



The MRT-RRT Monthly Decisions Bulletin

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This bulletin covers recently published decisions of the Migration Review Tribunal and the Refugee Review Tribunal. The decisions summarised represent a cross-section of published decisions of the Tribunals. Selected summaries of Court judgments, of interest to the Tribunals, are also included. For your reference, 'the Act' refers to the *Migration Act 1958* and 'the Regulations' refers to the Migration Regulations 1994.

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MIGRATION REVIEW TRIBUNAL DECISIONS

Business and Skilled visas

0806328

23 October 2009, Melbourne

Ms M Hodgkinson, Member

SKILLED (PROVISIONAL (CLASS VC) – SUBCLASS 485 (SKILLED – GRADUATE) – CL.485.221 – SKILLS ASSESSMENT – A delegate of the Minister refused to grant the applicant a Skilled (Provisional) (Class VC) visa on the basis that she did not satisfy cl.485.221 of the Regulations, as she had not provided a positive skills assessment from the relevant assessing authority for the nominated occupation at the time of decision. In the visa application, the applicant nominated her occupation as Translator. However, she later submitted a *Notification of Changes in Circumstances* form advising that she had applied for a new nominated occupation of Business and Information Professional. The applicant's representative claimed that the applicant felt she had been misled by her previous agent in believing she had the skills to nominate as an interpreter, and that she should have been allowed to change her nominated occupation. The representative argued that the applicant met the remaining criteria for the grant of the visa and that the delegate should have used their discretion under r.2.27B in order to invite the applicant to have her skills assessed for a different skilled occupation. The applicant submitted copies of positive skills assessments obtained for the occupations of Public Relations Officer and Business and Information Professional. The applicant claimed that she had heard that there was discretion to change her nominated occupation and to seek a skills assessment for a different occupation. The applicant acknowledged that she was aware at the time the application was lodged that she had nominated her occupation as Translator and that she sat the NAATI test twice but did not pass. She claimed that this was when it dawned on her that she had made a mistake. She claimed that she came to Australia to pursue a career in communications, not in translating. She further claimed that she had worked hard in Australia and had created a niche for herself. She claimed that she had come to Australia at a young age and if she were not granted the visa she would be uprooted.

Held: Decision under review affirmed.

The Tribunal discussed with the applicant at hearing that r.2.27B was omitted in September 2007 with the introduction of the new General Skilled Migration Scheme, of which Class VC is a part. The Tribunal noted that, although the applicant had spoken to people who had received an invitation under r.2.27B in the past, it no longer applied at the time that this application was lodged (November 2007), nor did it apply to the VC visa class even when it was in force. Consequently, the Tribunal found that there was no discretion to invite the applicant to undergo a skills assessment for a new nominated occupation. The Tribunal was not satisfied that the application was affected by fraud or negligence on the part of the previous migration agent. The Tribunal noted that the applicant had acknowledged her awareness at the time of lodgment that the occupation of Translator had been nominated. The Tribunal noted that the applicant had pursued assessment of her skills as a Translator by sitting two tests, which she failed to pass. The Tribunal further observed that even if the *Change of Circumstances* form had been sufficient to substitute a new nominated occupation, cl.485.214 requires that the applicant had applied for assessment of skills for the nominated skilled occupation at the time of application. The applicant did not do so until March 2008, after the application was lodged. Thus, the Tribunal found that the applicant's nominated skilled occupation was Translator. The Tribunal found that, as she had not provided a positive skill assessment from NAATI for the nominated occupation of Translator at the time of decision, the applicant therefore did not meet cl.485.221 and did not meet the criteria for the grant of a class VC visa.

0904267

23 September 2009, Sydney

Mr L Hardy, Member

SKILLED – AUSTRALIAN-SPONSORED (MIGRANT) (CLASS BQ) – SUBCLASS 138 (SKILLED – AUSTRALIAN-SPONSORED) – CL.138.216 – CL.138.225A – SKILLED OCCUPATION – REQUISITE PERIOD OF TIME – A delegate of the Minister refused to grant a Subclass 138 visa on the basis that the visa applicant had not satisfied cl.138.216 of the Regulations because he was not employed in a skilled

occupation for the requisite period of time. The visa application stated that the visa applicant had worked as an electrical engineer from June 2006. The visa application included a letter from Engineers Australia which stated that his qualifications met the requirements of his nominated occupation. A "Certification" on his employer's letterhead and signed by the general manager, stated that the applicant was employed from 1 June 2006 and his duties and responsibilities for the position were listed. Officers from the Department conducted a site visit and were satisfied that the applicant's employer was a genuine business. The General Manager advised them that the visa applicant was a previous employee of his company but he could not provide any employment records at that time as all documents were with his accountant. He confirmed the authenticity of the employment certificate for the visa applicant. The visa applicant supplied payslips for the periods 1 June 2006 to 28 June 2006 and 1 May 2008 to 28 May 2008 which were expressed to be the first and last month of the visa applicant's employment.

Held: Decision under review set aside.

The Tribunal found that the nominated skilled occupation of Electronics Engineer required the visa applicant to be employed in a skilled occupation for a period of, or for periods totalling, at least 12 months in the period of 18 months immediately before the day on which the application was made. The Tribunal found the relevant period was 11 January 2006 to 11 July 2007, and based on the evidence provided, the visa applicant was employed from 1 June 2006 to 31 May 2008. The Tribunal accepted he was employed for this period and that his duties were as set out in the certificate of employment. The Tribunal also found that the applicant's responsibilities and duties indicated he performed the duties and functions of an Electronics Engineer during his employment. The Tribunal found the applicant nominated a skilled occupation for which 60 points were specified, and that he was employed in a skilled occupation for a period of at least 12 months in the period of 18 months immediately before the day on which the application was made. Accordingly, the Tribunal found that the applicant met the requirements of cl.138.216 and cl.138.225A of the Regulations.

Family visas

0803354

7 September 2009, Sydney

Mr A Jacovides

OTHER FAMILY (MIGRANT) (CLASS BO) – SUBCLASS 115 (REMAINING RELATIVE) – R.1.15 – NEAR RELATIVES – A delegate of the Minister refused to grant the visa applicants Subclass 115 (Remaining Relative) visas because the primary visa applicant had near relatives who were not Australian citizens, Australian permanent residents or eligible New Zealand citizens, usually resident in Australia. The visa application was made on the basis that the visa applicant, a Fijian citizen, is the remaining relative of her brother (the sponsor and review applicant), who is an Australian citizen. The visa applicant stated that her parents and two of her four siblings live in America, and her other two siblings live in Australia. She claimed that her husband's parents are deceased and that he has no siblings. At the Tribunal hearing, the applicant requested the Tribunal to take into account that the visa applicant does not have a positive relationship with her parents and that one of her brothers in America intends to migrate to Australia. He claimed that the visa applicant has a close relationship with her siblings in Australia and that it was preferable that she live in Australia rather than anywhere else. He stated that because the visa applicant was in Fiji and their parents were in the USA, he assumed she could satisfy the requirements of 'remaining relative' because she was the only relative remaining in Fiji. The review applicant stated that he assumed decision makers had the discretion to grant the visa on humanitarian or compassionate grounds.

Held: Decision under review affirmed.

The Tribunal found that the visa applicant's parents and siblings reside in America. The Tribunal noted that the legislation requires the visa applicant and her spouse to have *no near relatives* other than those who are Australian citizens, permanent residents or eligible New Zealand citizens as required by r.1.15(1)(c). Accordingly, the Tribunal found that the visa applicant did not meet r.1.15(c) and could not satisfy the requirements for the grant of the visa. The Tribunal further noted that neither it nor the delegate possessed the discretion to grant visas on humanitarian or compassionate grounds.

0904793

2 October 2009, Sydney

Mr J Silva, Member

CHILD (MIGRANT) (CLASS AH) – SUBCLASS 102 (ADOPTION) – CL.102.211(2) – ADOPTIVE

PARENTS – A delegate of the Minister refused the applicant's Subclass 102 visa application on the basis that the adopting parents had not lived overseas for the 12 months preceding the date of application. The visa applicant was a six year-old child and documents provided to the Department indicated he was adopted by the review applicant and his spouse in 2008 in the Philippines. The review applicant claimed that he resigned from his job in Australia and returned to the Philippines to spend time with his ill father, and took the opportunity to set up a business there. He claimed that the review applicant and his spouse have no children of their own, and that the visa applicant is the youngest of their nephew's children. The review applicant claimed that he became the babysitter for the visa applicant as the visa applicant's natural parents were busy working and could not meet the child's financial needs. The review applicant claimed that he initiated the idea of adoption to his sister and her husband, and after some hesitation, they agreed. Departmental records showed that the review applicant was outside Australia for less than 2 months during the relevant period of 12 months prior to the application date, whilst the review applicant's wife was outside Australia for a period of less than 1 month. The review applicant submitted that he was domiciled in the Philippines as he had set up a business there and had responsibilities towards the visa applicant as well as his ailing father. He claimed that after he returned to Australia it was only due to unforeseen circumstances that he did not manage to return to the Philippines in the period before the visa application was lodged, and that throughout this time he had fulfilled his responsibilities as the visa applicant's adoptive parent by sending money to support him.

Held: Decision under review affirmed.

Based on the documentation provided, the Tribunal accepted that the review applicant and his spouse adopted the visa applicant although it noted some anomalies regarding the review applicant's account of the process leading up to the adoption. The Tribunal found that he had business and family interests in both Australia and the Philippines, and that relevantly, during the 12 months before the visa application, the review applicant was residing overseas for less than 2 months. Therefore, the Tribunal found that the review applicant had not been residing overseas for more than 12 months at the time of application. The review applicant claimed that he would have continued living in the Philippines up to the date of the visa application had it not been for unexpected economic problems, however, the Tribunal found that this did not enable the review applicant to meet the requirement that he had been residing overseas for more than 12 months at the time of application. The Tribunal noted the review applicant's request that the 12-month overseas residency requirement be waived due to compelling or compassionate circumstances, however, the Tribunal found that the Act did not give the decision-maker discretion to waive the requirements of cl.101.211(2). It therefore found that, as neither the review applicant nor his spouse had been residing overseas for more than 12 months at the time of application, the visa applicant was not adopted by a person who met the requirements of cl.102.211(2)(b)(ii). The visa applicant therefore did not meet the criteria in cl.102.211(2) and subsequently was not eligible for the grant of an Adoption visa.

0905422

25 September 2009, Melbourne

Ms M Urquhart, Melbourne

CHILD (RESIDENCE) (CLASS BT) – SUBCLASS 802 (CHILD) – CL.802.214 – REASONABLE

PERIOD – A delegate of the Minister refused to grant the applicant a Subclass 802 (Child) visa on the basis that the applicant did not meet cl.802.214(1)(c) because it could not be satisfied that since turning 18, or within 6 months or a reasonable period after completing the equivalent of year 12 in the Australian school system, the applicant had been undertaking a full time course of study at an educational institution leading to the award of a professional, trade or vocational qualification. The application was made on the basis that the applicant is the dependent child of an Australian permanent resident, his father (the sponsor). The sponsor submitted that the applicant met all the criteria for the grant of the visa, except that his full time studies did not commence within 6 months of completing secondary school in 2002. The applicant came to Australia in 2003 as a member of the family unit of his father, who had been granted a Subclass 457 visa. The sponsor claimed that, after arriving in Australia, the applicant completed a number of study courses related to sport and fitness health. In 2007 he returned to the UK after being refused the right to remain in

Australia as a dependent of his father. In the UK the applicant enrolled in the Royal Marines but was medically discharged in 2008. The visa applicant then returned to Australia and commenced full time studies at the College of Sports Therapy in 2009. The sponsor argued that, apart from his time in the Royal Marines, the applicant had been studying almost constantly since 2003.

Held: Decision under review affirmed.

The Tribunal considered the meaning of "reasonable time" as used in cl.802.214(1)(c) and took into account the surrounding circumstances including the actual time involved and the numerous study activities undertaken by the applicant during the relevant period. It noted that, with the exception of the time spent in the Royal Marines, all courses studied by the applicant were in the area of sports health and therapy and that this is the area in which he is now engaged in full time study. The Tribunal accepted the sponsor's submission that the issue of the applicant's residency and his ability to remain with his family in Australia may have impacted his study history. However, the Tribunal noted that the applicant appeared to have spent a year subsequent to his arrival in Australia in 2003, without studying. He then embarked on a variety of part time courses for approximately four years. The Tribunal noted that only some of the courses were studied at educational institutions. The Tribunal further noted that, subsequent to his time in the Royal Marines, the applicant spent a further year not studying. The Tribunal found that, even taken cumulatively, the timeline of study put forward by the applicant did not qualify as a "reasonable time". The Tribunal found that the time spent by the applicant in the Royal Marines appeared to have been a very clear break in the "reasonable ongoing support" and did not appear to suggest that the applicant was dependent on the sponsor during this period. Thus, the Tribunal was not satisfied that the applicant met cl.802.214(1)(c) for the grant of the visa.

Partner visas

0802361

1 October 2009, Sydney

Ms R Mathlin, Member

PARTNER (TEMPORARY) – (CLASS UK) – SUBCLASS 820 (SPOUSE) – CL.820.211 – CL.820.221(1) – DE FACTO RELATIONSHIP – A delegate of the Minister refused to grant a Subclass 820 (Spouse) visa because she was not satisfied the parties were in a genuine and continuing spouse relationship. The delegate noted that the sponsor was still married to his first wife at the time of his marriage to the applicant and therefore, the applicants were assessed as being in a de facto relationship. The applicant claimed she came to Australia in 2002 to visit her daughter but on her arrival she learned her daughter had died so she remained in Australia to care for her daughter's three children. The visa applicant married her sponsor in 2003. Based on a site visit report, the delegate was not satisfied that the parties shared a household. The delegate found that there was an apparent lack of knowledge by the applicant of the sponsor's daily circumstances, they did not share a common language and inconsistent accounts were provided by both parties of how they met. The applicant claimed the sponsor helps her with cooking, washing and light housework. She claimed he receives a pension, and that they only go out to do shopping or to the temple and he pays for everything. She claimed he gives her weekly pocket money, they look after each other and he comforts her greatly since she lost her daughter. He told her that if she cared for him, he would take care of her. Evidence provided by the sponsor's carer indicated that he visits weekly to take the sponsor shopping or to the doctors and that the visa applicant always accompanies them. He claimed the applicant spends a lot of time caring for the sponsor, who has serious health problems. He claimed that they can communicate with each other and that he had observed them communicating frequently. He stated that the sponsor knows a bit of Khmer and he has observed the sponsor asking questions and the applicant replying. Also, he claimed that they have friends who speak both languages who assist them to communicate. The carer claimed the relationship appeared like a "normal" marriage with mutual affection.

Held: Decision under review set aside.

The Tribunal found there was no valid marriage and the application was considered under r.1.15A(1A)(b) as a de facto relationship. The Tribunal found the sponsor was in very poor health and it was extremely difficult to obtain information from him. However, the Tribunal found that the applicant was a frank and truthful witness. Based on the evidence provided, the Tribunal was satisfied the couple's financial arrangements

were consistent with a husband and wife and that the applicant had lived with the sponsor at their current address for the past two years. The Tribunal accepted that the applicant does most of the housework due to the sponsor's ill health, and that they always shop together. The Tribunal accepted they are recognised as a married couple and that the applicant cares for the sponsor while he provides support and companionship to her. The Tribunal gave weight to the sponsor's carer's evidence and found that, in the Tribunal's view, the benefits obtained by each of the parties, and their reasons for entering into and committing to the relationship, are compatible with those that exist in a genuine married relationship, and where the parties have a mutual commitment to a shared life as husband and wife to the exclusion of all others. The Tribunal was satisfied there were compelling and compassionate circumstances and accepted that, because of the sponsor's extremely poor health and if not for the applicant's care, the sponsor would not be able to live independently. The Tribunal considered that the potential adverse consequences to the sponsor's health if the applicant left Australia and the implications to his health if his care were taken over by the public health system were compelling reasons for the visa to be granted. The Tribunal was of the view that, although the sponsor and the applicant entered into a bigamous marriage in unclear circumstances, this was most likely an innocent mistake made by the sponsor and not the applicant. The Tribunal considered it was likely the sponsor thought he was divorced from his first wife when he first sought divorce proceedings. The Tribunal accepted the relationship between the applicant and sponsor had been in existence for six years at the time of its decision and found that the longstanding nature of the relationship was also a compelling and compassionate reason for granting the visa. Accordingly, the Tribunal found the applicant satisfied the requirements of cl.820.211(2)(a) and (c) of the Regulations.

0804034

12 October 2009, Sydney

Ms M Moustafine, Member

PARTNER (PROVISIONAL) (CLASS UF) – SUBCLASS 309 – VISA REFUSAL – CL.309.211 – CL.309.221(1) – R.1.15A – GENUINE AND CONTINUING RELATIONSHIP – A delegate refused to grant the applicant a Subclass 309 visa on the basis that the visa applicant did not satisfy cl.309.211 and cl.309.221 of the Regulations. The delegate had concerns about the brief time the couple had spent together in person before deciding to marry. There were also inconsistencies between the parties' accounts of claimed shared experiences during the review applicant's visits to China and minimal evidence was provided showing that the parties represented themselves as being in a committed spousal relationship outside a very limited circle of people. The delegate also noted the absence of statements of support from direct family members. It was claimed that the visa and review applicant met at a party organised by a mutual friend in Fujian in 2006 while the review applicant was visiting on holidays. The applicant claimed that in the following three weeks, the relationship developed as the parties travelled together to various tourist attractions in Fujian. Following the review applicant's return to Australia, the parties continued to communicate regularly chatting online and through web cam. The review applicant claimed that he then proposed and the visa applicant accepted. The review applicant returned to China and took the visa applicant to meet his family and register their marriage. The review applicant returned to Australia three days later. He subsequently travelled to China on two occasions for a combined period of 18 months until May 2009. The parties submitted to the Tribunal copies of passports, birth certificates, marriage certificates, divorce certificates, income tax statements and payslips. Also included were statements from the applicants and their friends attesting to the genuine nature of the spousal relationship. The Tribunal was advised of the birth of the parties' son in May 2009 and a copy of the child's birth certificate and photos of the couple with their son were provided.

Held: Decision under review set aside.

The Tribunal noted that it had more evidence before it than had been available to the delegate and that two statements of support for the marriage from friends had been provided with a large number of photographs showing the couple together in China and with both their families and friends in social situations. The Tribunal placed less weight on the financial aspects of the relationship as the visa and review applicants were living in different countries, however, the Tribunal found that the parties gave consistent and credible descriptions about the sharing of finances and assets while the review applicant was living in China for two extended periods since their marriage. It accepted that during these visits the couple cohabited at the visa applicant's parents' house and that they spent time looking after the review applicant's aged parents. The Tribunal was satisfied that although the parties had not had the opportunity to establish a separate household together, they had lived as husband and wife for extensive periods in China. The Tribunal found

that the recent birth of the couple's son was also a strong indication of a committed spousal relationship. The Tribunal therefore found that, at the time of the visa application, the visa applicant was the spouse of the review applicant within the meaning of r.1.15A, who was an Australian citizen, and met the requirements of cl.309.211(2) of the Regulations. Further, the Tribunal found that, at the time of the Tribunal's decision, the applicant continued to be the review applicant's spouse and satisfied cl.309.221 of the Regulations. Accordingly, the Tribunal was satisfied that the applicant met the requirements of cl.309.211 and cl.309.221 of the Regulations for the grant of the visa.

Student visas

0901669

19 October 2009, Sydney

Ms L Nicholls, Member

VOCATIONAL EDUCATION AND TRAINING SECTOR VISA – SUBCLASS 572 – CL. 572.223(2)(a)(i)(A) – ENGLISH PROFICIENCY – A delegate of the Minister refused the application for a further student visa because she found that the applicant had not met the English proficiency requirements of cl.572.223(2)(a)(i)(A). The delegate found that the applicant had provided an academic transcript of his results in an Advanced Diploma in E-business. However, as that document and the accompanying letter from the education provider did not show that he had completed at least 51% of the course, the delegate was not satisfied that he met the requirements of Schedule 5A407 (d)(ii) in that he had not provided evidence that he had successfully completed a *substantial* part of the course. The Tribunal noted that the application for review was lodged one month after the date which appeared on the Department's decision letter in relation to the final date an application could be made, however, it found that the applicant had been incorrectly notified of their decision by the Department and that the application for review was valid. The applicant claimed that he had completed High School in Egypt along with two years of University, and on arrival in Australia he had successfully undertaken a twelve week English language course. He stated that he had not sat for an IELTS test. He claimed that he subsequently enrolled in two Diploma courses which he did not complete, before enrolling in the Advanced Diploma of E-business at the Australian College of Education and Training. The applicant provided certification to the Tribunal that he had successfully completed the first year of this two year course which had been conducted in English.

Held: Decision under review set aside.

The Tribunal found that the applicant was the holder of a student visa and at the date of decision had successfully completed 12 units of a Certificate IV course (Diploma of E-Business) conducted in English by the Australian College of Education and Training, and that subject to the Gazette notice in force at the time of application, the applicant was subject to consideration under Assessment Level 3. The Tribunal noted the judgement in *MIAC v Kamal* [2009] which stated that the Court found the phrase "taken less than 2 years before the date of the application" meant an IELTS test taken *no earlier than two years* before the date of the application. Applying the reasoning in that decision to the phrase "less than 2 years before the date of the application" used in Schedule 5A407 (d)(iii), the Tribunal found that the applicant met the requirements of that subclause in that he had completed 12 units out of 18 possible units of the course, whilst needing only 8 units to qualify. Accordingly, the Tribunal found that the applicant had less than 2 years before the date of application successfully completed a substantial part of a Certificate IV course that was conducted in English. On that basis, the Tribunal found that the applicant satisfied the requirements of cl.572.223(2)(a)(i)(A) in relation to English language proficiency, and that the matter should be remitted to the Department for further consideration.

0903286

26 August 2009, Melbourne

Ms J Ellis, Member

CANCELLATION – STUDENT (TEMPORARY) (CLASS TU) – SUBCLASS 573 – HIGHER EDUCATION SECTOR – S.116(1)(b) – CONDITION 8202(3)(a) – EXCEPTIONAL CIRCUMSTANCES – A delegate of the Minister cancelled the visa applicant's Subclass 573 student visa under s.116(1)(b) on the basis that he had not complied with condition 8202 because his education provider, Australian School of Tourism and

Hotel Management (ASTHM), had certified him as not achieving satisfactory progress for the Advanced Diploma of Hospitality Management course in which he was enrolled. The course commenced in July 2008 and in November 2008 the applicant lodged a 'Request for a Letter of Release' because he claimed he wanted to enrol in another course which was more suitable for him and less stressful. The applicant claimed he first had difficulties when he was asked to cook and taste non-vegetarian dishes. He also claimed he cooked non-vegetarian food but refused to taste it because, as a Sikh, he felt it was not good to eat non-vegetarian food. He further claimed the exceptional circumstances beyond his control that led to the non-compliance was that he suffered stress caused by being forced to handle and cook meat, that he tried without success to change courses and that the chefs discriminated against Indian students. He claimed he did not realise the consequences of not achieving satisfactory academic progress and that he applied for a Letter of Release in November 2008 and that he had also applied on 2 earlier occasions as he realised this course was not for him. ASTHM refused his request and also his appeal against their decision.

Held: Decision under review affirmed.

The Tribunal initially considered whether the applicant had complied with condition 8202 of his visa. Evidence before the Tribunal indicated that the applicant's assessments were not satisfactory in almost every subject between August and December 2008 and that the majority of subjects were not related to the handling or cooking of meat. The assessments also indicated that his teachers believed he needed to study more, that he did not sit for all his assessments and that he failed to attend remedial classes which he was required to do. The Tribunal found that the grounds for cancellation under s.116(1)(b) existed because ASTHM had certified that the applicant had not achieved satisfactory course progress and therefore, he had not complied with condition 8202(3)(a). As the Tribunal found that the applicant had not complied with condition 8202 of his visa, it was then required to consider whether the non-compliance was due to exceptional circumstances beyond the applicant's control. The Tribunal accepted the applicant's religious beliefs concerning the handling of meat but noted that he had stated he had not read the brochure he received at enrolment which expressly stated that students would be expected to select, prepare and cook meat. The Tribunal found that ASTHM did not have effective external appeal procedures in place and that this was beyond the applicant's control, but this did not lead to the applicant's non compliance with condition 8202(3)(a). The Tribunal did not accept that the applicant's unsuccessful attempts to change courses in November 2008 led to his unsatisfactory course progress between July and December 2008. The Tribunal noted that the majority of his assessments did not involve handling meat and he had told the Tribunal he suffered from stress from July 2008 however he did not seek medical advice until November 2008. The Tribunal was not satisfied the applicant's claimed circumstances constituted exceptional circumstances beyond his control which led to his non compliance with condition 8202(2)(a) and accordingly, his visa was subject to mandatory cancellation under subsection 116(3).

Other visas

0903857

24 September 2009, Sydney

Ms A O'Toole, Member

SPONSORED (VISITOR) (CLASS UL) – SUBCLASS 679 – (SPONSORED FAMILY VISITOR) – CL.679.224 – GENUINE VISIT – The review applicant claimed that he wished for the visa applicant to travel to Australia from Tonga in the company of his grandmother, who was the review applicant's mother-in-law who had already been granted her tourist visa. It was claimed that the visa applicant would like to visit Australia because his younger brother had joined the army and is due for his marching out parade. The review applicant claimed that the visa applicant's brother is due to go to Iraq next year, and that it is very important for his younger brother to have his only brother present at this parade. The visa applicant had previously applied for a visitor visa in 2007 which was refused. The review applicant claimed that the visa applicant would be provided accommodation and support by them should he be granted a visa to travel to Australia, and that he had held the same job in Australia for over 20 years. It was claimed that the visa applicant worked on the family's 12-acre property in Tonga where they grew bananas, sugar cane, papaya and other fruits and vegetables, and that he would return to Tonga to look after his grandmother. The review applicant claimed that he would ensure that the visa applicant would abide by his visa conditions.

Held: Decision under review set aside.

The Tribunal accepted that the visa applicant lived with his grandmother in Tonga, that he cares for her and that the visa applicant would be visiting his mother and siblings in Australia. The Tribunal accepted that the visa applicant's expenses during his visit would be met by the review applicant and his wife, and that the review applicant would provide the visa applicant with accommodation, food and financial support as required and that the visa applicant would have access to sufficient funds for the duration of his visit. The Tribunal stated that it was impressed by the evidence of the review applicant and it was of the view that he spoke truthfully. The Tribunal accepted that the visa applicant's mother has not seen the visa applicant since 2005 and that financial difficulties endured by the family in Australia meant that they could not travel to Tonga. The Tribunal considered that this case was unusual due to the visa applicant's brother joining the army and being due to start a tour of duty in Iraq. It found that there was no evidence before the Tribunal that the review applicant had previously sponsored a visa applicant who breached the visa conditions or that any member of the visa applicant's family had breached any visa conditions in the past. The Tribunal accepted the evidence of the review applicant and the visa applicant's mother that they would ensure that the visa applicant would not breach any of his visa conditions should he travel to Australia. The Tribunal was satisfied that it was the intention of the visa applicant to travel to Australia with his grandmother and to return with her to Tonga at the appropriate time, and that the visa applicant's intention to visit his family in Australia was genuine. Accordingly, the Tribunal found the visa applicant satisfied the requirements of cl.679.224 of the Regulations.

0905047

29 September 2009, Sydney

Ms M Ford, Member

SPONSORED (VISITOR) (CLASS UL) – SUBCLASS 679 (SPONSORED FAMILY VISITOR) – CL.679.224 – GENUINE INTENT TO ONLY VISIT – A delegate of the Minister refused to grant the applicant a Subclass 679 (Sponsored Family Visitor) visa because he was not satisfied that the applicant genuinely intended to visit Australia only temporarily. The delegate found that the applicant had recently lodged an application for a Contributory Parent (Migrant) visa, and that this indicated her intent to reside in Australia on a permanent basis. The delegate found that this, combined with the ongoing civil violence and volatile security situation in Sri Lanka, indicated that the applicant may seek to remain in Australia after the expiration of her visa. The visa applicant was sponsored by her daughter, the review applicant. The visa applicant claimed that she wished to travel to Australia to assist her daughter with the care of her newborn baby for a couple of months. She submitted evidence of financial investments in Sri Lanka, and a statutory declaration stating that she cares for her chronically ill sister in Sri Lanka as well as her daughter and eight year old grandson. Evidence was submitted demonstrating that the visa applicant's sister had previously had cardiac surgery, that she continues to be unwell and that her prognosis is such that she will not survive the next five years. The review applicant claimed that she had been advised the visa applicant's application for permanent residency would take two years to be processed and then her mother would have five years before she has to enter Australia. She claimed that the visa applicant would not leave Sri Lanka while her sister is alive. The review applicant claimed that her mother lives in Colombo and is not politically active and therefore political instability and security issues in Sri Lanka are not relevant to her safety and that there are no security issues in the location where the visa applicant resides.

Held: Decision under review set aside.

The Tribunal accepted both the review applicant and visa applicant's evidence that the visa applicant has work and sufficient financial resources in Sri Lanka to ensure the visa applicant will comply with the visa conditions and return to Sri Lanka at the expiration of her visa. It further accepted the evidence that the visa applicant's family responsibilities in Sri Lanka will ensure she returns, and found that the visa applicant has no intention of taking up permanent residence in Australia whilst her elder sister remains alive. The Tribunal agreed with the submission that non-compliance with the terms of the visa may have the potential to negatively affect the visa applicant's application for permanent residency. It accepted that the applicants do not expect a decision to be made on the application for two years and that, if approved; the visa applicant then has five years in which to take up her residency. The Tribunal accepted that the visa applicant would be traveling to Australia to assist her daughter with the care of her new born baby for a few months. It was also satisfied that her intended visit is genuine and that there is very little likelihood that the visa applicant will remain in Australia after the expiration of her visa. Accordingly, the Tribunal set aside the original decision and found that the visa applicant met cl.679.224 of the Regulations.

0907291

8 October 2009, Melbourne

P Murphy, Senior Member

CONFIRMATORY (RESIDENCE) (CLASS AK) SUBCLASS 808 – A delegate of the Minister refused to grant the applicant a Subclass 808 visa as he was not the holder of any of the specified visa classes required by cl.808.211 of the Regulations at the time of application. The applicant is 24 year old Indian national who arrived in Australia in October 2007 on a student visa which was valid until March 2011. Supporting material indicated that on or about 24 May 2009, the applicant was the victim of a serious criminal assault, during which he was stabbed in the head with a screwdriver. Medical evidence indicated that the assault resulted in him sustaining significant injuries, including traumatic brain injury, requiring hospitalisation and post hospitalisation rehabilitation. In August 2009 the applicant applied for a Confirmatory (Residence) (Class AK) visa stating that he wished “to apply to the Minister of Immigration under section 351 of the Migration Act”. It also noted that he had “life threatening and permanent disability as a result of a violent crime committed (sic) against me.”

Held: Decision under review affirmed.

The Tribunal received the response to hearing invitation which indicated that neither the applicant nor his authorised recipient wished to take part in the hearing. The Tribunal found that this response was consistent with previous information which indicated that the primary intention was to activate the ability of the applicant to seek Ministerial Intervention under section 351 of the Act. In light of this, the scheduled hearing was cancelled and the Tribunal proceeded to determine the application without a hearing on the basis of the material before it. Clause 808.211 provides that, at the time of application, an applicant must be the holder of one of the specified visa types stated therein. The Tribunal found that the visa applicant held a Student (Temporary) (Class TU) Subclass 573 visa at the time of application, which is not one of the visas specified in cl.808.211. This finding was reinforced by departmental records. The Tribunal therefore was not satisfied that the applicant was the holder of one or other of the visas specified in cl.808.211 at the time of his visa application. Accordingly, the Tribunal found that the applicant did not satisfy the requirements of cl.808.211 for a Subclass 808 visa and there was no basis or discretion for the Tribunal to avoid that requirement. The Tribunal found that the applicant was therefore not entitled to the grant of a Confirmatory (Residence) (Class AK) visa.

REFUGEE REVIEW TRIBUNAL DECISIONS

Bangladesh

0902782

30 October 2009, Sydney

Ms A MacDonald, Senior Member

BANGLADESH – RELIGION – APOSTATE – PARTICULAR SOCIAL GROUP – DE FACTO RELATIONSHIP WITH NON-MUSLIM – CHILD OUT OF WEDLOCK – NON-PRACTISING MUSLIM –

The applicant claimed to fear harm if he were to return to Bangladesh with his partner and their child. He claimed to fear harm because he is no longer a practising Muslim and because he is in a de facto relationship with a woman of a different race and religion and there is a child of this relationship. The applicant first arrived in Australia in 1994 and lodged a protection visa application which he subsequently withdrew before it was decided. After holding a number of different visas in Australia he again applied for protection in 2000 on the basis of his political opinion. The outcome of that review was the subject of five differently constituted Tribunals by direction of the Federal Court. From the second Tribunal onward the applicant stated that he did not wish to pursue his claims relating to his political activities in Bangladesh. The applicant claimed that he met his partner in Australia in 1999, they commenced a relationship and began living together soon after. At that time the applicant's de-facto was an unlawful non-citizen in Australia. She was located and detained in early 2000. The applicant paid a bond for her release and sent her home. He claimed that he had hoped he would be able to bring her back after the grant of his skilled visa application. Soon after, the applicant's partner informed him that she was pregnant with his child and their daughter was born in October 2000. Since her return to the Philippines, the applicant has not seen his partner. The applicant claimed that they speak on the phone and via webcam almost every day. The applicant claimed that he has not visited the Philippines because he would be unable to return to Australia once he left. The applicant claimed that he could not reside in the Philippines as he and his de facto are unmarried, and have no intention to marry. The applicant claimed to fear harm from people in his home town in Bangladesh who are aware of his relationship with a Christian woman and of their child that has been born out of wedlock. He claimed that internal relocation for his de facto and daughter would not be viable because they look racially different and they would immediately be singled out. The applicant claimed he is a non-practising Muslim, and claimed that Muslims in Bangladesh are generally extremely hostile to people who are apostate. He claimed that he, his partner and child would be viewed as insulting Islam. The applicant claimed that he could not expect effective protection from the police who are mostly Muslim. The applicant's de facto gave evidence that neither she nor the applicant believes in marriage. She stated that she is a practising Catholic and is raising her daughter as a Catholic.

Held: Decision under review set aside.

The Tribunal accepted that the applicant was in a de facto relationship and that the relationship was genuine and continuing. It accepted that the applicant does not have a right of residency in the Philippines as a result of his relationship unless he and his partner marry. The Tribunal was satisfied that the applicant and his partner are committed to living together as a family, and that if the applicant were to return to Bangladesh, his partner and child would accompany him in spite of the applicant's claimed fear of persecution there. The Tribunal accepted that if he and his family were to reside in Bangladesh, they would be persecuted because his partner and daughter look different and because they would be known as being non-Muslim, of a different race and not married. The Tribunal was not satisfied that there was a real chance the applicant would suffer persecution due to his apostate beliefs if he was to relocate to an urban area. However, the Tribunal found that the cumulative effect of the harm the applicant faces from living in a de facto relationship with a non-Muslim of different race, having a child out of wedlock and being a non-practising Muslim amounts to serious persecution. Accordingly, the Tribunal was satisfied that the applicant had a well-founded fear of persecution for a Convention reason.

China

0905560

16 October 2009, Perth

Mr T Caravella, Member

CHINA – PARTICULAR SOCIAL GROUP – WOMEN – SINGLE WOMEN – SINGLE MOTHERS – The applicant claimed to fear persecution from her Australian husband from whom she separated, and from her father and uncle in China who would like her to return to the marriage. The applicant married her husband whom she had met over the internet in October 2007. They lived together in China for 6 months and the applicant claimed they were happy and that they discussed her relocating to Australia. Shortly after her husband departed China, the applicant discovered she was pregnant. She claimed her husband wanted the baby to be born in Australia, but changed his mind about her applying for a spouse visa and told her to apply for a visitor visa instead. The applicant claimed that in one telephone conversation in which she believes he was intoxicated, her husband told her to tell the Australian Embassy that she didn't want to stay in Australia and that she would return to China to have the baby. The applicant gave birth in Australia. She claimed that there were a number of incidents both during and after her pregnancy when her husband was drunk, abusive and/or violent. On one occasion, he hit her on the head with a mobile telephone when she was pregnant. The applicant claimed that she also worried because her husband kept an axe in the cupboard and told her that he wanted to kill his mother and brother. The applicant eventually left her husband and moved into a women's refuge. She claimed that one month after they separated, he threatened to get a gun to get their child back. The applicant subsequently applied for and was issued with a restraining order. The applicant claimed that she felt she would be accepted in her father's home in China but that there would be pressure on her to return to the relationship. The applicant believed the police in China would only respond to a call if there was a serious injury, and that the roads near her father's house would make police access in an emergency difficult. The applicant claimed that she could not relocate as it would take her too long to find a job. She claimed that her Australian-born child would not have access to a Chinese medical card. The applicant's representative submitted that the laws in China pertaining to domestic violence are fledgling and inadequate and that there is serious question as to whether the police would respond to provide the applicant with protection.

Held: Decision under review affirmed.

The Tribunal was satisfied that the applicant suffered domestic violence at the hands of her husband while in Australia and that this constituted "serious harm". However, the Tribunal found no evidence that the harm experienced or the harm feared in the future was for a Convention reason. The Tribunal accepted that the applicant may be a member of a particular social group however it found that her husband's motivation to cause the applicant harm was due to his personal relationship with her and not because she is a member of one or more particular social groups. The Tribunal did not accept that under-resourcing of the police in China or the narrow roads in her village constituted discriminatory withholding of state protection. The Tribunal found that while country information indicated that more needed to be done to provide better protection in rural areas in China; other information demonstrated an improved legal system and infrastructure which provides necessary state protection against domestic violence, particularly in respect to services in urban centres. The Tribunal found that the applicant's comments at hearing indicated that she was not so concerned about serious harm from her father or uncle, it found she was more concerned about gossip in her hometown and embarrassment for them. In light of independent information, the Tribunal was satisfied that the level of protection available to the applicant in larger urban areas would be such that the applicant would not face a real chance of serious harm at the hands of her husband. Further, the Tribunal was satisfied that the applicant had the capacity to relocate, based on her evidence of previous relocation for work and then to Australia. The Tribunal noted the applicant's claim that it would take too long to find work, but also noted that the rate of unemployment in China is presently lower than that in Australia. The Tribunal considered country information and found evidence that attitudes towards divorced and single mothers in China are changing. It did not accept that the applicant would experience significant discrimination amounting to persecution for these reasons. The Tribunal was satisfied that the applicant's child could access health care, for a fee, in China. The Tribunal found it was reasonable for the applicant to relocate to an area where she would not face a risk of harm. The Tribunal was satisfied that there was no sound basis for believing that there was a significant threat to the applicant should she return to China. The Tribunal was, therefore, not satisfied that the applicant had a well founded fear of persecution in China now or in the reasonably foreseeable future.

0906541

28 October 2009, Sydney

Mr B MacCarthy, Member

CHINA – SOCIAL GROUP – FALUN GONG – The applicant entered Australia using a South Korean passport under a false identity and was taken into immigration detention. The applicant claimed that he had been detained for over six months in China for practising Falun Gong and he feared he would suffer similar harm if he were to return there. He claimed that he had been introduced to Falun Gong by a work colleague in 2005, and that the following year he had been arrested for assisting in putting up posters carrying slogans such as “Communist Party is evil”. The applicant claimed that after being held in a local detention station for about 28 days, he was then sent to a higher level centre where he remained for a period of months, before finally being released after signing a statement promising that he would never participate in Falun Gong again, and paying a bond of 5000 yuan. He claimed that he was never formally charged with anything, but from that point on, he had to go to the local community centre every Monday and Friday to “receive education.” He claimed that while he was in detention, people went to his home and smashed windows and wrote abusive slogans on the wall, his son was bullied at school, and that as a result of all these pressures his wife divorced him and he was forced to move to a different address. The applicant claimed that shortly after returning to work, he was told by his employer that a decision had been made to make him redundant as they were in the process of restructuring, and that because of his “circumstances”, he was not eligible to compete for any other position. He claimed that the implication was that this was because of his involvement in Falun Gong. The applicant claimed that it was then that he realised he had no future in China and, with financial help from fellow practitioners and the assistance of an old school friend, he was able to obtain a false South Korean passport and leave China and travel to Australia.

Held: Decision under review set aside.

The Tribunal found that although the applicant came to Australia using a Korean passport in another name, evidence of his Chinese citizenship in the form of a Chinese household register in the identity claimed by the applicant was contained in the Department’s file, and on that basis, the Tribunal found that the applicant was the person he claimed to be and that he was a citizen of the PRC. The Tribunal was impressed by the applicant’s account of his experiences in detention and accepted that he had been detained and mistreated while in detention in China. The Tribunal found that against this background, the applicant’s claim that he lost his job was plausible. The Tribunal further found that the applicant was able to answer to its satisfaction almost all of its questions regarding the philosophy and practice of Falun Gong. The Tribunal considered whether the applicant’s current knowledge may have been acquired in recent times, however, it found that less than three months had elapsed since the departmental interview, and that given his answers at the hearing and the confident manner in which he gave them, the applicant had a detailed knowledge of Falun Gong and accepted that his knowledge was acquired in China. The Tribunal accepted that, notwithstanding his arrest and detention, he continued to practise Falun Gong privately, and were the applicant to return to China he would continue to practise Falun Gong. The Tribunal found that there was a real chance the applicant’s continued commitment to Falun Gong might be discovered given that he is already adversely regarded by Chinese authorities, and that he would be at risk of further arrest, detention and physical abuse. The Tribunal was of the view that in a society such as China where household registration was required, the applicant would not be able to avoid detection by relocating to another location. The Tribunal found that the harm he might face was sufficiently serious as to amount to persecution, and that the persecution he faced would be because of his association with Falun Gong. The Tribunal considered that Falun Gong practitioners constituted a “particular social group” in China and therefore found that the persecution he feared would be motivated by a Convention reason. Accordingly, the Tribunal was satisfied that the applicant was a person to whom Australia had protection obligations under the Refugee Convention.

India

0903571

7 October 2009, Sydney

Mr D O'Brien, Principal Member

INDIA – POLITICAL OPINION – The applicant claimed to fear persecution for reasons of his political opinion. He claimed he joined the police force in 1979. In 1984 when a Temple was attacked, he supported Mann Akali Dal. He claimed another Akali Dal group wanted him to support it but he refused. He further claimed that in 1991 while on police duty a false case was registered against him in which it was alleged he was involved with others in planning a robbery and that he and another fired shots at the police. He claimed he was held unlawfully in jail for 12 months on a false charge and he was released on a judge's orders. He claimed that a member of Person 1's party brought the false case against him and that his uncle was a witness to the illegal confiscation of land by Person 1, who had been a government Minister and a member of Badal Akali Dal which opposed Mann Akali Dal. The applicant claimed he fought for 8 years for reinstatement to the police force after the charges against him were dismissed and that he was eventually reinstated and won compensation, but after one and half years he was involuntarily retired because of pressure by Person 1 on the applicant's superiors. The applicant claimed he leased some land in partnership with Person 2 without knowing that Person 2 was a member of Person 1's group. He claimed that when the crop was ready Person 2 took the lot and when the applicant asked for his money he was chased away with rifle shots fired into the air. He claimed he filed a First Incident Report but no further police action was taken and that in April 2008 he was arrested again by the police who imprisoned him for 10-15 days. He claimed he feared for his life because Person 1's supporters killed a friend of his and the police had arrested his son twice and held him in prison for a time.

Held: Decision under review affirmed.

The Tribunal accepted that the applicant was a Sikh and a supporter of the Mann Akali Dal party. However, it did not accept the incidents which the applicant claimed took place in 1991 and 2006 were a basis for a finding of persecution for a Convention reason. The Tribunal did accept the applicant was falsely arrested in 1991 and released after 12 months, but it did not accept that Person 1 was responsible for the false charge brought against the applicant. The Tribunal did not accept the applicant's account of the 2006 incident about the dispute concerning the proceeds of a crop and it noted that the applicant was unable to offer an explanation about an inconsistency in his evidence relating to this. The Tribunal also found that the applicant was unable to provide details to support his allegation that he was arrested in April 2008 or that he had been arrested many times. The Tribunal's view was that even if the applicant faced harm if he returned to the Punjab, the threat did not extend to India as a whole. Country information indicated there were no restrictions on the relocation of Sikhs to other Indian states and that upon their relocation they would have indiscriminate access to employment dependent on their skill level. The Tribunal believed that if the applicant and his family moved to a new area of India, the risk of harm to them arising from their political opinion would become remote. The Tribunal's view was that for these reasons, the applicant did not hold a well founded fear of being persecuted for any Convention reason if he returned to a region of India different from where he formerly lived and the likelihood was remote that those seeking to harm him in his former region of residence would have an interest in locating him elsewhere in India. On this basis, the Tribunal did not consider the applicant was a person who was owed protection obligations by Australia. Accordingly, the Tribunal was not satisfied that the applicant had a well founded fear of persecution for a Convention reason and it affirmed the decision not to grant the applicants protection visas.

Israel

0904705

29 September 2009, Melbourne

Mr P Fisher, Member

ISRAEL – POLITICAL OPINION – CONSCIENTIOUS OBJECTOR – The applicant claimed he left Israel initially to travel and explore Australia. However, he claimed that six months ago the situation in Israel became worse with bombs falling in every town, especially in the northern area where his house was located. As a result, his parents moved to a different location in Israel which they hoped would be far from

the bombing. The applicant claimed that although the current situation in Israel was not as bad as it was six months ago, there were still bombings going on. He feared that if he went back, the army would probably call him to serve his country as all Israeli men had a duty to serve in the army for a month every year until the age of 45, and if they resisted they were imprisoned. The applicant claimed he could not understand how the delegate had found that he had not been persecuted because of his religion or race, as all the problems in Israel were because Israelis were Jewish and their Arab neighbours were determined to eliminate the very existence of Israel. Even when he wanted to travel the world, he claimed he could not go to many places because of his race and religion and that there were lots of examples of Israeli Jews being persecuted in different parts of the world. He claimed he is ashamed of what is happening over there and that he is determined never to live there again.

Held: Decision under review set aside.

The Tribunal considered the applicant to have given a consistent and credible explanation of the reasons he does not wish to perform any further military service. The Tribunal accepted that the applicant initially performed his military service with the Israel Defence Forces and found that, at that time, he had no conscientious objection to doing so, but that the experiences he gained during the course of his military service had formed the subsequent development of his views on military service generally, and the conflict between Israel and its Arab neighbours in particular. The Tribunal accepted that since leaving Israel, and particularly since arriving in Australia, the applicant had developed a different outlook on the Israeli-Arab conflict, that he had formed a genuine moral objection to the manner in which the Israel Defence Forces engaged in that conflict, and that he conscientiously objects to performing further military service with those forces. The Tribunal also accepted that the applicant is now opposed to war generally, although not necessarily in all circumstances. Finally, the Tribunal accepted that if the applicant did return to Israel and he was required to perform reserve military service, he would refuse to do so for reasons of conscience. Consequently, the Tribunal found that if the applicant returns to Israel in the reasonably foreseeable future, he would be called up to perform reserve military service, and would not be relieved of that obligation on grounds of conscientious objection. Accordingly, the Tribunal found that the applicant would be imprisoned for such refusal when called up to do so, given that the country information indicated that this has happened to many other people who have done likewise. The Tribunal therefore found that there is a real chance that the applicant would experience serious harm capable of amounting to persecution if he returns to Israel in the reasonably foreseeable future. As the risk of persecution in this case comes from the state itself, the Tribunal found that state protection is not available to the applicant. Given that it is the state apparatus from which the applicant has a well founded fear of persecution, the Tribunal also concluded that safe relocation within Israel is not available to him. Accordingly, the Tribunal was satisfied that the applicant is a person to whom Australia had protection obligations under the Refugee Convention.

Latvia

0903639

12 October 2009, Sydney

Ms L Mojsin, Member

LATVIA (STATELESS) – SOCIAL GROUP – ETHNIC RUSSIAN MINORITY – The applicant claimed that she was born in the Ukraine and went to live in Latvia when she was 18. She claimed that she was not able to become a Latvian citizen and was not entitled to government assistance because of her ethnicity. She stated that she and her daughter were evicted from the flat that they owned by Latvian nationalists in 2005 for not paying the government “strata” and that it was common practice to evict “aliens” under these auspices. She claimed that she had no alternative but to sell the flat to a friend and that as a result of the eviction she complained to the authorities and various human rights organisations. She also claimed that her story became public when she contacted a ‘human rights’ organisation who distributed details of her grievances and her personal details in a pamphlet on the streets of Riva. She stated that she then began receiving threatening notes. She claimed that she went to the police who said that they were going to investigate the matter, but later she received a letter from them to say that the case had been dropped due to a lack of evidence. The applicant claimed she and her daughter were severely beaten near their apartment and that the attack was reported to the police, however, no action was taken to investigate the matter. She claimed that a few days later, someone with a Latvian accent telephoned her and said that they would ‘finish them off’ soon, at which time she and her daughter decided to come to Australia. She claimed

that her daughter came to Australia by herself as they had been robbed and had all of their money stolen, and that subsequently her daughter was granted a protection visa in 2006. The applicant claimed that she unsuccessfully applied offshore for a Humanitarian visa to Australia, and that she had since made a number of attempts to relocate to other countries in the EU but was told that, as a stateless person, she was not entitled to reside in any of those countries.

Held: Decision under review affirmed.

The Tribunal found that the applicant was not evicted from her flat, but rather she sold it to a friend as she could not meet her financial obligations and that after living there rent free for a short period, she was asked to vacate it by the new owner. The Tribunal did not accept that the applicant was forcibly removed by the Latvian government. The Tribunal rejected the applicant's claim that the housing policies of the Latvian government amounted to forcible eviction of ethnic Russians/Ukrainians, and further rejected the applicant's claim that the Latvian Government's policies discriminated against the applicant because of her ethnicity in the provision of housing and other associated costs such as utility services. The Tribunal could find no independent evidence to suggest that pro-Russian organisations in Latvia distributed pamphlets in Riga detailing complaints by ethnic Russians/Ukrainians, and was of the view that were this the situation, some mention would have been made in independent sources such as US State Department or Amnesty International reports. Therefore, it was not satisfied that pamphlets were distributed in Riga with the applicant's name and contact details on them or that any threatening messages or calls were received. The Tribunal found that, even if it were to accept that the applicant and her daughter were attacked on the street and that they were threatened on the telephone and had valuables stolen when their apartment was robbed, the independent evidence did not suggest that ethnic Russian/Ukrainian residents did not receive police protection. The Tribunal found that independent evidence did not suggest that ethnic Russian/Ukrainians were treated differently in the provision of government services, and found nothing to suggest that ethnic Russians/Ukrainians received differing payments from ethnic Latvians. The Tribunal found that the Latvian state granted citizenship to ethnic Russians, who comprised about 30% of the population of Latvia and were still the majority ethnicity in Riga, and that by 2005, 100,000 ethnic Russians had applied for and were granted Latvian citizenship. The Tribunal was therefore satisfied that the Latvian state had not prevented the applicant from obtaining citizenship and that the Latvian state did not intend to institute forcible expulsion of ethnic Russians or Ukrainians who were non-citizen residents. The Tribunal was not satisfied that the applicant was a person to whom Australia had protection obligations under the Refugees Convention.

Lebanon

0905729

23 September 2009, Sydney

Mr S Roushan, Member

LEBANON – IMPUTED POLITICAL OPINION – The applicant claimed to fear persecution on the basis of race, religion, nationality, membership of a particular social group and political opinion. His case was essentially that, as a Palestinian refugee in Lebanon, he was subjected to severe discrimination. He lived in Nahr el-Bared with his large extended family in harsh socio-economic conditions. The family's situation deteriorated significantly in 2007 when, during clashes between members of Fatah al-Islam and the Lebanese Army in the camp, his home was occupied and subsequently destroyed. The applicant and his family were made homeless and were forced to leave the camp. The applicant claimed that their circumstances attracted false accusations of association with Fatah al-Islam by the Lebanese Army. They were also accused of collaborating with the Lebanese Army by members of Fatah al-Islam. The applicant claimed that many of his relatives were subjected to arrest, detention and mistreatment by the Lebanese Army. He provided evidence of his brothers continued detention without charge by the authorities. The applicant claimed his uncle was shot and subsequently accused of being a leader of Fatah al-Islam and that he died in prison after being denied adequate medical treatment. The applicant claimed that he fears further adverse treatment by the Lebanese authorities and that he also fears being harmed by members of Fatah al-Islam, other Palestinians who may perceive his family as being responsible for the destruction of Nahr el-Bared and Lebanese nationals for holding his family responsible for the death of loved ones during the 2007 clashes.

Held: Decision under review set aside.

The Tribunal found the applicant's evidence was wholly consistent with his written claims and the independent evidence before the Tribunal. The Tribunal found the applicant to be a reliable, truthful and credible witness. The sources consulted by the Tribunal confirm that on 20 May 2007 clashes erupted between armed members of the radical Fatah al-Islam and the army in Tripoli. Fighting was triggered and clashes spread to Nahr el-Bared camp after Fatah al-Islam fighters attacked and killed Lebanese soldiers at an army outpost. A short-lived ceasefire was followed by three months of fighting when more than 20,000 Palestine refugees living in Nahr el-Bared camp and about 10,000 other Palestine refugees and Lebanese living in adjacent areas were forcibly displaced. According to Human Rights Watch, the Lebanese army and internal security forces arbitrarily detained and physically abused Palestinian men fleeing the fighting and the government failed to investigate the cases of arbitrary detention and abuse, reinforcing a climate of impunity.

The Tribunal accepted that the applicant's family home in Nahr el-Bared was invaded and occupied in 2007 by Fatah al-Islam fighters during the war. The Tribunal accepted that his family home was destroyed, making him and members of his family homeless. The Tribunal accepted that upon fleeing Nahr el-Bared, the applicant, alongside other male Palestinian residents of the camp, was stopped, interrogated, accused of being associated with Fatah al-Islam and mistreated. The Tribunal accepted that the applicant's relatives were also subjected to the same treatment. The Tribunal accepted that false accusations about family members carried serious consequences for the applicant, in that he continued to be subjected to interrogation and mistreatment on a number of occasions. Having regard to the evidence before it, the Tribunal was satisfied that the applicant's imputed political opinion and membership of a particular social group, namely his family, were essential and significant reasons for the persecution feared by him. The Tribunal was of the view that if the applicant were to return to Lebanon he would face significant economic hardship that would threaten his capacity to subsist and that this would amount to serious harm. The Tribunal was also satisfied that the applicant's Palestinian ethnicity is an essential and significant reason for the persecution he faces. Having considered his circumstances as a whole, the Tribunal was satisfied that relocation to another camp or elsewhere within Lebanon is neither reasonable nor would it provide the applicant with means to escape the harm he fears. Accordingly, the Tribunal was satisfied that the applicant had a well-founded fear of persecution for a Convention reason.

0905774

23 October 2009, Sydney

Ms S Pinto, Member

LEBANON – POLITICAL OPINION – The applicant claimed to fear persecution on the basis of his political beliefs. The applicant is a Sunni Muslim. He claimed that during the Nahar El-Bared conflict in May 2007, which was fought between the Lebanese Army and Fatah al-Islam, members of the applicant's village watched the unfolding events, fearing that Fatah al-Islam fighters may use their town as an escape route out to sea or through the mountains. The applicant claimed that a number of young men in his village were vigilant in guarding the coastline and mountain ranges surrounding their village, and were determined to capture any Fatah al-Islam fighters who might try to escape from the Lebanese Army during the last phase of fighting. The applicant claimed that, as a result of his involvement in the conflict, he was threatened by telephone by members of the Fatah al-Islam. The applicant claims that he went to Qatar in 2008 for both work and to avoid the threats, but returned to Lebanon due to the shortage of employment opportunities. The applicant claimed that he lived in Beirut for his safety upon his return to Lebanon because he feared returning to the north of Lebanon. The applicant fears that if he returns to Lebanon, he will be sought by Fatah al-Islam and also fears Hezbollah as a result of its links to Fatah al-Islam.

Held: Decision under review affirmed.

The Tribunal accepted that a conflict occurred between Fatah al-Islam and the Lebanese Army Forces from May to July 2007 at the Nahar El-Bared Refugee Camp. The Tribunal accepted, on the basis of independent evidence, that militia groups were involved to some extent in the conflict and it was prepared to accept that civilians may have provided some assistance to the army in terms of its needs for food, petrol and medical supplies. The Tribunal also accepted that businesses ceased to operate during the conflict, several persons were killed and that Fatah al-Islam continued to operate in parts of Lebanon. The Tribunal did not, however, accept that the applicant had any involvement in the conflict and that he had, at any time, been sought by Fatah al-Islam or that he would be of any adverse interest to Fatah al-Islam or Hezbollah upon his return to

Lebanon. The Tribunal considered that the applicant's evidence to the Tribunal in relation to his claimed involvement in the Nahar El-Bared Refugee Camp was often vague, inconsistent and contradicted his evidence to the Department. Although the applicant was able to speak generally about the role of the civilian population, he had considerable difficulty when asked at the Tribunal hearing to elaborate upon his own role in the conflict. The Tribunal was not satisfied that the applicant was a credible witness and did not accept that the applicant had given a truthful account of his experiences in Lebanon. The Tribunal was not satisfied that the applicant was a person to whom Australia had protection obligations under the Refugees Convention. The Tribunal was also not satisfied that there was a real chance that the applicant would be harmed upon his return to Lebanon for reasons of his political opinion, imputed political opinion or for any other Convention reasons. The Tribunal was, therefore, not satisfied that the applicant had a well founded fear of persecution in Lebanon now or in the reasonably foreseeable future.

Liberia

0903079

14 September 2009, Melbourne

Ms W Boddison

LIBERIA – ETHNICITY – KISSI TRIBE – RELIGION – CHRISTIAN – The applicant claimed to fear persecution from Muslim Mandingo members of the “Liberians United for Reconciliation and Democracy” rebel group (LURD) on the basis of his Christian religion and Kissi ethnicity. The applicant claimed that he was being targeted by a LURD General because of a long-standing land dispute between the applicant's and the General's families, and because the General had found out that he had provided a statement to the Truth and Reconciliation Commission (TRC). The applicant claimed that the land dispute was grounded in tensions between Muslims and Christians. The applicant claimed that during the civil war he was, at various times, forced into slavery and portage for a number of rebel groups. He claimed that he saw people being beaten and killed and was forced to dig mass graves when working for two rebel groups. The applicant claimed that the son of his family's Muslim landlord became a General in the LURD and burnt down the home his family had fled from during the civil war. He claimed that the General then began looking for his family. The applicant claimed that in 2003 the LURD, headed by the General, attacked his village and beat his family. He claimed that they raped his mother, sisters and fiancé and that he was made to watch the General shoot both his parents. His fiancé and siblings were taken away and he never saw them again. The applicant claimed he was taken captive by the LURD rebels but managed to escape. He claimed that he was seen by the LURD General when passing through a roadblock in 2004 and was beaten with guns, sticks and machetes, and that he escaped when fighting broke out with a Christian militia rebel group. He claimed that LURD rebels continued to search for him. The applicant claimed that in 2007 he made a written statement about his experiences during the war to the TRC. He claimed that he had an appointment to read his statement on the radio for national broadcast, but he was too scared to return for the interview. At hearing, the applicant claimed that in September 2008, the General and his associates came to the house he was sharing with 8 people, they broke down the door and started fighting with the applicant. He claimed that the men were carrying machetes and guns and said they wanted to arrest the applicant. His friends told them that they could not arrest the applicant as they were not security officers. He claimed his friends fought them off and alerted neighbours, but before the General left he threatened the applicant. He claimed that the General wanted to kill him so he would not be able to make a radio statement at the TRC.

Held: Decision under review affirmed.

The Tribunal had significant concerns about many aspects of the applicant's claims and evidence, and noted that he provided a number of conflicting and contradictory accounts throughout the process. The Tribunal further found that the applicant's claims were inconsistent with country information. Independent information indicated that the person with the name given by the applicant for the General was in self-imposed exile at the time the applicant claimed to have been attacked by him, and that the person bearing the alias given by the applicant for the General was a different person altogether. The Tribunal did not accept that there was a land dispute in the applicant's home village between the applicant and the General's family and that he was being targeted as a result of the dispute. The Tribunal found that the applicant was not being targeted by a former LURD general, nor that there was an attack on his home in September 2008. It did not accept that an experienced rebel leader and his armed men would leave the applicant's house when unarmed occupants told them that they could not take the applicant away because they were not

security officials. Given the applicant's claim that the General wanted to kill him, the Tribunal found it far-fetched that the General had the opportunity to do so yet he left without inflicting much harm upon the applicant. The Tribunal did not accept that the applicant was being targeted by LURD members as a result of providing a statement to the TRC. The Tribunal noted that the applicant had not provided any evidence that any aspect of his statement had been published. The Tribunal found that the applicant had never been persecuted in the past on account of his religion, that LURD has been disarmed, and that there is no real chance the applicant would be persecuted for reasons of his religion in the reasonably foreseeable future by LURD rebels or others. The Tribunal acknowledged that the Kissi Tribe is a minority Tribe, but could find virtually no evidence that the Kissi tribe is particularly singled out for persecutory treatment in Liberia. The Tribunal found that the applicant did not have a well founded fear of persecution and that he is not a refugee.

Malaysia

0900523

15 September 2009, Melbourne

Mr J Atkins, Member

MALAYSIA – ETHNICITY – CHINESE – RELIGION – CHRISTIAN – The applicant claimed to fear persecution from the Malaysian government on the basis of his Chinese ethnicity and Christian religion. He claimed that preferential treatment is given to the ethnic Malay majority in Malaysia and that he had been prevented from attending university to undertake teacher training because only 3-5% of Chinese students are selected to receive government scholarships. He claimed that 95% of university places go to Malays. He claimed that it is difficult to obtain accurate reports in the press because it is controlled by Malays, and this is why there are very few reports of discrimination in newspapers. The applicant claimed that he is unable to obtain government employment and that his own business failed because of the discrimination by the Malaysian government and the ethnic Malay majority against the Chinese. The applicant claimed that the government required him to sell 51% of the logging business he had established to a Malay partner. As logging contracting became increasingly difficult, the applicant sold out of the business and entered the fishing industry. He claimed that he could not get a fishing permit in his own name as they are controlled by Malays so he had to rent a permit from a Malay. The applicant claimed he was a Methodist and that churches were hard to find in Malaysia so Christians had to travel long distances to get to a Church, while there are mosques in every village. The applicant claimed that if he had to return to Malaysia he would be unable to support himself or his de facto and her child as it would be impossible for him to get work and therefore he would have nowhere to live, nor enough food to exist. He claimed that the authorities in Malaysia would not protect him as they instigate the discrimination against ethnic Chinese.

Held: Decision under review affirmed.

The Tribunal found that there was substantial evidence to suggest a degree of discrimination against Ethnic Chinese in Malaysia which included education, government and private sector employment, and in obtaining business permits and licenses. However, the Tribunal found that the discrimination experienced by the visa applicant on the basis of his Chinese ethnicity did not amount to serious harm. The Tribunal found that while the applicant did not attend university in Malaysia, he did not suffer financial hardship as a result. The Tribunal noted that the applicant had said that his work in the logging sector earned him considerably more than he would have earned as a student or part time teacher. Although the applicant was required to take on a Malaysian business partner, the Tribunal found that this did not cause the business to fail, rather, the applicant told the Tribunal that, as forests were progressively cleared in Malaysia, business became more difficult and he sold his share. The Tribunal further found that while the applicant could not hold a fishing permit in his own name, he was able to get around this by renting a permit. The Tribunal found that the applicant was not deprived of a living and that after selling that business the applicant was still able to work part time and had sufficient savings to allow him and his de facto to travel to Australia and holiday for 5 months before looking for work. The Tribunal accepted the applicant's claim that he is unable to obtain Government employment, and noted that this claim was supported by independent country information. However, the Tribunal found that the applicant had not suffered serious harm for a Convention reason, as he was able to obtain work and carry on his own business. The Tribunal noted that the applicant had not suggested he was denied any education, work or freedom because of his religion and it found he did not face a real chance of persecution in the reasonably foreseeable future because of his religion. The Tribunal

found that, on the basis of professional advice, the applicant did not apply for protection when he first decided to extend his stay in Australia. It found that neither the applicant nor his advisors felt he had a legitimate claim for a protection visa and instead he applied for a Subclass 457 visa. The Tribunal found that the applicant's delay in lodging an application for a protection visa was consistent with the applicant not possessing a genuine fear of persecution should he return to Malaysia. Therefore, the Tribunal was not satisfied that the applicant was a person to whom Australia had protection obligations under the Refugees Convention.

0904128

22 October 2009, Melbourne

Ms D Hubble, Member

MALAYSIA – SOCIAL GROUP – TAMILS IN MALAYSIA – The applicant claimed that as a Tamil he was discriminated against in Malaysia. He stated that one day on his way home from work he was set upon by four men and hit in the leg with a stick. The applicant claimed that his attackers were close friends of the son of a government minister. He claimed that subsequently a man was arrested by police and after being let out on bail, the man went to the applicant's home and assaulted his mother before setting the house on fire. The applicant stated that he did not report this second incident to the authorities as he felt that they would not take any action due to the perpetrator's connections. The applicant claimed that he and his mother stayed in a temple for a period of time before his boss arranged through another man for him to come to Australia. The applicant stated that Tamils do not have any respect in Malaysia and that they are discriminated against in relation to employment and other areas. He claimed that Tamils in Malaysia are slaves and that they receive no protection.

Held: Decision under review affirmed.

The Tribunal accepted that the applicant was assaulted by some Malay men who subsequently assaulted his mother and burned down their home. The Tribunal also accepted that the applicant reported the assault to the Malaysian police who subsequently arrested and charged one of the applicant's assailants. The Tribunal found that the assailant was subsequently released on bail and that this accorded with normal practice in Malaysia. The Tribunal also accepted that gang members were still looking for the applicant. The Tribunal found that in these circumstances, the applicant had a subjective fear of injury or death at the hands of gang members who were seeking revenge for his having reported the first assault to the police. The Tribunal found that this constituted serious harm, but that fear of revenge did not come within the scope of the Convention unless it could be shown that the retaliation was linked with a racial, religious or other Convention reason. The Tribunal accepted, based on the available country information, that there were gangs in Malaysia who engaged in criminal activities and perpetrated various criminal acts on Malaysian citizens. The Tribunal considered that, on the available evidence, the initial attack suffered by the applicant was an opportunistic incident of street violence arbitrarily perpetrated against him by drug and alcohol-fuelled gang members. The Tribunal noted that the applicant specifically stated that he was not sure why he was attacked. In such circumstances, the Tribunal did not accept that gang members were motivated by reason of the applicant's race or religion. The Tribunal found that the gang's subsequent desire for revenge was not for the essential and significant reason of the applicant's race or religion, or any other Convention reason, but because the applicant reported one of them to the police who subsequently arrested and charged him. Accordingly, the Tribunal found that neither the applicant's race nor religion, nor any other Convention reason, was the essential and significant reason for the harm feared by the applicant. The Tribunal accepted that ethnic Tamils suffer discrimination in Malaysia; however, the Tribunal was not able to locate any reports of the Malaysian police failing to act due to a person being of Tamil ethnicity, or any information to suggest that the police in Malaysia apply the criminal law in a discriminatory manner. The Tribunal found that the applicant could access state protection and that such protection would not be withheld by the Malaysian authorities. Accordingly, the Tribunal was not satisfied that the applicant was a person to whom Australia had protection obligations under the Refugees Convention.

North Korea

0905614

19 October 2009, Sydney

Mr A Mullin, Member

NORTH KOREA – POLITICAL OPINION – OPPOSITION TO THE REGIME – PROTECTION OBLIGATIONS TO NORTH KOREAN CITIZENS

The applicant claimed that his fellow factory workers became dissatisfied with their pay and working conditions, and that he represented them in their demands to their employer. He claimed that he was subsequently arrested, taken to a police station and interrogated, and that when he refused to modify his views he was severely beaten. He claimed that he was released a few months later after his wife had paid a bribe to the police, and was warned that if he gave any more trouble the police would kill him. The applicant claimed that after his return to work he was treated badly by the factory management and that he was closely monitored. He claimed that some time later he was involved in an argument with management after a friend was injured by a faulty machine, and that he was told to go home to wait for further orders. He claimed that he was then warned that government officials had come to the factory to hold a meeting with the management and that he might be re-arrested. The applicant claimed that he and his wife fled to a relative's house and were taken by a friend to the home of a man who could help them cross into China as the applicant's wife had an uncle there, and they crossed illegally into China that night. He claimed that they paid to obtain fraudulent Chinese identity cards. The applicant claimed that they lived in China for four years before they received an offer from a South Korean businessman to take the applicant to Australia for a fee. The applicant claimed that he then boarded a cargo ship which arrived in Perth.

Held: Decision under review affirmed.

The Tribunal had concerns about the applicant's claims to have arrived in Australia clandestinely without a passport, given that there were no entry records for him held by the Department of Immigration, and that his account of the circumstances in which he was smuggled to Australia in a cargo ship were sufficiently vague as to raise concerns about its plausibility. The Tribunal considered the possibility that his origins were in the sizeable Korean ethnic minority living in China and that, under another name, he came to Australia with a valid Australian visa in a Chinese passport. However, the Tribunal was prepared to give the applicant the benefit of the doubt given that he was able to provide some circumstantial detail of his claimed life and experiences in North Korea and he had repeated these with a degree of consistency since he lodged his application, nor was there any information before the Tribunal which directly refuted his claims. The Tribunal found that there was abundant independent evidence that the North Korean totalitarian system of government had, for many years, denied to the population even the most basic of human rights and had ruthlessly suppressed any signs of dissent or opposition. It found that actions such as those the applicant claimed to have taken to protest against working conditions, and subsequently to leave the country without permission, could be expected to result in harsh punishment with the real possibility that those targeted would suffer lengthy imprisonment or death. The Tribunal accepted the applicant's account as both coherent and generally consistent with the country information, and that his claims about arguments with his employer and consequent punishment by the authorities were credible. The Tribunal found that there was a real risk that he would suffer serious harm amounting to persecution if he returned to North Korea and that although there was no particular information before the Tribunal regarding his actual political opinion, it was satisfied that the motivation for this harm would be an adverse political opinion imputed to him by the North Korean authorities. However, the Tribunal found that there was information which indicated that North Korean citizens were entitled to citizenship of the Republic of Korea (ROK), and that once a claimant was found to be a genuine North Korean, the decision to grant citizenship was, in practice, automatic and not discretionary, and that no genuine North Korean refugee had ever been refused ROK citizenship. The Tribunal found that the applicant had not taken all possible steps to avail himself of that right, and that therefore the applicant was not owed protection obligations by Australia. Despite the applicant's claim that he would be at risk from North Korean agents operating in ROK and that he would face discrimination and hostility from the ROK population, the Tribunal was not satisfied that any difficulties the applicant could be expected to face in adjusting to life in ROK could be said to constitute serious harm amounting to persecution. Accordingly, the Tribunal was not satisfied that the applicant was a person to whom Australia had protection obligations under the Refugees Convention.

FEDERAL COURT JUDGMENTS

Khant v MIAC

[2009] FCA 1247

Federal Court of Australia, Cowdroy J, NSD 410 of 2009, 5 November 2009

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a decision of the Migration Review Tribunal (the Tribunal) affirming a decision of the Minister's delegate to cancel the appellant's Student (Temporary) (Class TU) Subclass 573 (Higher Education Sector) visa under s.116 of the *Migration Act 1958* (the Act) on the basis of non-compliance with condition 8202.

Prior to the cancellation, the Department had invited the appellant to attend an interview. There was no record of any interview being conducted though there was a record of the notification of the decision verified by the appellant's signature on a later day. On review, the Tribunal invited the appellant to provide information and comment upon numerous issues including his failure to attend several interviews before the Department. The appellant did not respond and the Tribunal proceeded to hand down its decision on the basis that he had lost any entitlement to a hearing. The Tribunal considered an untranslated medical certificate relating to the appellant's grandmother and found that though he may have had concerns about her health, under r.2.43(2)(b)(ii)(B) of the Migration Regulations 1994, it was satisfied on the limited evidence before it that the non-compliance was not due to exceptional circumstances beyond his control.

On appeal to the Federal Court, the appellant submitted in the very particular factual circumstances of the proceedings, the Tribunal should have exercised its discretion to seek more information before making its decision. Those circumstances included the uncertainty about whether an interview was conducted and what occurred; the unclear decision of the delegate; the unclear purpose of the medical documents provided to the delegate; and the Tribunal's obligation to be positively satisfied that there were no exceptional circumstances explaining the appellant's failure to comply with condition 8202.

Held: MRT decision set aside and remitted for reconsideration.

- (i) The failure of the Tribunal to make further inquiries of the appellant, or to inquire of the delegate or Department about a critical fact, coupled with the ease at which such inquiry could be made, the paucity of information the Tribunal had to make its decision, and the type of inquiry the required by r.2.43(2)(b) meant that there was jurisdictional error for failure to conduct a proper review.
- (ii) Though the Act allowed the Tribunal to proceed to a decision in the absence of a reply from the appellant, in the circumstances of the case, this did not relieve it of its obligation to make further inquiry by email or phone. The medical records may have been provided for another reason, for example, that the appellant's parents were unable to give him sufficient funds because they were paying for the treatment of his sick grandmother. This exposed the paucity of the information it had before it to make its decision. Further, the records lacked any documentation regarding any interview with the delegate and enquiry of the delegate regarding this discrepancy could have resolved the issue.

Maroun v MIAC

[2009] FCA 1284

Federal Court of Australia, Jagot J, NSD 863 of 2009, 12 November 2009

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a decision of the Migration Review Tribunal (the Tribunal) that it did not have jurisdiction to hear the application for review because the application was filed out of time.

In the visa application form, the appellant provided a NSW address as his "*residential address in Australia*". He also included a residential address in Lebanon. He did not respond to a question about his "*Address for correspondence*". In response to the question, "*Do you agree to DIMIA communicating with you by*

facsimile, email or other electronic means? he answered “yes” and provided an email address. This question was followed by a note that any decision to refuse the visa application would be notified by mail.

The Tribunal found the review application was lodged outside the prescribed time period. The Tribunal was satisfied that the letter notifying the applicant of the primary decision was sent in accordance with s.66 of the *Migration Act 1958* (the Act). A copy of that letter on the Department’s file bore a registered post sticker and stated “*The enclosed leaflet provides information about review by the MRT, including addresses where an application can be made*”. After the signature section, the letter stated: “*Enclosure: ...MRT leaflet*”. The letter was returned to the Department marked ‘return to sender’ and the envelope, addressed to the NSW address, was on file. The Tribunal leaflet was not. A Departmental officer gave evidence that she could not recall the letter but it was the usual practice to enclose the decision and Tribunal leaflet with such letters.

The appellant contended, among other things, that the notification letter did not comply with s.66(2)(d)(iv) of the Act, as notice of “where the application for review can be made” was not given. He also contended that the notice was not given by a method in s.494B of the Act as he did not provide his NSW address “for the purposes of receiving documents”. Further, the NSW address was not his “last residential address” as he also gave an address in Lebanon.

Held: Appeal dismissed.

- (i) It was open to the Federal Magistrate to find that the letter was sent and included a copy of a Tribunal leaflet that satisfied the requirements of s.66(2)(d)(iv) of the Act.
- (ii) Section 66(2)(d)(iv) does not say that the notice must identify all places where an application for review can be made. It states only that the notice must state “where the application for review can be made”. *Uddin v MIMIA* [2005] FMCA 841 does not deal with s.66(2)(d)(iv) of the Act. The statutory circumstances in *Uddin* and *Shao v MIMIA* (2007) 157 FCR 300 are not sufficiently similar to s.66(2)(d)(iv) to support any form of reasoning by analogy.
- (iii) *Obiter*: Even if the section were construed as requiring all locations where an application can be made, having regard to the principles in *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, not every breach of s.66(2)(d)(iv), no matter how trivial, would operate to invalidate a notice.
- (iv) In the context of the form as a whole the appellant must be taken to have provided his residential address as his address for the purpose of, at least, receiving any notice of refusal of the visa application. The ordinary meaning of the word “last” in s.494B does not mean “single” or “only”. It means “most recent at the time in question”. As the appellant was physically in Australia at the time of his application, his Australian address was his “last” residential address.

**SZKUS v MIAC
[2009] FCA 1285**

Federal Court of Australia, Jagot J, NSD 892 of 2009, 12 November 2009

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

The appellant, an Indian national, claimed to be subject to harassment by political opponents and police. A newspaper article was submitted that referred to him as the victim of an incident described in his claims. The Tribunal requested DFAT seek information on whether the article was genuine and the incident occurred. In answer to the first question, DFAT contacted the newspaper’s editor, Mr Sharma, who confirmed that the article was published and provided additional information about the occurrence of the incident corroborating the appellant’s central claim. In answer to the second question, DFAT contacted the police and was informed there was no record of the incident. At the Tribunal’s request, DFAT later provided further information that several people had said the incident did not occur, the newspaper had a small circulation and was not well regarded, and confirmed that there was no police report.

In reaching its conclusions, the Tribunal accepted the article had been published but noted there was no police record and did not accept that the incident occurred. It did so on the basis that DFAT had been unable to verify that the incident occurred and it preferred DFAT's evidence to that of the appellant. The Tribunal did not expressly mention Mr Sharma's comments about the incident.

The appellant claimed the Tribunal breached s.424(1) of the *Migration Act 1958* (the Act) as it failed to have regard to the information it got, being the information from Mr Sharma as to whether the incident occurred. The Federal Magistrate found that, in view of the later request for further information from DFAT, the Tribunal should be understood as having sought to verify (and thus must have considered) Mr Sharma's material.

Held: RRT decision set aside and remitted for reconsideration.

- (i) The Tribunal committed a jurisdictional error by contravening its obligation under s.424(1) of the Act because it did not have regard to Mr Sharma's information insofar as it was relevant to the occurrence of the incident. Mr Sharma did more than confirm publication of the article. He gave detailed evidence about the incident. Because the material from Mr. Sharma was corroborative of the appellant's central claim it was relevant to the Tribunal's assessment of the appellant's credibility and the existence of the appellant's claimed fear of persecution.
- (ii) The Tribunal's reasoning strongly suggested that in its mind DFAT's evidence did not include Mr Sharma's information. If it had, its statement that it preferred DFAT's evidence would have made no sense as Mr Sharma's material supported the appellant's claims. Because DFAT provided all Mr Sharma's information under its response about whether the article was published and not in answer to whether the incident occurred the Tribunal appeared not to have considered it as relevant to the second question.
- (iii) The Tribunal did not seek to verify Mr Sharma's information about whether the incident occurred but rather whether there was no police record which information DFAT provided in response to the Tribunal's second question.

Ahmad v MIAC

[2009] FCA 1368

Federal Court of Australia, Middleton J, VID 608 of 2009, 13 November 2009

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a decision of the Migration Review Tribunal (the Tribunal) affirming a decision of the Minister's delegate to cancel the appellant's student visa.

The appellant's visa was cancelled under s.116(1)(b) of the *Migration Act 1958* (the Act) based on his education provider's certification that his course attendance during semester two of 2007 was unsatisfactory, with the result that he breached condition 8202(3)(b) of the visa. The Tribunal found that the appellant had breached condition 8202(3)(b) and was satisfied that breach was not due to exceptional circumstances that were beyond his control.

At first instance, the Federal Magistrates Court found no jurisdictional error in the Tribunal's decision but did observe that the notice given to the appellant pursuant to s.20 of the *Education Services for Overseas Students Act 2000* (ESOS Act) was probably invalid because it did not specify the period during which the appellant had failed to achieve satisfactory course attendance. A similar observation was made in relation to the notice of intention to consider cancellation of the visa given by the Minister under s.119 of the Act

On appeal, the appellant contended that the Federal Magistrates Court failed to consider the relevant law in relation to student visa cancellations; failed to recognise there was no breach of condition 8202; and failed to recognise that the Tribunal decision was affected by jurisdictional error.

Held: Appeal dismissed.

- (i) The Federal Magistrates Court did not err as contended.

Obiter:

- (ii) The Federal Magistrates Court's tentative view that the notice given to the appellant by the education provider under s.20 of the ESOS Act was 'probably invalid' was in error: see *Maan v MIAC* [2009] FCAFC 150 and *Chen v MIMIA* [2005] FCA 299 at [86]. However, the Federal Magistrates Court recognised that defects in a s.20 notice are not material to whether a cancellation under the Act is invalid, and that the validity of the cancellation process under the Act is separate and distinct from the validity of the s.20 notice itself.

- (iii) The Federal Magistrate correctly recognised that a failure to comply with s.119 did not deprive the Tribunal of jurisdiction to review a decision of the delegate on the merits. The Tribunal had, in fact, drawn the period during which the appellant had been said to have had unsatisfactory attendance to the appellant's attention, and specifically invited comment thereon.

FEDERAL MAGISTRATES COURT JUDGMENTS

SZMKN v MIAC & Anor

[2009] FMCA 954

Federal Magistrates Court of Australia, Scarlett FM, SYG 680 of 2009, 8 October 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 in China as a Falun Gong practitioner.

The Tribunal did not accept the applicant was a witness of truth. The Tribunal considered the evidence of the applicant's participation in Falun Gong activities in Australia and concluded, relevantly, "*based on the evidence available to it and its findings herein, the Tribunal is not satisfied the applicant's continued engagement in Falun Gong in Australia is for any other reason than to invoke refugee protection obligations; and (presumably) to establish a social network for himself in Australia*". The Tribunal said it had therefore disregarded the conduct in Australia under s.91R(3) of the *Migration Act 1958* (the Act). The Tribunal went on to consider the fact that the applicant attended numerous public protests in support of Falun Gong and found it possible that his attendance at such demonstrations may have brought him to the adverse attention of the authorities in China, so that he may be treated harshly on his return. Accordingly, the Tribunal stated its intention to refer the matter to the Minister for consideration against his discretionary power in s.417 of the Act.

On the day after the date of the decision record, the Tribunal issued a corrigendum which modified its Findings and Reasons by removing the sentence, "*and (presumably) to establish a social network for himself in Australia*."

The applicant contended, amongst other things, that the Tribunal fell into jurisdictional error by issuing a corrigendum to the decision removing a finding of fact.

Held: RRT decision quashed and remitted for reconsideration.

- (i) The Tribunal fell into jurisdictional error by failing to consider the applicant's *sur place* claim.
- (ii) The corrigendum was void and of no effect. A change to the reasons by purporting to withdraw a finding of fact is outside the scope of a corrigendum, which is meant to correct clerical errors and similar errors. As a decision had been made the day before, the Tribunal was already *functus officio* when it purported to issue the corrigendum and it was too late to withdraw a finding of fact.
- (iii) The Tribunal found that the applicant engaged in the conduct in Australia not only for the purpose of strengthening his claim to be a refugee but also for another purpose, to establish a social network for himself in Australia. Therefore, s.91R(3) was not engaged and the Tribunal should not have disregarded the applicant's conduct in Australia.
- (iv) It is curious that the Tribunal would use conduct engaged in by the applicant in Australia, which it has just disregarded under s.91R(3), for the purposes of making a finding that is tantamount to a finding of a fear of persecution for imputed political opinion, as a basis for a referral for the exercise of Ministerial discretion. However, the Tribunal was able to refer to that conduct for that purpose.

SZNTU v MIAC & Anor

[2009] FMCA 1045

Federal Magistrates Court of Australia, Driver FM, SYG 1771 of 2009, 26 October 2009

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

The applicant claimed to fear persecution based on her practise of Falun Gong. The Tribunal did not find the applicant to be a credible witness on some aspects of the claims. The Tribunal did not accept the applicant

was a Falun Gong practitioner in China. In relation to the key claim of harm suffered, the Tribunal found that, although the applicant did travel to Mayi Island at the relevant time, the difficulties she encountered were not related to practise of Falun Gong, but to a commercial issue. The Tribunal took account of the applicant's asserted practise of Falun Gong in Australia and participation in demonstrations, but did not accept she had engaged in that conduct for any reason other than to strengthen her refugee claims. The Tribunal disregarded that conduct pursuant to s.91R(3) of the *Migration Act 1958* (the Act) in assessing those claims.

The applicant claimed, among other things, that the Tribunal failed to investigate the applicant's genuine claims and failed to comply with s.91R(3) of the Act.

Held: Application dismissed.

- (i) There was no arguable case of jurisdictional error by the Tribunal.
- (ii) The Tribunal is not subject to a general duty to investigate claims: *SZIAI v MIAC* [2009] HCA 39.
- (iii) Even by reference to the High Court decision in *SZJGV v MIAC* [2009] HCA 40 the Tribunal did not fall into error as it was not obliged to rely upon the applicant's conduct in Australia in order to support the adverse credibility assessment it had already made. Even if such an error were arguable, the outcome would necessarily have been the same if the information had been taken into account. That would support a conclusion that relief should be refused, even if a jurisdictional error had been established.

**SZMJQ v MIAC & Anor
[2009] FMCA 1068**

Federal Magistrates Court of Australia, Raphael FM, SYG 883 of 2009, 30 October 2009

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

The applicant claimed to be a Catholic who worshipped at an unofficial church and feared persecution from Chinese authorities for reasons of his religion. The applicant claimed to have been taken to the local police station, questioned, beaten, sentenced to 10 days administrative detention, fined RMB 1000 Yuan and threatened with criminal detention. In detention he was told to sign a piece of paper ("regret letter") agreeing not to practice his religion. At the Tribunal hearing, the Member questioned the applicant as to whether he signed the regret letter. The interpreter interpreted the applicant's answer as indicating that he did not sign the letter. The Tribunal then queried why the applicant was released from detention if he did not sign. The applicant's responded to this stating "I don't know, I really don't know". In finding the applicant not to be a credible witness in aspects of his evidence, the Tribunal relied on his inability to explain why he was released from detention after refusing to sign the regret letter.

The applicant claimed, amongst other things, that the level of interpretation was inadequate and that he had not been given a meaningful hearing as contemplated by s.425 of the *Migration Act 1958*. The applicant produced a transcript of the hearing which revealed that he had in fact stated that he did sign the regret letter and that his evidence had been incorrectly interpreted.

Held: RRT decision set aside and remitted for reconsideration.

- (i) The Tribunal's decision was affected by jurisdictional error because of an interpretation error at hearing which was material to the conclusions of the Tribunal adverse to the applicant.
- (ii) The principle in *Appellant P119/2002 v Minister for Immigration* [2003] FCAFC 230 (*P119/2002*) at [17] that a failure to comply with s.425 by reason of inadequate translation services may be established by (a) a standard of interpretation so inadequate that the applicant was effectively prevented from giving evidence; or (b) errors material to the conclusions of the Tribunal adverse to the applicant; is uncontroversial and, even if only *obiter*, has now been translated into orthodoxy. The second of the two criteria is a correct statement of the law and does not confine itself to failures which are "absolutely central" to the Tribunal's reasoning.

- (iii) The Court is not required to find that the Tribunal's decision would have been different had the interpretation error not existed. Given the nature of proceedings before the Tribunal, applicants should always be given the benefit of the doubt where an error of this type occurs.

**Hasan & Anor v MIAC & Anor
[2009] FMCA 1124**

Federal Magistrates Court of Australia, Raphael FM, SYG 1731 of 2009, 18 November 2009

The applicants sought judicial review of a Migration Review Tribunal (the Tribunal) decision that it did not have jurisdiction to conduct a review because the application was filed out of time.

A delegate of the Department of Immigration and Citizenship advised the applicants that their applications for Skilled (Provisional) (Class CC) visas were refused. The decision notification letter indicated the addresses of the New South Wales and Victorian registries of the Tribunal as places where applications for review can be lodged and stated that more information concerning merits review was contained within an enclosed brochure. The relevant brochure identified the New South Wales and Victorian registries of the Tribunal as well as registries of the Administrative Appeals Tribunal in Queensland, South Australia and Western Australia but was not in fact enclosed with the letter. The applicants lodged a review application some five months after receipt of the delegate's decision. In finding the review application was lodged outside the prescribed time period, the Tribunal was satisfied that the decision notification letter was sent in accordance with s.66 of the *Migration Act* 1958 (the Act), including by stating where an application for review could be made.

The applicants contended that the Tribunal had misconstrued s.66(2)(d)(iv) of the Act on the basis that the decision notification letter did not advise them of all the addresses at which review applications to the Tribunal could be lodged.

Held: Application dismissed.

- (i) The Tribunal did not misconstrue the requirements of s.66(2)(d)(iv) of the Act and correctly declined to exercise jurisdiction on the basis that the time limit for lodging review applications had expired.
- (ii) Provided the letter advising the applicants of their right to seek review indicates a place where an application can be received and it is clear that, wherever that place may be, it will receive applications from applicants in any part of Australia then s.66(2)(d)(iv) will have been complied with. The *obiter* comments in *Maroun v MIAC* [2009] FCA 1284 at [21] consider s.66(2)(d)(iv) in a manner supportive of this conclusion.

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

INSTRUMENTS

Migration Regulations 1994 – Specification for the purpose of paragraph 1208(3)(bd) – Specification of Addresses – October 2009 (IMMI 09/097)

This instrument specifies addresses for applications for subclass 442 (Occupational Trainee) visas. This Instrument commenced on 9 November 2009.

Migration Act 1958 – Determination under subsection 262(2) – Daily Maintenance Amounts for Persons in Detention – October 2009 (IMMI 09/098)

This Determination provides the daily amount for keeping and maintaining of a person in immigration detention at specified places. This instrument took effect on 9 November 2009.

Migration Regulations 1994 – Specification under subparagraph 2.12F(1)(a)(ii) – Refund of Visa Application Charges – October 2009 (IMMI 09/116)

This Specification provides the circumstances in which the Minister may refund an amount paid by way of the first instalment of a visa application charge. This Instrument commenced on 9 November 2009.

Migration Regulations 1994 – Specification under regulation 3.10A – Access to Movement Records – October 2009 (IMMI 09/117)

This instrument specifies legislation, agencies, purposes and employees for the purposes of allowing access to movement records under regulation 3.10A of the Regulations. This Instrument commenced on 9 November 2009.

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 – October 2009 (IMMI 09/118)

This instrument revokes the 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 – June 2009 and specifies a level of salary for paragraph 457.223(6)(a) and exempt applicants for subclause 457.223(11) of the Regulations. This Instrument commenced on 9 November 2009.

Migration Regulations 1994 – Specification under paragraph 5.19(4)(e), subregulation 5.19(5) and paragraph 2.43(1)(la) – Regional Certifying Bodies and Regional Postcodes – October 2009 (IMMI 09/120)

This Specification provides the Regional Certifying Bodies that are approved to certify certain nominations made under the Regional Sponsored Migration Scheme. This Instrument commenced on 9 November 2009.

Migration Regulations 1994 – Specification under subregulations 2.61(4), 2.61(5), 2.61(6), 2.66A(2), 2.66A(2), 2.66A(6), 2.73A(5), 2.73B(6), 2.73C(6) and paragraphs 1205(3)(ca), 1220B(3)(b) of schedule 1 – Addresses – October 2009 (IMMI 09/121)

This instrument specifies addresses for lodgement of various sponsorship approval applications and variations of terms of sponsorship approvals and visa nominations. This instrument commenced on 9 November 2009.

Migration Regulations 1994 – Specification under subparagraphs 2.72(10)(a) and 2.72I(5)(b) – Occupations – October 2009 (IMMI 09/125)

This instrument revokes the Migration Regulations 1994 – Specification under subparagraphs 2.72(10)(a)

and 2.721(5)(b) – Occupations for the Temporary Business Long Stay and Occupational Trainee Visas – September 2009 and specifies occupations for subclass 457 visas and nominated occupational training for subclass 442 visas. This instrument commenced on 27 October 2009.

Migration Regulations 1994 – Specification under regulation 1218(3)(d) – Classes of Persons – November 2009 (IMMI 09/127)

This instrument revokes Migration Regulations 1994 – Specification under regulation 1218(3)(d) – Classes of Persons – September 2009. This Instrument commenced on 8 November 2009.

Migration Regulations 1994 – Specification under regulation 1218(3)(d) – Classes of Persons – 17 November 2009 (IMMI 09/128)

This instrument revokes the Migration Regulations 1994 – Specification under paragraph 1218(3)(d) – Classes of persons who may make an Internet Application for a Tourist Visa – 26 March 2007 and specifies classes of persons. This Instrument commenced on 21 November 2009.

Migration Regulations 1994 – Specification under subparagraph 1218(1)(b)(iii) – Travel Agents for PRC Citizens Applying for Tourist Visas – November 2009 (IMMI 09/130)

This instrument specifies the travel agents for PRC citizens applying for tourist visas for the purpose of subparagraph 1218(1)(b)(iii) of schedule 1 to the Migration Regulations 1994. This Instrument commenced on 23 November 2009.

Migration Regulations 1994 – Specification under regulations 846.111, 855.111, 856.111 and 857.111 – Health Waiver – Participating States and Territories – November 2009 (IMMI 09/131)

This Specification revokes Migration Regulations 1994 – Specification under regulations 846.111, 855.111, 856.111 and 857.111 – Health Waiver – Participating States and Territories – August 2009 and provides states and/or territories which have agreed to participate in the health waiver, in particular the inclusion of South Australia. This Instrument commenced on 18 November 2009.

CASELOAD OVERVIEW

MRT Decisions – November 2009

Decision Category	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Bridging refusal	1	5	2	1	9
Visitor refusal	41	16	2	2	61
Student refusal	15	11	8	11	45
Temporary business refusal	11	21	19	8	59
Permanent business refusal	1	7	1	0	9
Skill linked refusal	110	126	38	14	288
Partner refusal	68	30	10	6	114
Family refusal	20	25	2	1	48
Student cancellation	34	36	1	3	74
Sponsor approval refusal	3	5	6	0	14
Other	9	9	6	1	25
Total	313	291	95	47	746

RRT Decisions – November 2009

Country	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Albania	0	1	0	0	1
Bangladesh	1	0	0	1	2
Burma (Myanmar)	2	1	0	0	3
Cameroon	1	0	0	0	1
China (PRC)	17	38	0	5	60
Colombia	1	0	0	0	1
Congo, Democratic Republic of	1	0	0	0	1
East Timor	0	1	0	0	1
Egypt	2	0	0	0	2
El Salvador	1	0	0	0	1
Eritrea	1	0	0	0	1
Ethiopia	2	1	0	0	3
Fiji	1	8	0	2	11
India	1	4	0	2	7
Indonesia	0	12	0	2	14

Iran	1	0	0	0	1
Israel	0	1	0	0	1
Jordan	0	1	0	0	1
Kenya	0	1	0	0	1
Korea, Dem Peoples Rep of	0	1	0	0	1
Korea, Republic Of	0	2	0	0	2
Lebanon	1	8	0	0	9
Malaysia	2	12	0	1	15
Mauritius	0	2	0	0	2
Mongolia	0	1	0	0	1
Morocco	0	1	0	0	1
Nepal	0	4	0	0	4
Nigeria	0	3	0	0	3
Pakistan	4	2	0	0	6
Philippines	0	1	0	0	1
Somalia	1	0	0	0	1
Sri Lanka	2	3	0	0	5
Tonga	0	2	0	0	2
Turkey	0	1	0	0	1
Ukraine	1	0	0	0	1
Vietnam	0	1	0	1	2
Zimbabwe	2	0	0	0	2
Total	45	113	0	14	172

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.

Between 1 January and 31 October 2009, 50% of all substantive decisions made have been published (48.9% of MRT and 53.3% of RRT). This does not include 'Withdrawn' or 'No Jurisdiction' cases. MRT decisions are selected and vetted for publication each day, with publication delayed by approximately seven days to allow for applicants to be notified of the Tribunal's decision. RRT decisions are also selected daily and are allocated to Publications Officers for editing. Once edited, the decisions are quality checked by a Senior Publications Officer and sent to AustLII for publishing on their website.

The Refugee Review Tribunal has a statutory obligation to ensure that the published version of a decision statement must not contain any information which may identify the applicant or any relative or other dependent of the applicant. Decisions that require extensive editing to meet this obligation may not be published.

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/>.

Publication of Country Advice

The Country Advice Service assists Tribunal Members with advice, analysis and information on country of origin issues relevant to MRT and RRT reviews. Country Advice has a particular role assisting Members in their determination of the validity of the claims in RRT reviews.

Country Advice Service products are published on the Tribunals' website for the information of applicants, migration advisers and other stakeholders. Published country advice is selectively edited to remove information which may identify an applicant for a protection visa. Publication may be delayed briefly where there is a concern not to compromise a particular review before the Tribunals.

Stakeholders and interested groups are welcome to contribute to the Tribunals' store of country information, and to comment on the country advice published on the website.

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.

The Tribunal's Email address is: enquiries@mrt-rrt.gov.au.

Editor: Tracey Macmillan

Contributors:

Rachael Chadwick
Michael Haynes
Lynne Sonter

Anna Stephens

Please note that any enquiries regarding this publication may be directed to the Editor at enquiries@mrt-rrt.gov.au.

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