with Awami League supporters as a student and his detention by police to be credible. The Tribunal also found the evidence of the applicant's witness at hearing to be reliable. It was satisfied that the applicant had provided a truthful account of the events leading to his decision to leave Bangladesh. The Tribunal therefore accepted that the applicant was a long-standing political activist with the Jubo Dal and that he had been consistently politically active since his arrival in Australia. The Tribunal was also satisfied the applicant was sufficiently dedicated his political beliefs that if he returned to Bangladesh he would continue to actively participate in BNP-related political activities in some way. The Tribunal found that the harm feared by the applicant amounted to persecution and independent reports about political violence since the election indicated individuals with the applicant's political profile faced a considerably increased risk of serious harm. The Tribunal therefore considered that the applicant had a well-founded fear of persecution.

Burma

0900571
26 May 2009, Melbourne
Ms M Urquhart, RRT Deputy Principal Member

BURMA – POLITICAL OPINION – NATIONAL LEAGUE FOR DEMOCRACY – PARTICULAR SOCIAL GROUP – FAMILY – ETHNICITY – MIXED RACE – The applicant claimed to fear persecution for reasons of his political opinion, membership of a particular social group and ethnicity. The applicant feared he would be imprisoned and tortured if he returned to Burma due to his imputed and real political opinion arising from his photocopying activities for a National League for Democracy (NLD) Party member and his current support of the NLD Party. He also feared future harm because of his membership of a particular social

group, his family, due to their long standing and close friendship with the NLD Party member and his parent's involvement in political activities and their arrest. The applicant claimed he was not "fully Burmese" and had been discriminated against on grounds of his ethnicity as a person of mixed race. He claimed he managed the family's stationery shop and, on one occasion, printed materials on behalf of the NLD at the request of a family friend who was a high profile NLD Party member. The applicant claimed that in 1988 his father, a government worker, had taken part in anti-government demonstrations criticising the military government and consequently lost his job. He claimed his mother was arrested, imprisoned and suffered harm for helping the NLD during the 1990 elections. The applicant described living under a military government since 1988 when he was a teenager. He claimed he lived in fear over the years as he observed his parents inability to speak openly about political matters and was aware of the abuse and torture of prisoners. He had witnessed beatings and suffered harassment and discrimination as a schoolboy. The applicant felt his family were being watched by the government as he claimed that on important dates, government officials went around checking on people, especially those on "the list" which included former prisoners or demonstrators. The applicant claimed in 2006 his father was imprisoned after the authorities questioned him about the whereabouts and political activities of his wife and son and the photocopying of NLD documents. He claimed he was informed by his aunt of his father's subsequent release and he and his mother had not been in contact with him to avoid causing his father's return to prison. He believed that military intelligence knew of his family's association with the NLD Party member and his photocopying activities. The applicant stated that he participated in demonstrations against the Burmese government while he was in Australia.

Held: Decision under review set aside

The Tribunal found the applicant to be an honest and credible witness and accepted all of his claims. It found he had suffered a lifetime of suppression from the government. The Tribunal found the applicant's demeanour when giving evidence of his father's detention convincing and that his fears over the years were evidence of serious psychological harm suffered by him in the past. Country of origin information (COI) supported the applicant's claims that the Burmese authorities commonly engaged in the abuse and persecution of those suspected of expressing anti-government or pro-democracy beliefs or supporting dissident groups, such as the NLD. Based on COI that "the government punished family members for alleged violation by individuals" and evidence supporting his father's detention, the Tribunal found that there was a real chance that the applicant would suffer harm because of his membership of a political social group, his family. COI also supported the claim of discrimination against ethnic minorities. Consequently, the Tribunal found that the harm feared by the applicant involved serious harm and systematic and discriminatory conduct and that the essential and significant reason for the harm feared was his imputed or actual political opinion, his membership of a particular social group (family) and his ethnicity, any or all of which are Convention reasons. The Tribunal found the applicant's involvement in the anti-government demonstrations in Australia was not conduct for the purpose of strengthening his claim and so may be disregarded under s.91R(3) of the Act. The Tribunal found that as the State was the perpetrator of the harm feared by the applicant, the State could not protect the applicant and that it was unreasonable for him to relocate within Burma. Therefore, the Tribunal was satisfied that the applicant had a well-founded fear of persecution for a Convention reason.

China

0809040
29 April 2009, Sydney
Ms S Durvasula, Member

CHINA – RELIGION – CHRISTIAN – The applicant claimed to fear persecution for reason of her religion. The applicant claimed she was brought up in a Christian family and the family did not attend the registered church as it was controlled by the Chinese government. She claimed she owned a restaurant in Fujian province, evangelised to customers and founded an underground church, using the restaurant's basement as the venue for its meetings. The applicant claimed the restaurant was raided by the police, she was arrested and detained for 6 months in a labour re-education camp for being a church leader and organising underground church activities and her business license was cancelled. After her release, the applicant claimed that she continued to practise Christianity in secret, attending small family church meetings at different places. She claimed that if she returned to China, she would continue evangelising the Christian

faith to others and attending and organising underground church meetings. In her explanation for the 9 months delay in applying for a protection visa, the applicant stated that she had no idea she could apply for protection and she thought it would impact her son, who was studying in Australia. The applicant claimed she regularly attended a Christian church since her arrival in Australia. She provided documentary evidence supporting her claims of arrest and detention.

Held: Decision under review set aside

The Tribunal had some doubts about the applicant's claims to fear harm in China due to her delay in lodging a protection visa application. It considered it implausible that the applicant, who was regularly attending a Chinese Christian church and had contact with other refugees, would not have been aware earlier that she could apply for protection. The Tribunal balanced this concern against other evidence provided in support of her claims and found that the delay in lodging a protection visa application did not necessarily mean that the applicant's other claims were entirely untrue. The Tribunal found the applicant to be a credible witness and accepted that she grew up in a Christian family and was a practising and committed Christian since childhood. The applicant provided a detailed account of her Christian beliefs and practices, the nature of her underground church activities and the circumstances of her arrest and detention by the authorities which was consistent with her written statements and claims at interview. Independent evidence suggested that when crackdowns towards house churches occurred, both leaders and members were detained, interrogated and subjected to physical abuse and sporadic mistreatment of underground Christians continued to occur in Fujian province. Consequently, the Tribunal was satisfied that there was a real chance that persons known to attend unregistered underground churches may be subjected to serious harm. The Tribunal considered the applicant's religion the essential and significant reason for the persecution which she feared and that the persecution involved systematic and discriminatory conduct. Since the Chinese Government was responsible for the persecution which the applicant feared, the Tribunal considered that there was no part of China that the applicant could reasonably be expected to relocate to. The Tribunal was satisfied that the applicant's church-going activities in Australia were as a committed Christian and that this was conduct otherwise than for the purpose of strengthening her refugee claim under s.91R(3) of the Act. Therefore, the Tribunal was satisfied that the applicant had a well-founded fear of persecution for a Convention reason.

0901444
14 May 2009, Sydney
Ms N Dougall, Member

CHINA – RELIGION – POLITICAL OPINION – FALUN GONG – The applicant claimed to fear persecution from Chinese authorities as he was a Falun Gong practitioner and that he had a solid understanding of the spiritual side of Falun Gong. He claimed that his father had been arrested in 2000 and detained for a year. He claimed that he practised Falun Gong with his family to help him recover from a back injury and to keep fit. The applicant initially claimed that the authorities had discovered he was a Falun Gong practitioner when a friend visited his home and he had shared materials and pamphlets with him. He later claimed that the friend found the materials in his room and had reported him to the authorities who then searched his house and found books and other material. He claimed he then ran away to another province where he stayed in hiding with a relative for about a year. The applicant claimed that the police continued to look for him in his absence and that when he returned, he was arrested and detained for a year and that he still had scars from being tortured. He claimed that after his release from detention he made two overseas trips and for nearly two years he planned his trip to Australia. He claimed that he applied for his Australian visa when he was visiting Japan as it was easier to obtain it from there.

Held: Decision under review affirmed

The Tribunal found that the applicant was not a credible witness because the inconsistencies, contradictions and implausibility in his evidence were of such magnitude that they indicated the claims were not truthful. The Tribunal found that the applicant made inconsistent and contradictory statements concerning the Falun Gong material his friend had found which led to him being reported to the authorities, the dates of his arrest and when the Police looked for him, searched his home and when they questioned him. The Tribunal was not satisfied that the applicant was a Falun Gong practitioner, that he ran away to another city, was later arrested and detained for a year, that his father was a Falun Gong practitioner or that he was arrested and detained. The Tribunal considered it implausible that the applicant would return to China once he had managed to leave for Japan or that he would remain in China for a year prior to his departure for Australia.

The Tribunal found that there was no plausible evidence that the applicant had suffered persecution or that there was a real chance he would suffer persecution in the future for any Convention reason. Accordingly, the Tribunal was not satisfied that the applicant had a well-founded fear of persecution.

Fiji

0808875
5 May 2009, Melbourne
Mr G Ledson, Member

FIJI – POLITICAL OPINION – COMMUNITY LEADER – The applicant claimed to fear persecution for reasons of his political opinion as he was involved with a political party and he was an active leader in his local community. He claimed that he attended provincial meetings and raised issues in opposition to the government military council and when he attended Parliament and presented his views of community issues and concerns, he was threatened by senior military officers and warned not to agitate against the government. The applicant claimed he continued with his community work and development programmes and attended district meetings where he criticised the military regime. He claimed he was reported and that he was called before the military council twice and warned to cease agitating and criticising the military government. The applicant claimed that because of this intimidation and threats made directly to him and the implied threats to his family, he had chosen self-censorship in relation to his political opinions. He claimed that if he returned to Fiji, he would be expected to become involved in his local community again to resolve issues and that he would become a target for the government. He feared that government agents would report him to the military and that he may be arrested, detained, taken to a camp and mistreated. Additionally, the applicant claimed that as a consequence of this intimidation, he had been denied the freedom to speak out about his opposition to the military regime.

Held: Decision under review set aside

The Tribunal found the applicant to be a credible witness. The Tribunal accepted country information which indicated that Fijians who opposed the military regime and political agenda were singled out and warned to desist from their activities and that Fijians who spoke out against the military regime faced a real chance of harassment, threats and arrest. The Tribunal was satisfied that the applicant had a political profile, that he was the target of threats in the past and that he would be in the future if he continued with his strong commitment to local welfare issues. The Tribunal found that the applicant's loss of freedom to speak out as a consequence of intimidation and threat of arrest, detention and being taken to a camp amounted to persecution involving serious harm and systematic and discriminatory conduct. It was not satisfied that the applicant could safely relocate in Fiji because of his political profile and the current situation there. Accordingly, the Tribunal was satisfied that the applicant faced a real chance of serious harm amounting to persecution from the military for reasons of his real or imputed political opinion and that he had a well-founded fear of persecution for a Convention reason.

India

0900297
5 May 2009, Sydney
Ms P Pope, Member

INDIA – POLITICAL OPINION – The applicant claimed to fear persecution for reasons of his political opinion. The applicant claimed that his father supported a political party and discussed political matters with visitors at home. He also claimed that his father was of interest to the police and his activities drew their attention. The state police arrested him and his father twice, interrogated and tortured them and then released both of them. He claimed that his father was a union leader and during the state elections the applicant and his father opposed a local political leader. There was a backlash from this and his father was threatened. The police were informed but no action was taken. His father was often away and the applicant claimed that the police questioned him about his father's whereabouts but that they left him alone as he could not tell them. He was also questioned by police when his father returned home. The applicant claimed that he knew nothing about his father's activities, where he went, who his friends were, what they discussed

or why the police were looking for him. The applicant claimed he was perceived as a sympathiser of his father's political party and risked detention, interrogation and torture by the police if there were any problems from that party. He claimed that he was physically mistreated by the police but could not describe their actions or particular events. He claimed that he cannot relocate to another part of India as he cannot live away from his father.

Held: Decision under review affirmed

The Tribunal accepted that the applicant assisted his father with low level political campaigning during state elections and that there was a backlash where the applicant's father was threatened by members of another party. The Tribunal did not accept that the threats were taken seriously by the applicant's father as he did not leave the state for some months. The Tribunal accepted that the applicant's father's activities drew the attention of the local police and that the applicant has not had any contact with his father since he came to Australia. In view of this, the Tribunal found that the applicant would not be questioned or harassed by the police if he returned in the reasonably foreseeable future. However, in the event that his father did return, the Tribunal accepted that the police would continue to question him about his knowledge of his father's activities. The Tribunal found that such questioning related to attempts by the police to apply laws of general application in the maintenance of national security. It did not relate to the applicant's political opinion or one imputed to him because of his father. The Tribunal did not accept that questioning of the applicant in these circumstances was discriminatory nor did it accept that questioning of the applicant in the past had been such that it could be described as amounting to significant physical harassment or ill-treatment. Although the applicant claimed that he was physically mistreated by the police on occasion, when asked to describe those events he was unable to do so. The Tribunal found that the conduct of the police and their treatment of the applicant in the past was not serious harm for the purposes of 91R. Furthermore, the Tribunal found that the cumulative treatment does not amount to persecution. Accordingly, the Tribunal was not satisfied that the applicant had a well founded fear of persecution for a Convention reason.

0901080
1 May 2009, Melbourne
Ms L Kirk, Senior Member

INDIA – PARTICULAR SOCIAL GROUP – HOMOSEXUAL – The applicants claimed to fear persecution on the basis of their membership of the particular social group, homosexuals in India. The applicants claimed to have been friends prior to traveling to Australia for World Youth Day. They claimed to have developed a relationship and lived together while visiting Australia. The applicants claimed that they had hoped to continue their relationship when they returned to India, but were discovered by their parents, beaten and locked in their rooms. They subsequently escaped and returned to Australia. The first-named applicant claimed that if he returned to India he would be killed or severely injured and forced to marry a girl. He claimed he would be harmed or mistreated by members of his family, who had disowned him, and by people in his town and members of his church who would not accept his choice of sexuality. He claimed to be unable to relocate to another part of India as he was unemployed and could not support himself and the second-named applicant. He claimed that they would be shunned by potential employers because of their sexuality. The second-named applicant claimed to fear that his parents, people from his village and members of his parish would try to kill him or force him to separate from the first-named applicant. He also claimed that they would try to harm the first-named applicant, who was blamed for instigating the relationship as the elder of the pair. The applicants further claimed that they would be punished by the police, perhaps blackmailed, if their relationship was discovered, and that they did not possess the networks, wealth or social contacts to support themselves or seek protection. The applicants were invited by the Tribunal to give oral evidence and present arguments at a hearing. They did not attend the scheduled hearing or make contact with the Tribunal.

Held: Decision under review affirmed

As the applicants failed to attend the scheduled hearing, the Tribunal proceeded to make its decision on the basis of the available information. The Tribunal found the applicants' claims to be lacking in detail in significant respects, and that there was not enough information to find that there was a real chance the applicants would suffer serious harm amounting to systematic and discriminatory conduct on their return to the country. The applicants' claims gave rise to many issues which the Tribunal wished to explore at the hearing, such as the source of the claimed threats that they would be killed or severely injured and forced to

marry a girl if they returned to India, and why the applicants could not relocate and/or find work in another part of India where homosexuality is more tolerated. As a consequence of their failure to provide evidence to substantiate their claims, the Tribunal was not satisfied that the applicants were homosexual and therefore could not be satisfied that they would be harmed or mistreated by their family members, members of their communities or members of their church. Nor could the Tribunal be satisfied that they would be forced to marry a girl chosen by their families if they returned to India. Given the paucity of available evidence, the fact that the applicants were put on notice that the Tribunal could not make a favourable decision on the information provided and the applicants' failure to attend the hearing or make any contact with the Tribunal, the Tribunal was not satisfied on the evidence before it that the applicants had a well-founded fear of persecution within the meaning of the Convention.

Sri Lanka

0808237
25 May 2009, Sydney
Dr I O'Connell, Senior Member

SRI LANKA – POLITICAL OPINION – LIBERATION TIGERS OF TAMIL EELAM – PARTICULAR SOCIAL GROUP – YOUNG TAMIL MALES – The applicant claimed to fear persecution for reasons of his imputed political opinion as a supporter of the Liberation Tigers of Tamil Eelam (LTTE) and membership of a particular social group, young Tamil males of eastern Sri Lanka. He claimed that, when he was four years old, his father was arrested by the authorities under suspicion of collaboration with the LTTE and that he had been missing, presumed dead. He also claimed that throughout his school years he experienced threats and intimidation from the LTTE and that an attempt to forcibly recruit him and other school children was foiled by the authorities. The applicant claimed he was arrested by the authorities on two occasions for his suspected association with the LTTE based on his ethnicity and that he was detained for several weeks, mistreated and tortured and he feared further arrests if he were to return. The applicant also claimed that the LTTE suspected him of giving information about their operations to the authorities and that he was forcibly detained in a LTTE camp for 3 months but he managed to escape. The applicant claimed that he could not relocate to an area such as Colombo because he only spoke Tamil and, as his identity card indicated that he was a Tamil from the east, the authorities would consider him to be a LTTE associate based on this profile. The applicant submitted personal documents, a copy of his father's arrest and detention papers and a doctor's report indicating that he suffered post-traumatic stress disorder as a result of the torture he had suffered.

Held: Decision under review set aside

The Tribunal accepted that the applicant was a Tamil from the eastern area of Sri Lanka but found that his oral evidence was unconvincing on several points. The doctor's report submitted by the applicant was inconsistent with his Commonwealth medical examination papers in which he responded in the negative to questions on depression, anxiety and physical pains. Evidence provided in support of his visitor visa application indicated that his father was a businessman who was financially supporting his visit to Australia. This contradicted his claim that his father had disappeared and was presumed dead. Consequently, the Tribunal did not accept all the incidents of past harm claimed by the applicant, in particular, that he was arrested, mistreated and tortured by the Sri Lankan authorities and that he was detained by the LTTE. However, the Tribunal formed the view that it was unnecessary to make definitive findings about all of the applicant's claims of past harm as it was satisfied that there was a real chance that he could face persecution for a Convention reason. Country information indicated that the applicant, as a young Tamil male from the east of Sri Lanka, could be detained by the Sri Lankan authorities in a cordon and search operation or at a checkpoint. Whilst this of itself did not constitute persecution, the information indicated that upon arrest persons of the applicant's profile were not infrequently subjected to prolonged detention and were mistreated in detention. The Tribunal found that this constituted serious harm for a Convention reason of his membership of a particular social group, young Tamil males of the eastern or northern districts. The Tribunal was satisfied that although the probability that the applicant would be detained and mistreated may be small it was nonetheless a real possibility and, as such, there existed a real chance that the applicant could face persecution for a Convention reason should he return to Sri Lanka now or in the reasonably foreseeable future. Accordingly, the Tribunal was satisfied that the applicant had a well-founded fear of persecution for a Convention reason.

Stateless

0808284
21 May 2009, Melbourne
Ms J Ellis, Member

STATELESS (KUWAIT) – RACE – STATELESS PALESTINIAN – PARTICULAR SOCIAL GROUP – NON-KUWAITI CITIZENS WITH EXPIRED RESIDENCY RIGHTS – The applicant claimed to fear persecution on the basis of his Palestinian race and his membership of the particular social group, non-Kuwaiti citizens whose residence rights have expired. The applicant claimed that his parents had migrated to Kuwait before he was born and he had never been registered with the Palestinian authorities. He claimed to have suffered ongoing discrimination in Kuwait as a stateless Palestinian and to have faced serious disadvantage in terms of education, employment and freedom of movement. While he was in Australia studying, the applicant became aware that his employment in Kuwait had been terminated. As Palestinian residency in Kuwait is dependent upon employment, the applicant claimed to have lost, along with his employment, his right to re-enter and reside in Kuwait which is his country of birth and former habitual residence. The applicant claimed that people without residence permits in Kuwait were jailed for two years and then deported to their country of former habitual residence. As the applicant had no right of entry to Gaza or the West Bank, he claimed to fear indefinite detention in Kuwait if he were to return.

Held: Decision under review affirmed

The Tribunal accepted that the applicant was stateless and independent evidence that indicated that although the applicant had been granted Egyptian travel documents he did not have the right to reside in Egypt, that he was not allowed to enter or reside in Gaza or the Palestinian Territories and that he could not access citizenship in Kuwait nor return there because his residency had expired. The Tribunal noted, however, that refugee status is not accorded to a person merely because they are stateless and unable to return to their country of former habitual residence. An applicant must have a well-founded fear of persecution for a Convention reason in the reasonably foreseeable future in that country. The Tribunal did not accept that the applicant had been denied employment or discriminated against in relation to public education in Kuwait for reason of his race or any Convention ground. It further found that the restricted freedom of movement experienced by the applicant did not amount to persecution which entailed 'serious harm'. While accepting that the applicant did not have the right to re-enter Kuwait, the Tribunal was unable to find any independent evidence that Palestinians had been subject to indefinite detention as was claimed by the applicant. The Tribunal noted that there might be a possibility that the applicant would be subject to indefinite detention as a result of his lack of residence rights but found that this would not be for a Convention ground. The Tribunal considered that Kuwaiti law in relation to non-residents could be considered to be a law of general application, and as such, must be shown to discriminate for a Convention reason. The Tribunal found that the law applied equally to all non-citizens in Kuwait without residency permits. The Tribunal accepted that Palestinians may be subject to indefinite detention due to the fact that there is no country to deport them to; however, the Tribunal considered this was not for a Convention reason but as the result of the exercise of a law of general application. Accordingly, the Tribunal found that the applicant did not face a real chance of persecution for a Convention reason. The Tribunal expressed sympathy for the applicant's circumstances and noted that his inability to ever receive citizenship in his country of birth and former habitual residence did appear repugnant to the values of Australian society. Having regard to the applicant's circumstances and the ministerial guidelines relating to the Minister's discretionary power, the Tribunal considered the case should be referred to the Department to be brought to the Ministers attention.

Turkey

0900309
11 May 2009, Melbourne
Ms R Gagliardi, Member

TURKEY – POLITICAL OPINION – KURDISTAN WORKERS' PARTY – RELIGION – ALEVI MUSLIM – ETHNICITY – KURDISH – PARTICULAR SOCIAL GROUP – FAMILY – The applicant claimed to fear persecution for reason of his imputed political opinion (membership of the PKK), religion (Alevi Muslim), ethnicity (Kurdish) and membership of a particular social group, being a member of his son's family, his son having participated in pro-Kurdish activities. The applicant claimed that many young people, including his son, protested against a government proposal to build a mosque in the village and were subsequently beaten and taken for interrogation by the military. The applicant's son fled to Australia because of these problems which were compounded by his religion and active involvement in trade unions. He was granted refugee status. Since that time the applicant claimed to have been questioned regularly by local authorities regarding his son's whereabouts. On one occasion, the applicant claimed to have been punched in the face by an unknown assailant in the middle of the night after refusing to co-operate with an order by the military to cut down some trees. The injury resulted in ongoing medical problems. The applicant claimed that in 2007 his house was shot at directly by the military. Both the applicant's children are in Australia and he was a widower. His only family in Turkey was an adult granddaughter with whom he claimed he could not stay permanently due to her own financial problems and a lack of suitable accommodation. The applicant claimed he was at risk of serious harm in his own village but that he could not live anywhere else in Turkey due to his age and inability to earn a living, his lack of entitlement to any sort of pension and the absence of housing assistance for the elderly.

Held: Decision under review set aside

The Tribunal found the applicant's claims to be largely consistent with those of his son, who had been deemed to be a refugee in Australia several years ago. The Tribunal found the applicant to be an honest witness, who could corroborate events concerning the claimed shooting in his village and the trauma to his head through independent sources. Given the applicant's credibility overall, the Tribunal accepted that this injury was inflicted by the authorities in his village as part of their general harassment of Kurdish Alevi, particularly those with family members who had a profile as dissidents in the area. The Tribunal determined that, as the applicant claimed fear of ill-treatment and persecution by state authorities, he could not apply for protection from these authorities, particularly in his home village. The Tribunal found that on the basis of past events and independent country information, the applicant faced a real chance of serious harm were he to return to his home town due to his imputed political opinion, religion, ethnicity and membership of a particular social group, being a member of his son's family. The Tribunal found that independent information strongly suggested that a person with a profile like the applicant's could ordinarily relocate within Turkey without difficulty. However, the Tribunal took into account the applicant's circumstances including: his age, frailty and ongoing problems associated with his head injury; the potential social dislocation involved with moving from a rural community to a larger city; the applicant's grand-daughter's precarious financial circumstances and lack of appropriate accommodation; the applicant's lack of means to support himself and his fears of social alienation as an Alevi/Kurd. Taking into account the applicant's circumstances individually as well as cumulatively, the Tribunal found that it would not be reasonable for the applicant to relocate from the local area that presented itself as an immediate danger in terms of serious harm. Accordingly, the Tribunal was satisfied that the applicant had a well-founded fear of persecution for a Convention reason.

SZMBL v MIAC
[2009] FCA 622
Federal Court of Australia, North J, NSD 161 of 2009, 22 May 2009

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

The appellant, a citizen of Bangladesh, initially claimed to fear persecution because, in his past employment as a railway porter and construction worker, he had faced a lot of difficult and inhuman situations. At the first Tribunal hearing, the appellant made a new claim that he had been active in student politics for the Awami League and had continued to be politically active in Australia. In response to a letter from the Tribunal inviting him to comment on the fact that he did not raise his political claims earlier, the appellant claimed that his migration agent, who accompanied him at the first hearing, had failed to submit the claims for him and had also advised him very strongly not to put forward his political claims. The appellant later appeared again before the Tribunal without his agent. In its decision, the Tribunal found that the appellant's political claims were entirely untrue and were raised at the last minute to strengthen his case. The Tribunal also found that the appellant engaged in political activity in Australia to strengthen his claim for protection and stated that it had disregarded such conduct pursuant to s.91R(3) of the *Migration Act* 1958. Immediately following that statement, the Tribunal said, *"(g)iven the Tribunal's serious reservations about the genuineness of the applicant's claims and of his evidence as a whole the Tribunal is not satisfied that such threats occurred."*

The appellant, at first instance, contended that the Tribunal's failure to investigate his allegation against the agent gave rise to jurisdictional error. The Federal Magistrate found that that there was no special or exceptional reason for the Tribunal to have undertaken any further inquires.

On appeal, the appellant further contended that the Tribunal's reference to "*evidence as a whole*" included a reference to the evidence about the appellant's activities in Australia and therefore breached s.91R(3).

Held: Appeal dismissed.

(i) The Federal Magistrate did not err in concluding that the Tribunal did not fall into jurisdictional error by refraining from making inquiries. The Tribunal was entitled to take the view that the explanation by the appellant as to why the political claims were omitted from the visa application was so improbable that it could reasonably be rejected without further inquires.

(ii) The reference to "evidence as a whole" read in context excludes the evidence of the appellant's Australian conduct. It is unreal to suggest that the Tribunal having just said that it disregards the appellant's conduct in Australia, in the next sentence contradicts itself. The Tribunal's subsequent concluding summary also confirms this.

Dhanoa v MIAC & Anor
[2009] FMCA 383
Federal Magistrates Court of Australia, Driver FM, SYG 3263 of 2008, 4 June 2009

The applicant sought judicial review of a Migration Review Tribunal (the Tribunal) decision affirming a decision of a delegate of the Minister to refuse to grant a Skilled – Independent Overseas Student (Residence) (Class DD) visa.

The delegate found the applicant achieved 110 points under the points test in Schedule 6A to the Migration Regulations 1994 (the Regulations) and as a result did not meet the qualifying score of 120 points for the purposes of cl.880.222 of Schedule 2 to the Regulations. The applicant claimed he was willing to invest at least $100,000 in an approved Australian Government investment for a term of at least 12 months in order to qualify for 5 bonus points under Item 6A81 of Part 8 of Schedule 6A. However, as he was awarded 15 rather than 20 points for the English language component, the delegate concluded that the applicant did not meet the 115 point requirement to initiate a request for capital investment.

The applicant later provided evidence to the Tribunal of an IELTS English language test result that was sufficient for the award of 20 points. The Tribunal accepted this, but on the basis that the applicant had not made a deposit of $100,000 in a designated security, it found that the applicant did not satisfy cl.880.222 as he did not have the qualifying score under the points test at the time of the Tribunal's decision.

The applicant argued that the Tribunal's decision was affected by jurisdictional error in that it failed to take into account a relevant consideration, being that it had the option of remitting the matter to the Minister with a direction that the applicant satisfied the criterion in relation to language skills. The applicant further argued that the Parts of Schedule 6A of the Regulations would each come within the normal English meaning of the word 'criterion'. Alternatively, it was argued that it was open to the Tribunal to remit the matter to the Department with a direction that another prescribed criterion had been met.

Held: MRT decision set aside and remitted for reconsideration.

(i) The Tribunal made a jurisdictional error by failing to make an enquiry of the Department that would have properly informed its exercise of discretion. Information was readily available to the Tribunal that no designated security was available at the relevant time into which the applicant could make a required deposit. The information was centrally relevant to the decision and was of immediate relevance to both the timing of the decision and the appropriate power to be exercised by the Tribunal in the circumstances. If the Tribunal had made the enquiry, it might have considered it appropriate to remit the case to the delegate or defer making a decision. Following *SZIAI v MIAC* [2008] FCA 1372, it was unreasonable in the exceptional circumstances of this case for the Tribunal not to make a further enquiry.

Obiter

(ii) The Tribunal may remit a case to Minister's Department with or without directions or recommendations, but if it chooses to attach directions or recommendations to the remitter, it is confined to those directions or recommendations as are permitted by the Regulations. Subsection 349(2)(c) limits the directions or recommendations that may be made on remittal but not the power of remittal itself.

(iii) It was open to the Tribunal to remit the case to the delegate with a direction that the applicant met specified component parts of the points test for the purposes of 880.222. While in a strict sense the relevant visa criterion is the sum of the component parts of the points test, the Tribunal is not required to disregard those component parts in deciding whether to remit a case to the Department.

Perkit v MIAC & Anor
[2009] FMCA 483
Federal Magistrates Court of Australia, Turner FM, MLG 1349 of 2009, 29 May 2009

The applicant sought judicial review of a Migration Review Tribunal (the Tribunal) decision affirming a decision of the Minister's delegate to refuse to grant him a Skilled–Independent Overseas Student (Residence) (Class DD) subclass 880 visa.

The delegate found the applicant achieved 110 points under the points test in Schedule 6A to the Migration Regulations 1994 (the Regulations)and as a result he did not meet the qualifying score of 120 points for the purposes of cl.880.222 of Schedule 2 to the Regulations. Although the applicant was willing to invest AUD 100,000 in a designated security as an option to gain 5 bonus points under Item 6A81 of Part 8 of Schedule 6A, the delegate did not initiate a request for the money given that the qualifying score of 120 points still would not have been met. In addition, organisations which dealt in designated securities had withdrawn the facility.

The Tribunal found that Item 6A81 required that the applicant "has deposited" the requisite money in a designated security and as he had not actually deposited the money he was not entitled to the 5 bonus points. The Tribunal was of the view that it could only remit an application to the Department if it was satisfied that an applicant met a criterion for the visa. The Tribunal was not satisfied that the applicant met cl.880.222 as he had not reached the qualifying score of 120 points.

The applicant contended the Tribunal should have requested him to provide evidence that he intended to deposit the money and on the substantive merits of the case it should have remitted the matter on the grounds that specific items in Schedule 6A were satisfied while recommending that the Department request the funds to be deposited.

Held: Application dismissed.

(i) The Tribunal made no error in law in deciding that the applicant was not entitled to the 5 points. The law is clear; under Item 6A81 the applicant must show that he has deposited at least AUD 100,000 in a designated security. An intention is not the requisite test under Item 6A81, that intention has no relevance. The requirement to comply with Item 6A81 is not a technicality. The case was decided on the law and the substantive merits of the case.

(ii) The Tribunal could not remit the matter for reconsideration. Regulation 4.15(1)(b) provides that a permissible direction is that the applicant must be taken to have satisfied a specific criterion for the visa. The Tribunal concluded correctly that it could not make a permissible direction because it could not direct that the applicant satisfied a specific criterion.

Rana v MIAC & Anor
[2009] FMCA 553
Federal Magistrates Court of Australia, Cameron FM, SYG 35 of 2009, 16 June 2009

The applicant, a citizen of India, sought judicial review of a decision of the Migration Review Tribunal (the Tribunal) affirming a decision of the Minister's delegate not to grant him a Student (Temporary)(Class TU) visa because the applicant did not satisfy cl.572.223(2) of Schedule 2 to the Migration Regulations 1994 (the Regulations).

The applicant applied for the visa in April 2007. In September 2007 he undertook an IELTS test and achieved an overall band score of 6.0. Clause 572.223(2)(a)(i)(A) relevantly required that, at time of decision, the applicant gives to the Minister evidence in accordance with the requirements mentioned in Schedule 5A for Subclass 572 and the assessment level to which the applicant is subject in relation to the applicant's English language proficiency. The relevant provision in Schedule 5A for assessment level 4 was cl.5A404(a)(ii), which required the applicant to have "*achieved, in an IELTS test that was taken less than 2 years before the date of the application, an Overall Band Score of at least 5.5* ..." or cl.5A404(b)(ii) which required an Overall Band Score of at least 5. The Tribunal found that to meet this requirement the IELTS test must have been conducted "within the 2 year period before the date specified", that is, before the date of the application, and therefore that it could not take into account the applicant's IELTS test taken in

September 2007. As the applicant did not provide evidence of English language proficiency in accordance with Schedule 5A, he did not satisfy an essential requirement of cl.572.223.

The applicant claimed the Tribunal misconstrued the Schedule 5A English language proficiency provision because an IELTS test taken between the date of the visa application and date of decision was capable of satisfying the provision, correctly construed.

The Court observed that the relevant assessment level for the applicant was Assessment Level 4 and that the Tribunal had erroneously found that the applicant was subject to Assessment Level 3. However, the applicant did not rely on this error, acknowledging that the Court's conclusion on the issue of interpretation would apply equally to both cl.5A407, which was the provision considered by the Tribunal, and cl.5A404, which was the clause which it should have considered.

Held: Application dismissed.

(i) The expression 'less than 2 years before' in cl.5A407 and 5A404, properly understood, requires an applicant to sit his or her IELTS test before lodging the visa application. The word 'before' has the effect of closing the period within which the IELTS test may be sat and the criterion satisfied. Unless that event occurs 'before' the application is lodged it does not fall within the required period and cannot be taken into consideration. That is the purpose of the relevant provision as explained in the Explanatory Statement.

(ii) The identification of the correct meaning of the expression 'less than 2 years before the date of the application' is not elucidated by other provisions in the Regulations. The reason for differences in formulation can only be a matter of inference and the Court will not infer from the Regulations an intention which is in conflict with the drafters' express intention. Even so, while recognising the drafters' intention, and the appropriateness of preferring a meaning which is both reasonably open and in conformity with that intention, it is necessary to consider the words themselves with a view to determining their meaning.

SZNAB v MIAC & Anor
[2009] FMCA 152
Federal Magistrates Court of Australia, Driver FM, SYG 3173 of 2008, 3 June 2009

The applicant, a citizen 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 harm because he was a Christian who attended church activities in Australia. The Tribunal concluded that it must disregard the applicant's conduct in attending church activities in Australia pursuant to s.91R(3) of the *Migration Act* 1958 (the Act). The Tribunal found that the "main" or "dominant purpose" of those activities was to strengthen the applicant's protection visa claims.

The Minister conceded that the Tribunal made a jurisdictional error in its application of a dominant purpose test rather than the sole purpose established by *Somaghi v MIAC* (1991) 31 FCR 100.

Held: RRT decision quashed and remitted for reconsideration.

(i) The Minister's concession should be accepted.

(ii) The Full Federal Court decision in *Somaghi* is authority for a sole purpose test. The observations of Madgwick J in *SZJZN v MIAC* [2008] FCA 519 about a dominant purpose test were *dicta* and are not binding upon the Court.

(iii) Pending the outcome of the High Court appeal from *MIAC v SZJGV* [2008] FCAFC 105, the Tribunal and the Court should proceed on the basis that s.91R(3) calls for the application of a sole purpose rather than a dominant purpose test in considering the motivation of an applicant in undertaking conduct in Australia.

SZNCK v MIAC & Anor
[2009] FMCA 399
Federal Magistrates Court of Australia, Driver FM, SYG 3448 of 2008, 28 May 2009

The applicant, a Chinese 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 applicant claimed to fear persecution on the basis that he and his wife had breached China's one child policy by having a second child.

The Tribunal accepted that the applicant and his wife may have breached China's family planning laws, that a fine had been imposed on them and that the applicant's wife had lost her job as a result. The Tribunal also accepted that other punitive actions may be taken against the applicant and that such matters "may amount to persecution within the meaning of s.91R(1)" of the *Migration Act* 1958 (the Act). However, relying on a US Department of State Report on Human Rights, the Tribunal found that such actions would be taken in accordance with China's family planning laws and involved the non-discriminatory enforcement of a law of general application.

The applicant contended that the Tribunal fell into jurisdictional error by finding that the "other actions" would be carried out in accordance with the relevant laws and by failing to make findings on whether those actions were appropriate and adapted to achieving the object of population planning.

Held: Tribunal decision quashed and remitted for reconsideration.

(iii) The Tribunal constructively failed to exercise jurisdiction in relation to the applicant's claims.

(iv) There was a false assumption that the enforcement of a law of general application which was itself non-discriminatory could not constitute persecution for any reason within the scope of the Convention. The Tribunal's finding that the other actions of the authorities appeared to be carried out in accordance with the law was not based on evidence apart from the US Department of State report which stated that such measures could not be taken without court approval and that that requirement was not always followed. The Tribunal cannot assume that action taken in consequence of non payment of a fine imposed according to law is itself taken in accordance with law and is not discriminatory. Neither can the Tribunal assume without evidence that such action is appropriate and adapted to the circumstances in accordance with international standards.

(v) Although not specifically articulated, it may reasonably be surmised that the applicant's claims supported a contention that he feared harm as a member of the particular social group of parents of a child born in breach of China's one child policy. The Tribunal accepted the fact of that claim and that it might amount to persecution under s.91R(1) and so needed to consider whether that harm did indeed amount to Convention related harm.

(vi) The Tribunal conducted an extensive review of the available country information and made adequate reference to the most up to date information in accordance with the principle arising from *SZJTQ v MIAC* [2008] FCA 1938 that the Tribunal must have regard to the most recent available material unless excused by the Act.

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

REGULATIONS

Migration Amendment Regulations 2009 (No. 7) (SLI 2009 No. 144)
These Regulations amend the Migration Regulations 1994 to address discrimination against same-sex couples and their children and make a number of changes to English language requirements for General Skilled Migration visas. These Regulations commenced on 1 July 2009.

Migration Amendment Regulations 2009 (No. 6) (SLI 2009 No. 143)
These Regulations amend the Migration Regulations 1994 to abolish the 45-day rule for certain Bridging visa subclasses and provide for new provisions in relation to permission to work for certain applicants. These Regulations commenced on 1 July 2009.

Migration Legislation Amendment Regulations 2009 (No. 2) (SLI 2009 No. 116)
These Regulations amend the Migration Regulations 1994 in relation to Subclass 462 (Work and Holiday) visas, Subclass 457 (Temporary Business (Long Stay)) visas, Subclass 676 (Tourist) visas, Subclass 050 (Bridging (General)) visas, Subclass 410 (Retirement) visas, Witness Protection (Trafficking)(Temporary)(Class UM) visas, Witness Protection (Trafficking)(Permanent)(Class DH) visas, Parent visas, Remaining Relative visas and Contributory Parent visas. They also substitute certain references to "Gazette Notice" with "instrument in writing".

Migration Amendment Regulations 2009 (No. 5) (SLI 2009 No. 115)
These Regulations amend the Migration Regulations 1994 in relation to sponsorship for Subclass 457 (Business (Long Stay)) visas and Subclass 470 (Professional Development) visas. These Regulations commence on 14 September 2009.

INSTRUMENTS

Migration Act 1958 – Revocation of section 499 Direction No. 21 (IMMI 09/047)
This Direction revokes the Migration Act 1958 – Direction under section 499 – Visa Refusal and Cancellation under section 501 (Direction No. 21 of 2001). Effective from 15 June 2009.

Migration Regulations 1994 – Specification under subparagraph 050.212(8)(c)(ii) – Bridging (General) Visa – Satisfaction of Criteria by Certain Applicants (IMMI 09/079).
This Specification provides that persons who held a Subclass 786 Humanitarian Concern Visa, for whom the Minister has lifted the bar in section 91K of the Migration Regulations 1994 and who have made an application for a Protection (Class XA) visa within 7 working days of being given notice that the Minister has lifted the bar, are exempt from satisfying the Minister that there is an acceptable reason for the delay in applying for a Protection (Class XA) visa. This Instrument commenced on 1 July 2009.

Migration Regulations 1994 – Specification under paragraphs 134.222C(2)(a), 139.226(b), 496.226(b), 863.226(b), 882.225(b), 6B34(a) and (b) and 6B103(g)(ii) and (iii) and subparagraphs 487.215(b)(i) and (c)(i), and 487.224(b)(i) and (c)(i) – English Language Training Arrangements (IMMI 09/078).
This Instrument specifies the States and Territories in which arrangements are established for suitable English language training for certain General Skilled Migration visa applicants. The previous instrument, IMMI 07/054, signed on 28 August 2007, was revoked by IMMI 09/072. This Instrument commenced on 1 July 2009 in relation to an application for a visa made on or after 1 July 2009.

Migration Regulations 1994 – Specification under regulations 846.111, 855.111, 856.111 and 857.111 – Health Waiver – Participating States and Territories (IMMI 09/074).
This Specification supports provisions in the Migration Regulations 1994 which require that applicants (and their non-migrating family members) for visa subclasses 846 (State/Territory Sponsored Regional Established Business in Australia), 855 (Labour Agreement), 856 (Employer Nomination Scheme) and 857 (Regional Sponsored Migration Scheme) satisfy Public Interest Criteria (PIC) 4007 if the applicants reside (or propose to reside) in a participating State or Territory. Effective from 1 July 2009.

Migration Regulations 1994 – Specification under regulations 1.15C, 1.15D and clauses 485.215 and 487.215 of sch 2 – English Language Tests for General Skilled Migration (IMMI 09/073).
This Instrument specifies scores for certain passport holders for English Language Tests. Effective from 1 July 2009.

Migration Regulations 1994 – Specification under subparagraph 050.212(8)(b)(ii) – Bridging (General) Visa – Satisfaction of Criteria by Certain Applicants (IMMI 09/070).
This Specification revokes the Migration Regulations 1994 – Specification under subparagraph 050.212(8)(b)(ii) – Bridging (General) Visa – Satisfaction of Criteria by Certain Applicants – December 2006 as a consequence of amendments to the Migration Regulations to abolish the requirement that applicants who do not lodge their application for a protection visa within 45 days of arriving in Australia are not permitted to work on their bridging visa. This Specification commenced on 30 June 2009 at 23:59.

Migration Regulations 1994 – Specification under subparagraph 030.212(3)(b)(ii) – Bridging Visa C – Satisfaction of Criteria by Certain Applicants (IMMI 09/069).
This Specification revokes Migration Regulations 1994 – Specification under subparagraph 030.212(3)(b)(ii) – Bridging Visa C – Satisfaction of Criteria by Certain Applicants – December 2006 as a consequence of amendments to the Migration Regulations to abolish the requirement that applicants who do not lodge their application for a protection visa within 45 days of arriving in Australia are not permitted to work on their bridging visa. This Specification commenced on 30 June 2009 at 23:59.

Migration Regulations 1994 – Specification under subparagraph 010.611(2)(c)(i) – Bridging Visa A – Certain Applicants exempt from Condition 8101 (IMMI 09/068).
This Specification revokes Migration Regulations 1994 – Specification under subparagraph 010.611(2)(c)(i) – Bridging Visa A – Certain Applicants exempt from Condition 8101 – December 2006 as a consequence of amendments to the Migration Regulations to abolish the requirement that applicants who do not lodge their application for a protection visa within 45 days of arriving in Australia are not permitted to work on their bridging visa. This Specification commenced on 30 June 2009 at 23:59.

Migration Regulations 1994 – Specification under paragraph 457.223(6)(a) and subclause 457.223(11) of Schedule 2 – Exemptions to the English Language Requirement for the Temporary Business (Long Stay) Visa (IMMI 09/067).
This Specification specifies the level of salary and method of calculating the level of salary for the purposes of subclause 457.223(6). Effective from 1 July 2009.

Migration Regulations 1994 – Specification under paragraphs 5.19(2)(h) and (i), 121.211(b), and 856.213(b) – Employer Nomination Scheme – Occupations, Locations, Salaries, and Relevant Assessing Authorities (IMMI 09/066).
This Specification increases the minimum salary level as it applies to the Employer Nomination Scheme by 4.1%. Effective from 1 July 2009.

Migration Regulations 1994 – Specification under item 1224A and paragraph 462.221(c) – Arrangements for Work and Holiday Visa Applicants from Thailand, Iran, Chile, Turkey, United States of America, Malaysia and Indonesia (IMMI 09/065).
This Specification lists foreign countries, educational qualifications and visa lodgement addresses for certain nationals who wish to apply for Work and Holiday visas. This Specification commenced on 1 July 2009.

Migration Regulations 1994 – Specification under regulation 1.03 – "Appropriate Regional Authority" (IMMI 09/061).
This Specification provides appropriate regional authorities for the purposes of the definition of "appropriate regional authority" in regulation 1.03 of the Migration Regulations 1994, in particular to include the Victorian

Department of Industry, Innovation and Regional Development and the Queensland Department of Tourism, Regional Development and Industry. Effective from 1 July 2009.

Migration Regulations 1994 – Specification under regulation 3.10A – Access to Movement Records (IMMI 09/053).
This Specification facilitates the administration of prescribed legislation and minimise fraud against the Commonwealth by enabling access to movement records to be authorised in a controlled and responsive manner. Effective from 1 July 2009.

Migration Regulations 1994 – Minimum Salary Levels and Occupations for the Temporary Business Long Stay Visa (IMMI 09/048)
This Notice specifies the minimum salary level that must be paid to Subclass 457 visa holders. Effective from 1 July 2009.

Legislation Pending

BILLS

Migration Amendment (Immigration Detention Reform) Bill 2009
This Bill proposes to amend the *Migration Act* 1958 to support the implementation of the Government's New Directions in Detention policy, announced by the Government on 29 July 2008. Introduced to the Senate 25 June 2009.

CASELOAD OVERVIEW

MRT Decisions – June 2009

Decision Category	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Bridging refusal	1	11	1	0	13
Visitor refusal	34	10	1	3	48
Student refusal	18	14	8	5	45
Temporary business refusal	23	13	5	7	48
Permanent business refusal	5	5	5	3	18
Skill linked refusal	30	27	11	6	74
Partner refusal	57	18	9	2	86
Family refusal	18	20	1	7	46
Student cancellation	15	23	3	8	49
Sponsor approval refusal	3	2	3	6	14
Other	14	21	4	4	43
Total	**218**	**164**	**51**	**51**	**484**

RRT Decisions – June 2009

Country	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Albania	0	2	0	0	2
Algeria	0	1	0	0	1
Australia	1	0	0	0	1
Bahrain	0	1	0	0	1
Bangladesh	1	2	0	3	6
Benin	1	0	0	0	1
Burma (Myanmar)	0	1	0	0	1
China (PRC)	18	60	1	4	83
Colombia	0	1	0	0	1
Congo, Democratic Republic of	0	1	0	0	1
Czech Republic	0	1	0	0	1
Egypt	0	2	0	0	2
Ethiopia	1	0	0	0	1
Fiji	1	3	0	1	5
Gambia	1	0	0	0	1
Ghana	0	2	0	0	2

India	0	15	0	3	18
Indonesia	1	14	0	0	15
Iran	1	1	0	0	2
Israel	1	0	0	0	1
Jordan	0	0	1	0	1
Kenya	2	2	0	0	4
Korea, Dem Peoples Rep of	0	1	0	0	1
Korea, Republic Of	0	3	0	1	4
Lebanon	1	7	0	0	8
Malaysia	2	8	0	2	12
Nepal	0	1	0	0	1
Nigeria	2	3	0	0	5
Pakistan	2	5	0	0	7
Philippines	0	1	0	0	1
Russian Federation	0	1	0	0	1
Rwanda	1	0	0	0	1
Sri Lanka	3	2	0	0	5
Syria	0	1	0	0	1
Togo	1	0	0	0	1
Tonga	0	1	0	0	1
Turkey	0	1	0	0	1
Vietnam	0	3	0	0	3
Zimbabwe	1	0	0	1	2

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 at least 40% 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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