



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

0804662

16 November 2009, Melbourne

Mr P Tyler, Member

TEMPORARY BUSINESS ENTRY (CLASS UC) – SUBCLASS 457 BUSINESS (LONG STAY) – CL.457.223(4) – NOMINATED OCCUPATION – A delegate of the Minister refused to grant the applicant a Subclass 457 visa as the delegate was not satisfied the applicant had the required skills, experience or employment background necessary to perform the approved nominated occupation of cook. The review applicant claimed that he first met the visa applicant when he came to Australia about three years ago through family connections. The visa applicant claimed that he was the chef and manager of a restaurant in Lebanon and that he had owned a 50% share of the business since 2001. The visa applicant gave oral evidence that the cuisine at the review applicant's restaurant in Australia was Lebanese. The review applicant advised that he owns three shops in Albury, being two chicken take-away shops and an Italian restaurant at which he plans to employ the visa applicant. He is confident that the visa applicant is capable of performing the tasks required of a cook and that he will do a good job. He also claimed that the visa applicant had told him that he is trained in Italian cuisine. The review applicant claimed he did not know what cuisine was served by the visa applicant's restaurant in Lebanon.

Held: Decision under review affirmed.

In considering whether the visa applicant's intention to perform the nominated occupation of 'cook' was genuine and whether the position associated with the nominated occupation was genuine, the Tribunal had regard to the following matters: the fact that the review applicant did not know the type of food served in the visa applicant's restaurant in Lebanon; the statement by the visa applicant's partner's brother to Departmental officers to the effect that the visa applicant did not have an ownership interest in the restaurant in Lebanon; the statement on the visa applicant's visitor visa application stating that his duties were "customer service in the restaurant"; and the visa applicant's oral evidence that the cuisine at the review applicant's restaurant in Australia was Lebanese. The Tribunal was not satisfied with the review applicant's explanations for these discrepancies and inconsistencies in evidence. All of these issues went to the genuineness of both the review applicant and the visa applicant and the Tribunal had expected them both to know these details. As such, this led the Tribunal to doubt the genuineness of the visa applicant's intention to perform the occupation that is the subject of the nomination and the genuineness of the creation of the position. Accordingly, the Tribunal was not satisfied that the applicant's intention to perform the occupation of 'cook' was genuine and that the position associated with the nominated occupation was genuine. The Tribunal therefore found that the visa applicant did not meet the requirements of cl.457.223(4) of the Regulations.

0806467

11 November 2009, Sydney

Ms D Dimitriadis, Member

SKILLED (RESIDENCE) (CLASS VB) – SUBCLASS 885 (SKILLED – INDEPENDENT) – CL.885.215 – MEDICAL EXAMINATION – ITEM 4005 – A delegate of the Minister refused to grant the applicant a Skilled (Residence) (Class VB) visa because he did not satisfy cl.885.215 of the Regulations as the visa application was not accompanied by evidence that the applicant had arranged to undergo the required medical examination. The visa applicant previously held a number of temporary visas in Australia as a student. At the time of lodging the Skilled (Residence) application, the applicant answered a question stating that he had undertaken a medical examination in the previous year. He provided a receipt for a Student visa medical examination which he claimed he had undergone while seeking an extension of his Student visa and he thought that medical assessments were valid for 12 months. The applicant claimed that he had no knowledge of the difference in medical examinations for temporary and permanent visa applications. The applicant's representative submitted that cl.885.215 refers to an applicant making an arrangement to undergo a medical examination and evidence of this is required. However, the medical check question in the

online application stated that the applicant had “undergone” a medical examination. He submitted that this is confusing for an applicant lodging an application without professional help. The representative further claimed that if the Department required applicants to take different kinds of medical tests for different applications, it had a duty of care under the principles of procedural fairness to clearly state in the application which kind of medical tests were required for the particular visa class or subclass. He stated that, given the ambiguity of cl.885.215, it was reasonable to expect a decision maker to use the authority under s.56 of the Act to ask the applicant to undertake extra blood tests to establish whether he satisfied item 4005 of the Regulations. The representative submitted that, because satisfying health related public interest criteria is required to be met at the time of decision, the Tribunal should exercise its powers under the Act to accept a new medical examination including blood tests. The applicant stated that he thought that if anything else had been required by the Department at the time of his application, the Department would have asked him for further documents. Instead, his visa was just refused. The applicant provided the results of a new medical test, including a blood test, at the Tribunal hearing. He stated that he had passed all of the medical requirements.

Held: Decision under review affirmed.

The Tribunal noted that the issue under review was whether the applicant satisfied cl.885.215 which required the visa application to be accompanied by evidence that arrangements had been made for the applicant to undergo a medical examination for the purpose of the application. The Tribunal considered the applicant’s evidence and the submissions of his representative however it did not accept the submission that the wording of c.885.215 was ambiguous. The Tribunal noted recent consideration of the meaning of the phrase “has made arrangements to undergo” in case law, specifically the finding that the phrase involves two key aspects; firstly, the arrangements must have been made, in the sense of being in place or in existence, when the application is made; and secondly, the arrangements must be to undergo, in the sense of to take or to sit for, a test. The Tribunal found that the applicant’s visa application was not accompanied by evidence that he had made arrangements to undergo a medical examination for the purpose of the application. It further found that arrangements had not been made for the applicant to undergo a medical examination at the time of application. Consequently, the Tribunal found that the applicant did not satisfy cl.885.215 and thus did not satisfy the requirements for the grant of a Subclass 885 visa.

0807471

13 October 2009, Sydney

Ms N Dougall, Member

SKILLED INDEPENDENT OVERSEAS STUDENT (RESIDENCE) (CLASS DD) – SUBCLASS 880 (SKILLED-INDEPENDENT OVERSEAS STUDENT) – CL.880.214 – SKILL QUALIFICATION – A delegate of the Minister refused the applicant’s Subclass 880 visa application as the visa applicant did not satisfy cl.880.214 of the Regulations. The delegate found that the applicant had not, in the 6 months immediately before the day when the application was made, completed more than one degree, diploma or trade qualification for award by an Australian educational institution as a result of a total of at least 2 years study. The delegate found that the visa applicant had completed his Certificate IV in Hospitality – Commercial Cookery and his Diploma in Hospitality Management in December 2007, which was more than 6 months prior to lodging the visa application. The applicant claimed that he had been awarded a Diploma of Hospitality Management by Holmes Institute (Holmes), which commenced on 14 November 2005 and finished on 10 November 2006. This Diploma was awarded to the applicant in September 2007. The applicant claimed that he was awarded a Certificate IV Hospitality (Commercial Cookery) by Holmes, which commenced on 8 January 2007 and finished on 21 August 2007. The applicant also provided a letter from Sydney International College of Business (SICB) dated 1 February 2007 which stated that SICB had issued a Statement of Attainment – Partial Completion of Certificate III in Hospitality – Commercial Cookery. The applicant claimed that he enrolled in Certificate III in Hospitality (Commercial Cookery) at SICB as Holmes did not offer the course at that time. He claimed that Holmes then introduced a Certificate IV in Hospitality (Commercial Cookery) commencing in February 2007, so he left SICB and re-enrolled in Holmes. He claimed that when he left SICB he was given a letter stating he had partially completed his Certificate III, and as a Certificate III was part of a Certificate IV in Hospitality (Commercial Cookery), Holmes gave him credits towards his Certificate IV which is why this course at Holmes was fast tracked. The applicant claimed that there were two Academic Transcripts for the Certificate IV in Hospitality (Commercial cookery). It was submitted that the second transcript showed the dates that the applicant actually studied the course as it was fast tracked, whilst the initial transcript showed the actual dates for the course if it had not been fast

tracked. The applicant submitted a letter from Holmes which stated that he studied both a Diploma in Hospitality Management and a Certificate IV in Hospitality (Commercial Cookery) between 14 November 2005 and 24 August 2007. These courses were fast tracked and completed in over 1 year and 9 months taking into account the SICB subjects the applicant had received credits for.

Held: Decision under review set aside.

The Tribunal was satisfied given the evidence before it that the applicant had been studying his Diploma of Hospitality Management and Certificate IV in Hospitality (Commercial Cookery) from 14 November 2005 to 21 August 2007 at Holmes and SICB. The Tribunal was also satisfied that the applicant had studied during that period without any holidays due to having to change education providers to study a prerequisite for his Certificate IV in Hospitality (Commercial Cookery). The Tribunal found that his study of over 1 year and 9 months was more than equivalent to at least 2 academic years. Therefore, the Tribunal found that the applicant had studied for at least 2 years full time study for a Diploma of Hospitality Management and a Certificate IV in Hospitality (Commercial Cookery) at Holmes and SIC, which he completed on 21 August 2007. The Tribunal accepted that the applicant, in the 6 months immediately before the day when the application was made, completed more than one degree, diploma or trade qualification for award by an Australian educational institution as a result of a total of at least 2 years study. Therefore, the Tribunal found that the applicant satisfied the criteria in cl.880.214 of the Regulations.

Family visas

0805004

16 November 2009, Melbourne

Mr P Fisher, Member

OTHER FAMILY (MIGRANT) (CLASS BO) – SUBCLASS 115 (REMAINING RELATIVE) – R.1.15 – DEFINITION OF REMAINING RELATIVE – A delegate of the Minister refused to grant the visa applicant a Subclass 115 (Remaining Relative) visa because the delegate was not satisfied that the applicants' parents or remaining sibling were deceased. The visa applicant, the review applicant's brother, submitted witness attestations as to the deaths of their parents in 2005, which were sworn before an official of the High Court of Afghanistan. The Australian High Commission sought to have the attestations verified by the Afghan Embassy in Islamabad and was informed by an embassy official that the documents were bogus. The visa applicant subsequently submitted replacement attestations, sworn in front of an official of the Afghanistan High Court in Kabul which were accompanied by a letter maintaining that the documents initially submitted were genuine and claiming that the applicant had been unable to obtain a satisfactory explanation from the Afghan bureaucracy as to why they were said to have been bogus. The same bureaucracy had, nevertheless, issued the replacement document to him. In support of the application for review, the applicant submitted a letter from the Afghan Embassy in Canberra certifying that the attestation as to the applicants' parents' deaths was genuine. The applicants claimed that their parents were abducted in 2005 and then killed by a militia commander. They claimed that the visa applicant was abducted at the same time but was held separately from his parents and later managed to escape. Consequently, they were not sure where their parents died or where they were buried. The visa applicant claimed they were informed by neighbours in Kabul about their parents' deaths. The visa applicant claimed that he and his parents had been targeted by Shia Muslims because his sister in law had entered into a love marriage without her family's consent and she was subsequently kidnapped. Her father had held his family responsible. The applicants also claimed to have another brother, not mentioned on the visa application, who had been killed by the Taliban. The visa applicant claimed that he never saw his brother's body and he does not know where he is buried. He claimed that he was told by the authorities that he could not obtain a death certificate for his brother as there were no witnesses to his death. The review applicant claimed that he had visited his brother's grave in Kabul. He claimed that the visa applicant was only 13 or 14 years old when their other brother died so he was shielded from all the details of his death, including the location of his grave.

Held: Decision under review set aside.

The Tribunal noted that, in the course of delivering their evidence, the applicants displayed familiarity and common knowledge with regard to their claimed shared family background and experiences. It also observed their strong physical resemblance to one another. The Tribunal noted the review applicant's

willingness to undergo DNA testing if required, but formed the view that this was not necessary. The Tribunal found, on the evidence before it, that the visa applicant and review applicant were brothers. The Tribunal noted the applicants' sworn evidence disputing the delegate's findings that the death attestations submitted in the visa application were bogus. The Tribunal found that the applicants' position was supported by the fact that the second death attestation obtained by the visa applicant had been authenticated by the Afghan Embassy in Canberra. The Tribunal noted that it is not unheard of for conflicting or inconsistent information to emerge from the Afghan bureaucracy. It observed that the documents submitted by the applicants attesting to the death of their parents were of limited evidentiary value, even if they were genuine, because all they purported to be was attestations by neighbours or others claiming to be able to confirm that the persons identified in the document are dead. The Tribunal noted that the role of the Afghan bureaucracy appeared to be limited to validating the authenticity of the attestations themselves, rather than the events described in them. It found that it was therefore unclear how much weight should be placed on the documents. However, the Tribunal found that the applicants gave consistent evidence about the circumstances under which their parents and sibling had died, and based on the evidence before it, the Tribunal was satisfied that the applicants' family members had died as claimed. The Tribunal thus found that the review applicant was the visa applicant's only surviving near relative, and that the visa applicant met the definition of remaining relative at the time of application and decision. Accordingly, the Tribunal found that the applicant satisfied the criteria for the grant of a Subclass 115 visa.

0806711

9 November 2009, Brisbane

Ms R Johnston, Member

CHILD (MIGRANT) (CLASS AH) – SUBCLASS 101 (CHILD) – CL.101.211(1) – DEPENDANT CHILD – DEFINITION OF DEPENDANT – A delegate of the Minister refused the applicant's Subclass 101 visa application on the basis that he was not satisfied that the applicant was wholly or substantially dependent on the sponsor for financial support to meet her basic needs for food, clothes and shelter. The review applicant claimed that he separated from the visa applicant's mother when the visa applicant was about 11 years old, and that when the visa applicant was about 13 years old, he came to Australia. Since then, he claimed he had provided her with financial support. The visa applicant claimed that she resided with her maternal grandparents and her mother in the same house in Santiago, Colombia, and that she did not pay rent, utilities or other expenses associated with living in the house. The visa applicant claimed that, for the last four years, her grandparents had provided her with shelter and food however the review applicant paid for her clothing, studies, books, and personal effects. Evidence was submitted indicating that the visa applicant was undertaking full time study. Bank Statements were also provided in the name of the review applicant which showed that the visa applicant withdrew, on average, approximately \$330AUD per month from the account, and that neither the visa applicant's grandparents nor the visa applicant's mother were able to draw on the account. The review applicant claimed that the minimum wage in Colombia was about \$300AUD per month and that this demonstrated that the financial support he had been providing to the visa applicant, who was single, covered her basic needs, her personal effects and the costs associated with her studies.

Held: Decision under review set aside.

The Tribunal found that, on the basis of the visa applicant's birth certificate, the visa applicant was the natural child of the sponsor, the review applicant. The Tribunal noted that cl.101.211 required that the visa applicant be less than 25 years old at the time of application, and that the birth certificate showed that the visa applicant was born in 1987. Based on this evidence, the Tribunal accepted that at time of application, the visa applicant had not yet turned 25. The Tribunal accepted that the visa applicant was studying full time, as evidenced by the certificate from the Institute of Professional and Technical Education. The Tribunal took into account the documentary material, including bank statements, which were submitted to demonstrate the visa applicant was financially dependent on the review applicant. The Tribunal accepted the oral evidence given by the review applicant at the hearing and the statutory declarations made by family members as evidence that the visa applicant had been substantially reliant on the review applicant for financial support to meet basic needs for food and clothing. The Tribunal considered it plausible, given that the applicant's grandparents were pensioners, that the visa applicant would be using the monies provided by the review applicant for food and clothing which are two of the three basic needs. The Tribunal consulted independent country information in relation to the cost of living in Colombia which suggested that the monthly minimum wage was approximately 433,700 pesos (about \$230AUD). The Tribunal noted that the review applicant, as a single person, had been receiving a monthly allowance of more than \$300AUD from

the review applicant, which appeared to be more than the monthly minimum wage on which a family in Colombia may be expected to exist. Notwithstanding the fact that the visa applicant resided rent free with her grandparents, the Tribunal accepted that the visa applicant had been substantially reliant on the review applicant for financial support to meet her basic needs. The Tribunal therefore found that, at the time of application, the visa applicant had been *dependent* (as that term is defined in regulation 1.05A(1)) on the review applicant for a substantial period, and that she remained so *dependent* at the time of decision. Consequently the visa applicant satisfied the definition of dependent child as set out in r.1.03 and subsequently met the requirements of cl. 101.211 and cl.101.221 of the Regulations.

0905602

29 October 2009, Sydney

Ms J Marquard, Member

CHILD (MIGRANT) (CLASS AH) – SUBCLASS 101 (CHILD) – CL.101.213 – FULL TIME STUDY – A delegate of the Minister refused to grant the applicant a Child (Migrant) visa on the basis that the applicant did not satisfy cl.101.213 because he was over 18 years old at the time of application and he did not provide evidence to show he had been studying in an educational institution leading to the award of a recognised professional, trade or vocational qualification. The delegate's decision record stated that the sponsor (the applicant's mother) visited the Department's offices in Ho Chi Minh City in 2008 to enquire about possible visas and she advised that the applicant had studied a trade for 2 years and that he had worked in that field up until then, with the exception of a visit to Australia. The applicant was 24 years old at the time of application. He claimed that he completed High School in 2002 and then undertook preparatory university courses in physics and mathematics. From 2004, he claimed that he studied a refrigeration electricity course. He received his certificate of vocation in 2006, and claimed that he subsequently undertook work experience for the period of his probation. The applicant claimed that he had never been in employment or received an income and that any work he had done had been work experience for his studies. The sponsor and her husband (the applicant's stepfather) provided evidence of financial remittances to the applicant. They claimed that they had sent money each month to cover the applicant's living and study expenses from 2004 up to the time of review. The applicant claimed to have begun studying English after completing his refrigeration technician's course as he wanted to continue his refrigeration studies at university in Australia when he joined his mother. He claimed that he was unable to provide evidence of studying English from March 2007 to March 2008 because he lost his receipt for tuition, and the college refused to provide evidence of his attendance. He claimed that the course helped him achieve his IELTS test score of 3.5 in July 2008, evidence of which was submitted.

Held: Decision under review set aside.

The Tribunal accepted that the only work the applicant had been involved in was work experience for his studies and it accepted that the applicant was not engaged in full-time work. The Tribunal found that, within a reasonable time after completing high school, the visa applicant had undertaken a full time course of study at an educational institution leading to the award of a professional, trade or vocational qualification. The Tribunal had concerns that the applicant had studied English as claimed from March 2007. While the Tribunal found the applicant's explanation for the absence of documentation difficult to believe. It accepted that the fact that he was able to achieve an IELTS result of 3.5 in July 2008 was evidence that he had been studying English. The Tribunal noted that while cl.101.213 contemplates a single full-time course of study, it may well extend to cover a qualification that is obtained upon satisfaction of a variety of criteria being fulfilled. In this context, the Tribunal accepted, based on the documents provided, that the applicant was studying at an educational institution leading to the award of a professional, trade or vocational qualification. The Tribunal also accepted that the applicant wished to continue studying towards the award of a higher qualification in his area, but studied English first to enable him to do so at an Australian university once he is reunited with his mother. The Tribunal also accepted that his course attendance combined with his study time amounted to full time study. The Tribunal accepted the evidence of the applicant, the sponsor and her husband that the applicant was dependent on the sponsor and that he did not receive any financial support from any other source. On this basis, the Tribunal found that, at the time of application, the applicant was a dependent child of an Australian permanent resident and had not turned 25. Therefore, the Tribunal found that the applicant satisfied the criteria in cl.101.213 of the Regulations.

0906230

17 November 2009, Perth

Ms L Ward, Member

OTHER FAMILY (RESIDENCE) (CLASS BU) – SUBCLASS 835 (REMAINING RELATIVE) – CL.835.213 – ADOPTION – A delegate of the Minister refused the applicant's Subclass 835 visa application as the visa applicant did not satisfy cl.835.213 of the Regulations. The review applicant provided copies of birth certificates and adoption papers to show that the review applicant and the visa applicant were biological twins and that they had been adopted out to different families a few months after their birth. The review applicant claimed that she became an Australian citizen in her early 20's and that she was married soon after. She claimed that in 2008 she was finally able to locate her twin sister after many years of searching and that after more than fifty years the applicants wished to spend the remainder of their lives together. The delegate found that because the applicant was formally adopted in Malaysia, her legal link to her biological twin sister was severed. The delegate therefore found that the review applicant was not a 'relative' or 'close relative' of the applicant and hence she failed to meet cl.835.213(a).

Held: Decision under review set aside.

The Tribunal accepted from the evidence provided that the applicants were biological twin sisters and that they had been adopted out to different families a few months after their birth. The Tribunal noted that it was required to decide if the term 'sister' as used in the Regulations included a biological sister who was then subject to an adoption order. The Tribunal found that the policy relating to the term 'remaining relative' required an expansive view of an applicant's relationship with the sponsor, as set out under Departmental policy guidelines. The Tribunal found that this view was consistent with a review applicant being able to sponsor a biological sister who was separated from them shortly after birth via adoption, and that a 'close relative' as defined at the time of application included 'sister' and 'step sister'. Therefore, the Tribunal found that biological sisters were still 'sisters' under the Regulations after adoption, and that accordingly, the Tribunal was satisfied that the applicants were 'sisters' as set out in the definition of a 'close relative' and therefore met cl.835.213 of the Regulations.

Partner visas

0807050

16 November 2009, Adelaide

Ms C Wilson, Member

PARTNER (TEMPORARY) (CLASS UK) – SUBCLASS 820.211 – CL.820.211(2) – SCHEDULE 3 CRITERIA 3004 – COMPELLING REASONS – A delegate of the Minister refused to grant the applicant a Subclass 820 visa as he was not the holder of a substantive visa at the time of application. Also, the delegate was not satisfied there were compelling reasons to waive the Schedule 3 criteria. The applicant gave evidence that he came to Australia in July 2007 on a three month tourist visa to attend his brother's wedding. His brother, mother and stepfather live in Adelaide. He claimed he met the sponsor in 2007 on 'Ladies Day' for the Melbourne Cup and they began living together within a few months. When the applicant's tourist visa was due to expire on 30 June 2008, he applied to the Department on 1 July 2008 for a further extension which was refused. He claimed he was told to apply for a spouse visa, which he did. The applicant stated at the hearing that it was his 'own stupidity' for not applying for the spouse visa until after his substantive visa had expired. He advised the Department that the reason he did not leave the country before his visa expired was that he could not afford the cost of a first class air ticket back to the UK. He claimed he discovered some weeks later that he didn't meet the Schedule 3 criteria after a Departmental officer informed him they should not have allowed him to make this application. He claimed that if he had known this when he applied, he would have used that money to return to the United Kingdom (UK) and apply from there instead. He claimed he and the sponsor had rented a house together and he had contributed to the household and supported the sponsor's two children. If he had to leave, he claimed he was worried about the bond he had built with the children. Also, he claimed it would be difficult for him to obtain work in the UK due to the dire economic situation there, that he worked and supported his family here and that he had nothing to go back to in the UK.

Held: Decision under review affirmed.

The Tribunal found that, as the applicant's Tourist visa ceased on 30 June 2008 and he lodged his Partner visa application after the expiration of that visa, he was therefore required to meet each of the six requirements contained in criterion 3004(c) to (h) inclusive. In relation to: (c) The Tribunal found there were no factors beyond the applicant's control which led him to not hold a substantive visa at the relevant time; (d) The Tribunal did not accept that not being advised by the Department in advance that he may not meet the Schedule 3 criteria amounted to a compelling reason to grant the applicant the visa. The Tribunal considered the applicant's family ties in Australia were a compelling reason but found this was not a sufficiently compelling reason to grant the visa. Although the applicant's relationship with the sponsor had deepened and they became engaged in November 2008 and the applicant had been providing financial support to the sponsor and her children, the Tribunal found that these factors were not in existence at the time of application and therefore could not be considered; (e) The visa applicant met cl.3004(e) as there was no evidence before the Tribunal that the visa applicant had not complied substantially with the conditions of his last substantive visa. (f) The Tribunal found that the applicant would not have been entitled to be granted the visa as he had not been in a de facto relationship for a period of 12 months immediately before the date of the application, having only met his de facto partner in November 2007 and applying for the spouse visa in July 2008; (g) The applicant met cl.3004(g) as the Tribunal accepted that the visa applicant intended to comply with any conditions to which his Subclass 820 visa would be subject if such a visa were granted to him; and (h) The Tribunal found that cl.3004(h) was not applicable in this case.

The Tribunal accepted that the applicant and sponsor were in a genuine relationship and acknowledged the distress and inconvenience that would be caused to them if the applicant was required to leave Australia and apply offshore. However, the Tribunal was not satisfied the reasons described were sufficiently compelling to justify not applying the Schedule 3 criteria. Accordingly, the Tribunal found that the applicant did not meet cl.820.211(2)(d)(ii) of the Regulations.

0903545

13 October 2009, Melbourne

Mr D.B. Mitchell, Member

PROSPECTIVE MARRIAGE (TEMPORARY) (CLASS TO) – SUBCLASS 300 – VISA REFUSAL – CL.300.214 – APPLICANTS KNOWN TO EACH OTHER AT TIME OF APPLICATION

The review applicant was born in Bulgaria and first arrived in Australia in 1977. He claimed that he had been married and divorced three times and had no children. The visa applicant was a national of Bulgaria who had lived in Spain for a number of years and had three adult sons from a marriage that ended with the death of her husband in 1999. The parties claimed that they met in the visa applicant's then home town of Ruse, Bulgaria, on 20 October 1975. He claimed that he was due to board a ship that was leaving Ruse and he had time to kill before its scheduled departure so he sat in the park whereby he began talking to the visa applicant who was there with her mother and 12 month old son. The review applicant claimed that he was leaving Bulgaria to flee to Austria, and he did not intend to return. He claimed that as he did not know if he could trust the visa applicant, he told her that he was going on a holiday to Germany. The applicant stated that he was able to recall this meeting that occurred more than 30 years ago because leaving his home country was a very significant moment in his life. The visa applicant claimed that she was able to remember the date of their meeting because it was only a few days after her son's first birthday. The review applicant claimed that in 2004 he sent a letter to the Bulgarian newspaper, *Trud*, saying that he was looking for a Bulgarian partner and giving his contact details, and that some time later the visa applicant telephoned him in response to his letter. He claimed that during their initial telephone conversation, she told him that she used to live in Ruse, and that upon further questioning, they realized that they had met in Ruse 30 years before. After further contact by phone and letter over a three year period, the review applicant proposed over the telephone and the visa applicant accepted.

Held: Decision under review set aside.

The Tribunal noted that it could understand the delegate's disbelief of the claim that the visa applicant, who responded to the review applicant's advertisement in a Bulgarian newspaper, was the same woman the review applicant had met briefly in Ruse almost 30 years previously when he was fleeing Bulgaria. The Tribunal considered the possibility that the visa applicant and the review applicant had concocted their story in the time since they claimed to have re-established contact in 2005. The Tribunal also noted that there were inconsistencies in their oral evidence at the hearing concerning who first left the park where they claim

to have met, the timing of their next contact, the timing of the review applicant's marriage proposal and whether or not the visa applicant accepted immediately, and the number of letters they had exchanged since re-establishing contact. However, the Tribunal took into account that the parties gave evidence that was generally consistent regarding such matters as the date and place of their meeting, what they told each other concerning their personal circumstances, the presence of the visa applicant's mother, the approximate duration of their conversation, and the purpose of the review applicant's visit to Ruse. The Tribunal also took into account the visa applicant's ability to recall the date of their meeting by reference to the approximate age of her first child at the time. The Tribunal accepted that coincidences happened in life and that on balance, it accepted that the applicants met in Ruse in October 1975 and that, by coincidence, the visa applicant had responded to his advertisement in the Bulgarian newspaper. Consequently, the Tribunal found that, at the time of application, the parties had met and were known to each other personally, and accordingly, that they met the requirements of cl.300.214 of Schedule 2. The Tribunal further noted that, as the delegate had not made findings regarding the remaining time of application criteria, it was not appropriate for it to proceed to make findings concerning the parties' genuine intention to marry and to live together as spouses. However, the Tribunal noted that the inconsistencies listed above warrant closer inspection by the Department, as well as the limitation on the Minister's discretion to approve sponsorships as contained in r. 1.20J.

Student visas

0905282

27 November 2009, Sydney

Mr L Hardy, Member

VOCATIONAL EDUCATION AND TRAINING SECTOR VISA (TEMPORARY) (CLASS TU)– SUBCLASS 572 – CONDITION 8202 – UNSATISFACTORY ATTENDANCE

– The applicant's Subclass 572 visa was cancelled due to his failure to meet the requirements of Condition 8202 in relation to satisfactory course attendance. The applicant claimed that his father in Nepal was hospitalised with asthma and that he made many attempts to go to college during this two week period but he had turned back half-way and headed home. He later changed this evidence to say that he had attended and had left early due to his inability to concentrate. Although the applicant acknowledged that his attendance for Term 1, 2009 had fallen below 80%, he claimed at hearing that his education provider had excessively miscalculated his absences. He claimed he was only absent for two weeks, and that his school marked him absent for a period of two to three weeks. The applicant claimed that he went to see a student counsellor in the weeks following his absences prior to the certification of the breach, although he did not provide any evidence to that effect. The applicant claimed that because his study in Australia was financed by his father, he became concerned about his ability to continue studying when his father became sick. The applicant claimed that because his visa had been cancelled, he could not obtain evidence such as student counselling or doctor's reports. He claimed that during this period he continued to hold a part-time job. The applicant submitted a letter from a hospital in Nepal stating that his father was recovering well from a heart bypass operation, and another letter from the applicant's mother stating that his father was undergoing treatment and that his condition was worsening every day.

Held: Decision under review affirmed.

The Tribunal was satisfied that the applicant had not complied with Condition 8202 and the ground for cancellation under s.116(1)(b) therefore existed. The Tribunal found that the documentary evidence did not support the claim that the applicant's father was suffering from asthma, let alone a bout of asthma that was so serious as to be exceptional. It found that the documentary evidence only supported the claim that the applicant's father had a heart condition, which had already been treated by way of a bypass operation and that the hospital's letter was written in response to a request for supporting evidence of a kind that had been identified as lacking when the applicant's visa was cancelled. Therefore, the Tribunal found that this letter was unreliable. It then considered his mother's letter and found that it was also created after the applicant's visa had been cancelled and that it therefore could not be relied upon as a truthful description of what was happening to the applicant's family at the relevant time. It found that, as neither letter was presented until the review was underway, taken together with other concerns, the Tribunal found that both of the letters were not genuine. The Tribunal also found it incongruous that, considering the applicant's claims about numerous telephone calls with his mother, he claimed he did not know the details of his

father's operation. The Tribunal found that the applicant's evidence as to when he first alerted the school of the problems he faced with his attendance was inconsistent and unsupported. It noted his evidence that he attempted, on various occasions, to go to school only to turn around halfway and go home, and that later he said that he *did* go to school and had simply returned home halfway through the day. The Tribunal noted that his written statement had said that he missed two to three weeks of school, and therefore found that the applicant's evidence was unreliable. The Tribunal found that the applicant's evidence that he continued to work through the period of his father's illness undermined his claims of being affected at the time by exceptional circumstances beyond his control. On the evidence before it, the Tribunal found that all of the applicant's claims about exceptional circumstances beyond his control were unreliable. Accordingly, the Tribunal found that the applicant had not complied with Condition 8202 and that in accordance with s.116(3) such circumstances were prescribed circumstances in which the visa must be cancelled. Accordingly, the Tribunal affirmed the decision to cancel the applicant's Subclass 572 Student visa.

0907394

5 November, 2009, Melbourne

Ms L Spieler, Member

STUDENT (TEMPORARY) (CLASS TU) – SUBCLASS 572 – S.116(1)(b) – CANCELLATION – CONDITION 8202(3)(b) – EXCEPTIONAL CIRCUMSTANCES – A delegate of the Minister cancelled the applicant's Subclass 572 visa under s.116(1)(b) for breaching condition 8202 as the applicant was unable to demonstrate that his failure to achieve satisfactory attendance was due to exceptional circumstances. The applicant claimed he was enrolled at Perth Institute Western Australia (PIWA) and in June 2009 PIWA formally notified the applicant in writing of its intention to cancel the course which the applicant was enrolled in. The applicant claimed he applied for a Student Course Variation in July 2009 to formally withdraw from this course and he stopped attending classes soon after. He enrolled in a course at a college closer to his home. He claimed he attempted to see a PIWA student advisor in early July to withdraw and cancel his studies, but he was unable to do so until late July. Information on file indicated that PIWA accepted the application to cancel the applicant's studies but this was not processed within 20 working days as is stated on the application form. On 19 August 2009 the applicant was issued with a s.20 notice. According to PIWA the applicant was an accepted student until 24 August 2009 although the applicant claimed he had already commenced studying at a new college.

Held: Decision under review set aside.

The Tribunal noted that the conditions contained on the application form stated that the application should have been processed within 20 working days, but when this was not done, PIWA issued with a warning letter four weeks after the applicant had stopped attending classes. The Tribunal found that PIWA took over two months to report the applicant and there was no information from PIWA to suggest that it did not intend to process the applicant's request to cancel his studies. The Tribunal found that the warning letter was inaccurate and to some extent, misleading. The Tribunal also had concerns about the processes which led to the applicant being reported. The Tribunal found that the applicant had lodged an application to cancel his studies with PIWA in July 2009 and that he had proceeded on the understanding he could commence studies at his new school. Accordingly, the Tribunal was satisfied the applicant's non compliance with condition 8202 was due to exceptional circumstances beyond his control. As the Tribunal decided a ground for cancellation existed, it then considered whether the power to cancel the visa under s.116(1) should be exercised, having regard to all the circumstances. Based on the evidence, the Tribunal found the applicant's breach of condition 8202 was due to exceptional circumstances beyond his control. Accordingly, the Tribunal set aside the decision to cancel the applicant's Subclass 572 visa.

Other visas

0901144

12 October 2009, Sydney

Mr J Cipolla, Member

TOURIST (CLASS TR) – SUBCLASS 676 – CL.676.221 – INTENTION TO ONLY VISIT – A delegate of the Minister refused to grant the applicants Subclass 676 visas because he was not satisfied that their

intention to only visit Australia was genuine. The delegate found that the primary applicant and his wife and daughter (the secondary applicants) did not have sufficient financial or personal ties in the Philippines that would act as strong enough incentive to ensure their return at the end of their proposed stay. The Tribunal determined that it had jurisdiction only to review the primary applicant's visa application. The visa applicant and his sister (the review applicant) presented evidence that the applicant owns a piggery and a rice mill. They claimed that these businesses represented significant investments by the applicant that require attention and regular managing and that for this reason, the visa applicant could only holiday in Australia for the month requested. The review applicant also stated that the visa applicant's second daughter, who was one year old at the time of application, was not included in the application. The review applicant claimed that the visa applicant would want to return to his daughter at the end of his stay. She further claimed that the visa applicant had commitments for the care of his elderly, hearing-impaired mother and to the local civil service to which he provides assistance during emergency relief operations. The review applicant submitted details of several family members and friends, all of whom had traveled to Australia previously and had abided by their visa conditions. Both the review and visa applicant claimed that there was no basis on which the visa applicant could lodge a protection visa application. The review applicant claimed that the visa applicant had a peaceful and successful life in the Philippines. The visa applicant stated at hearing that he understood the jurisdictional issues regarding his wife and daughter's visa applications, and confirmed that they would remain in the Philippines during his proposed visit. He claimed that this constituted a substantial incentive for him to return home at the conclusion of his proposed visit.

Held: Decision under review set aside.

The Tribunal found that the visa applicant's expressed intention only to visit Australia was genuine. It found that the evidence submitted regarding the applicant's businesses in the Philippines indicated that his wife, daughters and mother are all dependent on the running of the businesses. The Tribunal further found that the applicant's mother and other relatives had traveled to Australia previously and had always complied with the conditions of their visitor visas. It found that the visa applicant derived a great deal of pride from the volunteer work he had been involved in over the preceding 12 months. The Tribunal found that the applicant sought to visit Australia for the purpose of visiting his sister and that he would have access to adequate funds for his personal support during his proposed visit. It also found that the decision to refuse visas to the applicant's wife and daughter were not decisions the Tribunal could review, and that they would remain in the Philippines during the applicant's visit. On this basis, the Tribunal found that the applicant met the requirements of cl.676.221 of the Regulations.

REFUGEE REVIEW TRIBUNAL DECISIONS

Burma

0900265

10 November 2009, Melbourne

Mr P Tyler, Member

BURMA – POLITICAL OPINION – ANTI GOVERNMENT – SOCIAL GROUP – FAILED ASYLUM SEEKERS WHO RETURN TO BURMA – BURMESE WOMEN WITHOUT MALE PROTECTION

The applicant claimed that she was a Buddhist who often visited her local monastery. She claimed that increasingly she saw monks being shot and killed by military officers who would also abuse and arrest them. She claimed that military officers would shut thousands of monks inside their monasteries under armed guard and barricade the streets of Yangon. The applicant claimed that military officers took away the money given to the monks as donations and that the monastery was destroyed. She claimed she became very angry and decided to become involved in anti-government activities. She claimed that she began distributing brochures for the monks to arrange a protest in Yangon, and that she provided food and water and participated in marches. The applicant claimed that the assistant Abbot asked her to make copies of a letter that he wanted delivered to another monastery, which urged the monk not to surrender to the military. The authorities subsequently arrested the Abbot. She claimed that she feared that her involvement would be discovered, and that she went into hiding by moving from place to place. The applicant claimed that her employer was a religious man who assisted her financially during this time, and that he had a friend who invited her to come to Australia. The Department then received a letter from the applicant's employer claiming that the applicant had asked for a letter stating that she had been employed since 2006, which the employer claimed was untrue, and that she had then forged a letter using the company letterhead along with the seal and signature of the Managing Director to make this claim. The applicant claimed that the owners of the business had said this as they feared the repercussions of sending the letter. Subsequent to the hearing, the applicant made additional claims that she was a member of a particular social group, being failed asylum seekers who return to Burma, as well as Burmese woman without male protection.

Held: Decision under review affirmed.

The Tribunal found the applicant to be a witness who lacked credibility, and that her evidence was inconsistent and lacked plausibility in significant respects. The Tribunal noted that she had lodged three separate statutory declarations in support of her claims which contained differing information. It found that originally the applicant had claimed she saw the monks being mistreated by the authorities, whereas later she stated that she had not heard of this happening. She also claimed to be involved in anti-government activities and to be a political activist however in another declaration she claimed that she was never involved in politics. She claimed that she had gone into hiding for a number of months, whilst in another declaration and at the hearing she denied going into hiding. The Tribunal did not accept the applicant's explanation in relation to the employer's do-b-in-letter as it found that there was nothing for the employer to gain by not telling the truth. For these reasons, the Tribunal did not accept that the applicant was involved in anti-government activities, that she distributed brochures for monks or visited and gave brochures to another monastery. It also did not accept that she was involved in marches; that she helped monks; that she went into hiding; that she was involved in anti-government activities; or that she feared persecution from the Myanmar government due to her political activities. The Tribunal also noted that the applicant was able to leave Myanmar without incident, which demonstrated that, until the time of her departure, she was not of interest to the authorities. The Tribunal considered the applicant's claim that she was at risk of persecution because she belonged to a particular social group, being a Burmese woman without male protection. It found that the only area of consistency was her claim that the danger she feared arose due to her political activity. The Tribunal also noted that the applicant had left her 18 year old daughter in Burma and, apart from two alleged visits in which she was unharmed; there was no evidence of any further approaches to her by the authorities. This indicated to the Tribunal that if the applicant and her daughter were of interest, the authorities would be able to locate her. The Tribunal also did not accept that the Burmese authorities would have information to suggest that she was seeking protection in Australia. Therefore, the Tribunal found that the applicant did not face a real chance of suffering serious harm in the

reasonably foreseeable future if she were to return to Burma. Accordingly, the Tribunal was not satisfied that the applicant had a well founded fear of persecution for a Convention reason.

China

0906628

18 November 2009, Sydney

Ms C Carney, Member

CHINA – FALUN GONG – The applicant claimed to fear persecution because he practiced Falun Gong. He claimed that his father, with whom he had practiced Falun Gong since the age of nine, had been attacked and arrested for his beliefs, and that the applicant suffered because of his relationship to his father. He claimed that when his father was arrested he was beaten. The applicant claimed that he had never been detained in China because he was just a child. He claimed that his mother and he and his siblings had to go and live with his grandparents from time to time as the police would regularly come to search their house. The applicant said that at school all his classmates and teachers discriminated against him. He claimed that he was very young when he started practicing Falun Gong with his father and that it had greatly improved his health. He stated that he did not learn Falun Gong from a book, only from other practitioners. He claimed that many practitioners were arrested and tortured, and if he returned to China he would receive the same treatment. The applicant advised that his father was in immigration detention in Australia when he arrived in the country on a student visa. He claimed that his father had been granted a protection visa because he was a Falun Gong practitioner. The applicant's father gave evidence that he had practiced Falun Gong since 1994 and that he was arrested for a couple of days. He was not detained but the police beat him and made trouble for him. He subsequently left China and hid in Malaysia before traveling to Australia. The applicant's father claimed that while he was in hiding, the authorities continued to come to his home and harass his wife and the applicant. The applicant's father was granted a temporary protection visa in 2008 and his resolution of status application had not yet been determined.

Held: Decision under review set aside

The Tribunal was concerned that the applicant had provided his evidence at hearing in a rehearsed manner. However, it noted that he was able to give some detail of Falun Gong and its beliefs. The Tribunal accepted that the applicant had been exposed to Falun Gong. It noted that when concerns were put to the applicant regarding his answers, he stated that he was only practicing Falun Gong because of his father who wanted him to try harder. The Tribunal found that the evidence given by the applicant's father corroborated that given by the applicant. The Tribunal accepted that the applicant's father had been found to be a Falun Gong practitioner and had been granted temporary refugee status. The Tribunal noted independent information indicating that family members of some Falun Gong practitioners had been targeted for arbitrary arrest, detention and harassment, while others had lost jobs, the chance of promotion, a pension or state housing. On this basis, the Tribunal was satisfied that family members of Falun Gong practitioners in China is a social group that can be distinguished from the rest of Chinese society by Chinese authorities. The Tribunal found that the applicant could be persecuted on the basis of his membership of his family for reasons of his father's particular religious beliefs or political opinions. The Tribunal accepted that family members of Falun Gong practitioners are subjected to persecution and repression by the Chinese government. It accepted that the applicant might be detained, imprisoned, placed under surveillance, or be required to undergo re-education if he returned to China. The Tribunal also considered independent country information concerning the treatment of failed asylum seekers who come to the attention of Chinese authorities. The Tribunal formed the view that if the applicant returned to China, it would be apparent to the authorities that his father was a committed and vocal adherent of Falun Gong. Accordingly, the Tribunal found that the applicant had a well-founded fear of persecution for reason of his religion, political views or membership of a particular social group.

0906840

2 October 2009, Sydney

Mr J Cipolla, Member

CHINA – NO CONVENTION GROUND – CREDIBILITY – The applicant came to Australia on a student visa which was subsequently cancelled by the Department due to poor attendance. After his visa was cancelled, the applicant went to ground and was later located by Compliance officers. He claimed at that time that he was unaware of any visa cancellation and that he had been working two jobs to get enough money to study. The applicant did not advise in these interviews that he wanted to stay in Australia for any other reason than to pursue further study. At a further interview approximately one week later, the applicant advised that he wished to apply for a protection visa. The applicant claimed that a private real estate developer wanted to buy his parents' house to re-develop the land. He claimed that they offered a price much lower than market value and that when his parents did not accept the price, the property developer hired people to threaten and harass his parents. He claimed that his parents went to the police, however, the developer had contacts within the police force which meant that they took no action. The applicant claimed that his parents then complained to the local government authority and were subsequently told to stop complaining and that if they continued to complain they would be detained. The applicant claimed that they continued complaining and so were detained. He claimed that if he returned to China he would have no option but to complain to the authorities about the detention of his parents, and that therefore he too would be detained. The applicant did not attend a scheduled hearing at the Tribunal.

Held: Decision under review affirmed.

The Tribunal found that the applicant's claims were brief and lacking in detail. The Tribunal was concerned that the applicant when interviewed by Compliance and Departmental officers did not advise until a week after his detention that he wished to apply for Protection. The Tribunal noted that the applicant's response to questions put to him at that time were that he did not want to return to China as he would have nothing to do there, and that he had ceased studying and had failed to disclose this to his parents. The Tribunal found that these responses were not indicative of a person who feared persecution in their home country and were more indicative of a child that feared the wrath of their parents because they had failed to comply with their stated objectives, namely to study. The Tribunal held the view that a person who held a real fear of persecution in their home country for a convention based reason, would place this information before the Department at the first available opportunity. The fact that the applicant had not done so substantially diminished the applicant's credibility. The Tribunal found that the applicant's actions had been concocted whilst in detention in an attempt to invoke Australia's protection obligations. The Tribunal noted that it had hoped to explore at hearing why the applicant's parent's house had been specifically targeted by a developer in an attempt to ascertain whether this scenario was plausible. The Tribunal had also hoped to ask the applicant about details relating to his parents detention and disappearance. Based on the evidence before it, the Tribunal found that it could not be satisfied that the applicant, because of his political opinion or any other Convention reason, would be of adverse interest to the Chinese authorities if he returned to China. Accordingly, the Tribunal was not satisfied that the applicant had a well founded fear of persecution for a Convention reason.

El Salvador

0906782

24 November 2009, Melbourne

Ms M Holmes, Member

EL SALVADOR – SOCIAL GROUP – BUS, PUBLIC TRANSPORT AND TRUCK DRIVERS – The applicant claimed that he had been a bus driver on the same route in San Salvador for a number of years, and had also undertaken various private truck driving work. He claimed that he and other bus drivers were being attacked and robbed in the course of their duties by the Maras (gangs), including the Mara 18 or the 18th Street Gang (M-18) and the Mara Salvatrucha (MS-13). The applicant claimed that typically three or four gang members would get on the bus and after checking that no police were on board, they would take out their guns and point them at the applicant, demanding money from the till and from his pockets. The applicant claimed that they would then jump off the bus, threatening that if he told the police he would die.

He claimed he was aware that gang members had followed through on such threats made to other drivers and, as a consequence, he was afraid to tell the police. He also claimed that the police took bribes from gang members and they sometimes worked with them. The applicant claimed that in 2006 his son was murdered by gang members after being forced into a car, being shot, and run over by M-18 members. He claimed he did not know why his son was killed, but feared it was connected to the applicant's job as a bus driver. He claimed that around ten days after the death of his son he went to his son's home, where he was approached by gang members who said that they did not want him around or he would also die. The applicant claimed that driving was his only skill, and that he could not get a job elsewhere. Included in the application was the applicant's brother, who had been dependent on the applicant for the past four years since the death of their mother. The second named applicant is severely intellectually disabled and is fully dependent in respect of his physical needs and requires constant care and attention.

Held: Decision under review set aside.

The Tribunal accepted the applicant's account of his employment history and also accepted independent information which indicated that transport drivers had been targeted for extortion and robbery by gang members. The Tribunal accepted that the applicant was one of the drivers who experienced this crime over the year's, however, it considered that there was a degree of exaggeration in the frequency of occurrences claimed by the applicant as this crime did not feature more prominently in the independent information. The Tribunal accepted that the applicant's son was killed in 2006, however, it found that there was insufficient evidence for the Tribunal to conclude that the murder was an action against the applicant, nor to establish the motivation for the threat the applicant claimed was made to him shortly after his son's murder. The Tribunal accepted that to involve the police could lead to the possibility of the applicant being targeted for worse treatment than that which he had endured in the course of his work. It found that while there were some police in El Salvador who improperly associated with gang members, the independent information pointed more strongly to an inability on the part of the police to control the actions of gangs, rather than an unwillingness to do so because they were in some way benefiting from the unlawful actions of gang members. The Tribunal found that bus, public transport and truck drivers could be identified as a particular social group in El Salvador, and that the reason they were targeted by gang members was due to the fact that they were alone, unarmed and carried large amounts of money. The Tribunal found that if the applicant were to resume work as a driver, independent information strongly indicated that there was a real chance that he would be targeted by gang members for robbery, and that he could come to serious harm in an encounter. It found that State authorities had been unable to contain the activities of El Salvador's gangs despite concerted efforts to do so, and that due to the small size of the country, the applicant would not be able to relocate to avoid this threat. Therefore, the Tribunal was satisfied that the applicant's fear of persecution was well-founded. Further, the Tribunal found that the second named applicant was a member of the family unit and was also entitled to protection.

India

0808255

12 March 2009, Sydney

Ms P Leahy, Member

INDIA – RELIGION – CHRISTIAN – The applicant claimed to fear persecution on the basis of all five Convention reasons, which he claimed were indistinguishable from one another. He claimed that he was raised as a Christian in an area of Kerala well known for constant altercations between Muslims and Christians. He claimed that in 2004 he became friends with a Muslim girl with whom he attended college. In the visa application, he claimed that she fell in love with him and in 2007 she told him that she wanted to elope with him to another state. At hearing he claimed that he did not remember when he first met her, later he claimed he met her in 2003 and she told him in 2004 that she wanted to marry him. The applicant claimed that he told her the relationship would not work because of their different religions and the girl threatened suicide. The applicant claimed that in January 2007 he was manhandled by four Muslim men and taken to a Muslim village and held against his will. He claimed that his brother gathered a group of Christian youths to search for him, and there was a fight between his brother's group and a Muslim group. The applicant's brother feared for his safety and sent the applicant to Dubai where he stayed for five months. The applicant returned to Kerala for an arranged marriage to a Christian girl in October 2007. The applicant claimed that he was arrested by police in December 2007 and accused of raping his former Muslim

classmate, which led her to commit suicide. The applicant claimed that she committed suicide in response to his marriage. He did not provide any documentary evidence of her death. He claimed that the police were Muslim, that they beat him and threatened to send him to prison permanently. The applicant's brother gathered Christian supporters and demanded that a post mortem be conducted however the police refused and a riot took place. The applicant claimed that the police released him to end the riot and that after he was released, Muslim groups searched for him, wishing to take revenge. He claimed that police officers told his father that if the applicant left the country they could control the riots and their consequences. They said the Muslim criminals would go in search of the applicant and not stop until he was killed. The applicant claimed that the Church fathers advised the applicant to use the World Youth Conference as an opportunity to stay in Australia. He claimed that he did not have any evidence of his arrest. He claimed that if he returned he might be killed by the Muslim girl's brother and his friends. He claimed that he could not relocate to avoid problems because Muslims are all over India and they would come to know about him and kill him. He claimed that Christians cannot do anything in India because of Muslims.

Held: Decision under review affirmed.

The Tribunal advised the applicant at hearing that it had considerable difficulty with his credibility and it provided him with an opportunity to respond to its concerns at a further hearing. The Tribunal noted that, despite this, the applicant's credibility remained central to its findings. The Tribunal found the applicant to be an unreliable witness and that he had fabricated his claims in order to obtain a Protection visa. The Tribunal did not accept that the applicant's relationship with the Muslim girl developed in the manner claimed. The Tribunal tested the applicant's claims at hearing and found him to be evasive and equivocal about almost every aspect of his account. The Tribunal noted that the applicant was evasive about the dates at which key events were alleged to have occurred, and took the view that the applicant fabricated events to account for the inconsistencies in the dates given. The Tribunal also noted that the applicant changed the dates at which key events occurred in the course of the Tribunal hearing when challenged about their plausibility. The Tribunal rejected the applicant's claims that he was harmed in the past by Muslim police or by people connected to the Muslim girl he refused to marry. It found that the applicant had not been harmed because of his religion in the past, and was not satisfied that the applicant would face Convention-related persecution for any other reason if he returned to India. The Tribunal was therefore not satisfied that the applicant had a well founded fear of persecution for a Convention reason.

Kenya

0903027

28 October 2009, Sydney

Ms M Foster, Member

KENYA – POLITICAL OPINION – ORANGE DEMOCRATIC MOVEMENT SUPPORTER – SOCIAL GROUP – LUO ETHNICITY – The applicant claimed that she would be persecuted and tortured if she returned to Kenya because of her Luo "nationality" and because she belonged to the ODM (Orange Democratic Movement) Party. She claimed that her family had experienced problems because of their ethnicity and political leanings, culminating in the shooting of her brother who worked for the Electoral Commission, due to him being suspected of supporting the opposition party. The applicant claimed that her brother left Kenya about two weeks later and went to Uganda and that the incident was not reported to the police, although it was reported in the newspaper. The applicant claimed that she had been harassed and feared being harmed by Kikuyu people due to her support for the ODM. She claimed that she worked part time tallying votes at elections, and that she discussed politics with neighbours. The applicant claimed that her grandparents had disappeared many years ago and that she had inherited a number of properties which had been tenanted to Kikuyu and Kalejin people, and that these people had hatched a plan to eliminate her due to her being a Luo. She claimed that she received threats and that the tenants refused to pay rent, and when she reported this to the police nothing happened. The applicant claimed that she had complained of vote rigging many times with her work and had been threatened with the sack, and she was also not paid. She claimed that she had been physically abused by her employer, on one occasion she was locked in a room for minutes and on another her bag was pulled. The applicant stated that she fell whilst fleeing tribal and political clashes in Nairobi and fractured her right knee and that, as a result, she had two operations. She also submitted a psychological assessment stating that she displayed a range of symptoms associated with depression.

Held: Decision under review affirmed.

The Tribunal found that the applicant was a member of the Luo tribe in Kenya and that after considering independent evidence regarding post election violence, it accepted that the applicant had injured her knee as claimed. The Tribunal noted that in her written statement the applicant claimed she had been a part-time tally officer, however at the hearing she indicated that she had only worked as a tally officer for a period of two days during the December 2007 elections which did not accord with her written statement referring to serving as a tally officer for "years". The Tribunal also noted that the applicant had complained of vote rigging on one occasion, which was in contrast to her written statement complaining of vote rigging over and over again. It further noted that she had claimed at the hearing that as a result of complaining she was simply told to keep working, whereas in her written statement she claimed that she was threatened with losing her job. Therefore, the Tribunal did not accept that the applicant worked as a tally officer for the Electoral Commission of Kenya, nor did it accept the claims she made in her written statement that she was harassed by the army and police interrogators connected to her employers. The Tribunal found that despite the fact that the applicant was able to correctly identify the name of the leader of the ODM party and provide the name of the 2007 ODM parliamentary candidate for her electorate, the reasons she gave for supporting the party were very vague. It did not consider it plausible that the applicant would "forget" why she supported the party as she had claimed at the hearing. Thus, the Tribunal did not accept that the applicant was a supporter of the ODM. The Tribunal noted that in her written statement the applicant claimed that one of her tenants took her handbag, verbally harassed and abused her, and locked her in her house on many occasions, and that tenants had taken over her home and property after she reported them to the police. However, when she was asked to describe the problems she had with her tenants at the hearing the applicant only referred to them not paying their rent and moving out and leaving outstanding rent. The Tribunal did not accept that the applicant could fail to recall the serious threats and abuse she claimed to have been subjected to in her written statement if they were true. The Tribunal found that the independent evidence indicated that inter-tribal discrimination and conflict took place and that the Luo people were the third largest tribe in Kenya. It found that the fact that the applicant was able to complete her education and gain employment indicated that she was not subjected to serious harm amounting to persecution because of her ethnicity. Therefore, the Tribunal found that the applicant was not entitled to a Protection Visa.

Lebanon

0903507

2 October 2009, Sydney

Mr J Duignan, Member

LEBANON -- RELIGION – JEHOVAH'S WITNESS – IMPUTED POLITICAL OPINION – The applicant claimed he was baptised into the Jehovah's Witness faith in 1991. He claimed it was becoming increasingly difficult to practice his faith and that members were under increasing attacks from authorities, private citizens and the Church. He claimed he also feared the threat of terrorist groups and that members were accused of being allied to international Zionism and supporters of the state of Israel, and that they were increasingly becoming the target of Sunni militant groups because of their perceived links with Zionism. The applicant claimed that his family's home was located in an area predominately inhabited by Sunni Muslims who had gained strongholds in the past two years. He claimed that as a Jehovah Witness he did not enjoy the same legal and civil rights as other Lebanese citizens, and that as the religion was not formally recognised, members were denied the opportunity to be married under Jehovah's Witness rites or to obtain the level of protection from the authorities as other citizens enjoyed. He claimed that recent attacks had resulted in restricting their ability to practice core tenants of their faith including preaching, attending regular prayer group meetings and distributing religious material. He claimed that he feared being harmed, particularly when engaging in preaching activity due to the rampant hostility towards Jehovah's Witnesses and that they were unable to rely on effective protection from the Lebanese authorities as they also opposed their religious activities. He claimed members of the Jehovah's Witnesses were often arrested and charged under civil disobedience laws and that they were most vulnerable in situations where they might be attacked by private citizens and were unable to resort to police protection. He claimed he and his family had suffered numerous episodes where they had been targeted by hostile individuals. On one occasion, the applicant claimed that he, along with a fellow Jehovah's Witness, was physically attacked by a group of militant

Muslims whilst preaching in a village. The applicant also provided details of two other recent attacks. He claimed that he constantly feared for his life and that their home had often come under attack by youths.

Held: Decision under review set aside.

Based on evidence before the Tribunal, it found that the applicant was a national of both Lebanon and Syria. The Tribunal accepted that the applicant had genuinely adopted the Jehovah's Witness faith, having commenced those beliefs in 1991. The Tribunal accepted that he had followed the tenets of that faith, including proselytising in Lebanon before his travel to Australia and that he would likely do so on return to either country. The Tribunal was also satisfied that the applicant's activities in associating with those of the Jehovah's Witness faith in Australia had been undertaken as a result of his genuine faith, rather than for any reason associated with his application to be recognised as a refugee. It found he had presented credible evidence of association with the faith and personal evidence from other followers. In respect of the current circumstances in Syria, the Tribunal found that the applicant would certainly be persecuted if he returned there and practised his faith. Based on reliable information, the Tribunal found that the activities of the Jehovah's Witness group were specifically outlawed in Syria and all activity must be undertaken without the knowledge of Government authorities. The public practise would be in contravention of criminal law in Syria and would result in serious harm, including imprisonment and potential physical harm. The Tribunal concluded that the cumulative effect of legal, political and religious circumstances affecting Jehovah's Witnesses in Lebanon meant there was a real risk of serious harm amounting to persecution for the applicant should he return. In the Tribunal's view, the acts of physical harm which he had experienced were likely to be repeated and there was no prospect of his achieving protection from any Government agency. In continuing to practise his faith, the Tribunal found that the applicant would be exposed to the possibility of continual acts of serious physical harm, damage to his property and potentially adverse interest to security authorities. In the Tribunal's view, this risk of harm to the applicant arose entirely for reasons of his religion. On the basis of these findings, the Tribunal found that the applicant was a person to whom Australia had protection obligations under the Refugees Convention.

Malaysia

0906559

12 November 2009, Melbourne

Ms R Gagliardi, Member

MALAYSIA – SOCIAL GROUP – MALAYSIAN WOMEN OF INDIAN/MUSLIM ETHNICITY WHO SUFFER DOMESTIC VIOLENCE – The applicant claimed that she was forced to enter into an arranged marriage with a Muslim man of Indian ethnicity. She claimed that her husband controlled and abused her verbally and psychologically and that over time her husband's behaviour worsened as he began drinking heavily. She claimed that he regularly assaulted her both verbally and physically, and she felt that she could not tell anyone about this as she was frightened of her husband and she was aware that marital domestic violence was tolerated in Malaysian society. She claimed that she would be discriminated against and denied protection by the police because she was an Indian Muslim, and the police would assume she was Hindu because of her skin colour. She claimed that her husband had sexually assaulted her, and that in recent years he had begun hitting her eldest child. The applicant claimed that she had regularly travelled to Singapore, South Africa, Indonesia and Thailand with her employer however she did not consider seeking protection in these countries as she was committed to caring for her disabled employer and she was too busy to investigate this action. She claimed that she could not relocate inside Malaysia as she would face severe discrimination from the community and that her husband had contacts all over Malaysia and he would find her. The applicant submitted a police report from one such attack in 2005, along with a report from a psychologist which stated that the applicant had a full syndrome of symptoms consistent with Post Traumatic Stress Disorder and that he had enormous concerns for her well being.

Held: Decision under review set aside.

The Tribunal found that "Malaysian Women of Indian/Muslim ethnicity who suffered domestic violence" appropriately categorized the particular social group to which the applicant belonged. The Tribunal accepted that the applicant had submitted detailed and consistent accounts regarding various situations, including her hospitalisation, of the threats, oppression and violence in many forms, including the emotional, mental, physical and sexual abuse she underwent in Malaysia. The Tribunal accepted that domestic violence in

Malaysia could be perpetrated without it being visible because of cultural attitudes that women are encouraged to hold about their subjugated place in society and their lack of fundamental human rights and freedoms. It found that even if domestic violence did come to the attention of the authorities, independent information suggested that there were very few prosecutions of perpetrators, and that police were often reluctant to follow up on "private" matters with any vigour. The Tribunal accepted that the applicant had been subjected to serious harm in the past and that the applicant's mental and emotional condition would have been adversely affected, and that there was a real chance she would be subject to psychological harm in the future were she to return to Malaysia. The Tribunal found that the independent information illustrated that a Muslim Indian woman's standing in marriage in Malaysia placed her in a vulnerable position to the extent that in instances of domestic violence, there was a real chance that state protection would not be forthcoming. It found that the implementation of Domestic Violence laws was hampered by societal values about the "correct" place of women in society and that rape in marriage continued not to be outlawed. The Tribunal found that it would not be reasonable, given the psychological harm suffered by the applicant, for her to be able to re-build her life as a single mother in Malaysia in circumstances where her husband would be able to locate her and continue to persecute her. Therefore, the Tribunal found that the applicant had a well founded fear of serious harm and that on the basis of the evidence, given the applicant's membership of the multifaceted social group to which she belonged; there was a real chance that she would face persecution were she to return to Malaysia now or in the reasonably foreseeable future. Accordingly, the Tribunal was satisfied that the applicant had a well founded fear of persecution for a Convention reason.

Morocco

0906699

20 November 2009, Melbourne

Ms M Urquhart, Member

MOROCCO – PARTICULAR SOCIAL GROUP – NON-BELIEVERS – RELIGION – The applicant claimed to fear persecution from the authorities and from a fundamentalist Islamic group called the Anizyin, due to his lack of religious activity and involvement. The applicant was born into a Muslim family, but claimed that he and his siblings did not practice any religion. He claimed that he had been arrested many times by police on his way home from drinking at bars or when walking with his girlfriend. He claimed that the police would beat him, call him an infidel and that they only released him after he paid them money. The applicant claimed that he was also targeted by a group called the Anizyin, whose members act like religious police monitoring the streets and targeting anyone who acts against Islam. The applicant claimed he was targeted by the Anizyin coming home from pubs even if he had had nothing to drink because they knew he was not religious. He claimed that he was also targeted because the Anizyin were aware that he taught English, which they believe is the language of infidels. The applicant claimed that the Anizyin are involved with the police force or government, which gives them free reign to act in the community as they please. He claimed that he witnessed the Anizyin kill someone; so he notified the police and ultimately two of the killers were caught and were jailed pending a court date. The applicant was sent a letter by the police instructing him to attend the court as a witness. He claimed that he believed the Anizyin got information from the police about his identity and that from that point on he was constantly targeted by the Anizyin. The applicant claimed that his family had informed him that members of the Anizyin had come to the house looking for him since he left Morocco as they wish to kill him. He claimed that he could not relocate within Morocco as the Anizyin Organisation had a network of people everywhere.

Held: Decision under review affirmed.

The Tribunal accepted that the applicant and his siblings had never practiced religion and that he was a non-believer. However, the Tribunal did not accept that the applicant was a credible witness. It noted that his responses at hearing were at times vague, sometimes exaggerated and at times appeared to be merely self-serving. The Tribunal did not accept the applicant's evidence that he had been attacked by the Anizyin and arrested by the police on so many occasions that he could not remember when these incidents had happened. The Tribunal was of the view that if any altercations between himself and the Anizyin had occurred, they may have arisen because of drunkenness on the applicant's behalf or for some other reason, not because of his religion or non-belief. The Tribunal noted the applicant's evidence that he was really drunk once a month. For this reason, the Tribunal found that the applicant was known to police and that he may have had trouble with the police on the occasions when he had been drinking. The Tribunal accepted,

on the basis of independent country information, that there is corruption in the Moroccan police force and that the applicant may have had to pay bribes to them to be released. However, the Tribunal found that any trouble the applicant may have had was for a non-Convention reason, not because of his non-belief in religion or to Islam in particular. The Tribunal accepted that the applicant may have witnessed a man being killed by members of the Anizyin group as claimed. However, the Tribunal noted that the applicant's claims regarding his fear from this group were general and that no evidence had been provided to support them. The Tribunal was unable to locate independent country information about the Anizyin group. It was, however, prepared to accept the possibility of its existence. The Tribunal considered the applicant's evidence, and while it accepted that the applicant may be at some risk from the people who had been charged with the murder, it did not accept that he would be sought out and harmed because of his religion or membership of the particular social group, non-believers in Islam. The Tribunal noted that the applicant had not provided any information to support his claim that the Anizyin group collaborated with the authorities, that the police are unduly influenced by the organisation, or that state protection would not be provided to the applicant. It noted that, according to the applicant's evidence, the police acted appropriately when he reported witnessing a crime and those responsible were caught and charged. The Tribunal did not accept that the police would not provide the applicant with protection from the Anizyin should they seek to harm him. In the Tribunal's view, the evidence did not establish that there was a real chance that the applicant would suffer persecution for a Convention reason if he were to return to Morocco.

Pakistan

0902671

9 November 2009, Adelaide

Ms D Morgan, Member

PAKISTAN – PARTICULAR SOCIAL GROUP – TRANSEXUALS IN PAKISTAN – The applicant claimed to fear persecution on the basis of his membership of a particular social group being transsexuals in Pakistan. He submitted information to the Department about the term 'hijra', which means hermaphrodite in Urdu. Hijras are known in South Asian culture as the 'third sex' and in the West as transsexuals. The applicant submitted that hijras in Pakistan are socially marginalised and are viewed with disgust and fear. He referred to Pakistan's Penal Code, section 377, which deals with 'unnatural offences'. He submitted that there is no known grassroots activism among gays and transsexuals in Pakistan. The applicant claimed that he has identified as a female since childhood and that both his parents were angry about his feminine ways and they physically punished him because of them. He claimed his visible scars were from where his father beat him at age 12 after discovering cosmetics in his room. The applicant claimed that he began taking female hormones at university after consulting a doctor but he kept this secret from everyone. He claimed he ceased taking the medication as he was fearful of the consequences if his father found out. He claimed that in his early twenties his uncle threatened to kill him because of his gay appearance which his uncle said brought shame and disgrace to the family. The applicant claimed that in Pakistan gay people are looked down on and that transsexuals lead the worst lives as beggars sleeping on the streets and without employment. He said that he never felt safe in Pakistan as there was no protection for transsexuals and no laws were enacted to protect them. The applicant claimed that he came to Australia to undertake his Master's degree and that in Australia he had not been stereotyped or mocked for his feminine appearance. He started taking female hormones again and began living as a woman full time. He stated that he was considering surgery to complete his conversion to a female. In Australia the applicant met his current partner, who has proposed to him and with whom he lives. The applicant claimed that in 2007 he phoned his father and told him that he was living as a woman and that his boyfriend wanted to marry him. His father was very angry and told the applicant never to return to Pakistan as a transsexual or to contact him again. Later that month the applicant's father died. The applicant claimed that his younger brother informed him that the family blamed him for his father's death. He claimed that one of his uncles also telephoned him and threatened him with death if he returned to Pakistan as a transsexual. The applicant submitted that the laws of Pakistan do not permit gender changes and thus his sex would always be male on his identity documents. If he tried to obtain employment in Pakistan his documents would state that he is male and so, upon presenting as a woman, he would not obtain employment. The applicant's boyfriend gave evidence to the Tribunal supporting the applicant's claims. The applicant also submitted a doctor's report from the Australian Red Cross confirming that he had been prescribed hormone therapy and recommended he remain on the medication.

Held: Decision under review set aside

The Tribunal found that the applicant had been diagnosed in Australia as having the medical condition 'gender dysphoria', and that he had taken hormonal medication in Australia in order to increase his femininity. On the basis of the applicant's evidence and independent information, the Tribunal found that the applicant is a transsexual. It found the applicant to be a credible witness and accepted that he had experienced death threats and harassment by Pakistani people including members of his own family, and that this had occurred because of his transsexualism. The Tribunal noted independent country information indicated that honour killings had occurred where a family member murders a gay relative, claiming they have brought shame upon the family name. The information also indicated that killers can get away with such acts relatively easily. The Tribunal further noted independent information indicating that there is an identifiable transsexual community in Pakistan which forms a cognisable social group within the country. Independent information also indicated that section 377 of the Pakistan Penal Code sets out punishment for 'unnatural offences' with the effect the homosexual or transsexual conduct is a criminal offence, punishable by imprisonment. The Tribunal accepted that Pakistani law does not presently permit the applicant to change his gender for the purpose of legal documents. The Tribunal noted that country information supported the applicant's claim that there are no gay or lesbian advocacy groups operating in Pakistan, and that in Pakistan gay relationships are kept hidden in consequence of ostracism by the community. The Tribunal noted a recent report by the International Humanist and Ethical Union stating that revelations of homosexuality in Pakistan invited "highly unpleasant, if not potentially fatal, consequences". The Tribunal further noted that it is an entrenched principle of refugee law that the Tribunal cannot impose a requirement on the applicant to be discreet about his sexual orientation if he were to return to Pakistan. The Tribunal was satisfied that Pakistan vetoed a UN proposal in 2003 advocating global gay rights, on the ground that the resolution directly contradicts the tenets of Islam and other religions. Consequently, the Tribunal found that this situation pertains throughout Pakistan and thus relocation was not a reasonable option for the applicant to avoid harassment and harm. The Tribunal was satisfied that the applicant would not be able to access adequate state protection according to international standards in Pakistan. Accordingly, the Tribunal was satisfied that the applicant was a person to whom Australia had protection obligations.

Turkey

0903361

1 October 2009, Sydney

Ms A O'Toole, Member

TURKEY – ETHNICITY – KURDISH – RELIGION – ALEVI – POLITICAL OPINION – The applicant claimed to have been persecuted in Turkey because of his Kurdish ethnicity, his religion and his political opinion. He claimed that he became involved in Kurdish politics at the age of fourteen, participating in meetings with young Kurdish Alevi people in his neighbourhood. He claimed that from a very young age he was targeted because he is a Kurd. The applicant claimed that a number of his family members and friends had been assaulted, arrested, detained or had disappeared as a consequence of their Kurdish ethnicity, religion and political activities. This inspired his further involvement in fighting for the rights of Kurdish people. The applicant claimed to have been involved with a socialist cultural centre since 1996. He stated that the centre was often investigated by the police for no reason. At protests the cultural centre participated in, the applicant and other members were harassed by police. The applicant claimed that he suffered serious harm because of his ethnicity while undertaking compulsory military service from 1999 to 2000, including being subjected to torture tactics such as sleep deprivation and blasting with a high pressure hose. He claimed that after completing his military service he was involved in various activities which attracted adverse attention from the secret police in Turkey. He claimed that in early 2007 he was detained, assaulted and subjected to electric shock torture for about three days by the secret police. He claimed that the secret police demanded he act as a spy for them at the cultural centre he volunteered at. He claimed that in May 2007 he went into hiding to escape the secret police and their demands. After this, his family assisted him to leave the country. The applicant claimed that if he returned to Turkey he would be arrested and would suffer serious harm. In support of the application, the applicant submitted a psychologist's report indicating that he is suffering from major psychological problems as a result of his experiences in Turkey. He also submitted a letter of support from the Australian Turkish and Kurdish Community Services.

Held: Decision under review set aside.

The Tribunal found the applicant to be a credible witness. It noted that enquiries made into his claimed membership of the socialist cultural centre indicated that he was not known by the centre. However, the Tribunal accepted the applicant's explanation that the person contacted may have been attempting to protect the applicant. The Tribunal accepted the psychologist's report which indicated that the applicant was suffering Post Traumatic Stress Disorder due to his experiences in Turkey. The Tribunal accepted that the applicant was an Alevi Kurd and that he was involved in various activities in relation to the rights of Kurdish people in Turkey. The Tribunal also accepted that the applicant was the subject of serious harm on more than one occasion because of his ethnicity and political profile. The Tribunal was satisfied that the applicant was seriously harmed during his military service and when he was detained by the authorities in 2007. It further accepted that his cousins and brothers were also involved in political activities over the years. The Tribunal was satisfied that, should the applicant return to Turkey, he could be detained and subjected to interrogation and mistreatment. It thus accepted that the applicant's fear of persecution was well founded for the purposes of the Convention and that the applicant was a person to whom Australia had protection obligations.

Vietnam

0900266

29 October 2009, Melbourne

Mr T Connellan, Member

VIETNAM – RELIGION – CHRISTIAN – The applicant claimed to fear persecution by the Vietnamese government and its officials because of his membership of the Alliance of Christian Churches. He claimed to have converted to Christianity while living in a refugee camp in Hong Kong in 1991. He claimed that since his return to Vietnam in 1993 after unsuccessfully claiming asylum in Hong Kong, he had regularly spoken to people he met about God, acting as a "freelance missionary". He claimed to oppose the government's control of the Church which curtailed religious expression. The applicant claimed that he had been questioned by police about his missionary activities on two occasions, once in 2006 after a visit to his home by two friends who subsequently became Church Pastors, and again in 2007 regarding his plans to celebrate Christmas with his Church group. On both occasions the applicant was free to leave after answering the authorities' questions. The applicant claimed that the day after he left Vietnam the authorities came to his home and questioned his wife about his trip to Australia to attend a Christian conference, and about his relationship to the other conference attendees. He claimed that they threatened his family and told his wife they would ensure that he did not have a job when he returned to Vietnam. The applicant claimed that his employment ended as a result of his religious activities, and he submitted a translated copy of a document stating his labour contract was terminated effective September 2008, the week after he departed Vietnam. He further claimed that the day after his visa expired, authorities visited his home with a warrant of arrest. The applicant submitted a document titled "urgent Order of Arrest". The Tribunal questioned its authenticity and the applicant subsequently provided a translated letter from the relevant Vietnamese Post Office advising that the parcel containing the original document had gone missing. The applicant stated that his religious beliefs and practices were non-political, and that he did not hold a position of authority with the Church. He claimed to be especially in danger of persecution by the authorities because he is not a Pastor. The applicant claimed that the Vietnamese government draws a distinction between religious activity carried out by Pastors and those who are not and those without an official position cannot be controlled like Pastors who must attend government-approved training. Thus he claimed he is perceived as a greater threat. He claimed to fear arrest if he returned to Vietnam, and stated that he did not believe he would receive a trial because his crimes are considered to be so serious.

Held: Decision under review affirmed.

The Tribunal noted that the applicant had previously unsuccessfully claimed asylum as a refugee in Hong Kong, and that he had returned to Vietnam and had lived there without fear of persecution. The Tribunal accepted the applicant's belief in God, but did not accept that he had a well founded fear of persecution for reason of his religious beliefs. The Tribunal accepted the applicant's evidence that his religious beliefs and practices were non-political, and that he held no position of authority within the Church. The Tribunal stated its belief that this was the reason the applicant had not held a profile for his religious beliefs or activities and therefore he had been of no interest to the authorities in the past. The Tribunal did not accord any weight to

the document submitted detailing the applicant's termination of employment. It noted that the applicant claimed to have been engaged in religious activity for fifteen years and including when he was first employed and throughout the term of his employment. Thus the Tribunal found it was equally plausible that the applicant was terminated for deserting his post rather than for his religious activities. As the Tribunal did not accept that the applicant held a profile for his religious beliefs or activities, and as the applicant left Vietnam legally on a passport issued in his own name, the Tribunal did not accept that the authorities had any adverse interest in the applicant's movements or knowledge of the purpose of his travel. The Tribunal noted that it had not been provided with a satisfactory explanation for the problems regarding the authenticity of the purported arrest warrant submitted by the applicant. It found that the warrant was not an original document as claimed and that the applicant was not a witness of truth. It found that there was never an arrest warrant issued for the applicant and that the police did not visit his home after the expiry of his visa as claimed. The Tribunal found that the applicant had no reason to fear persecution should he return to Vietnam. The Tribunal was therefore not satisfied that the applicant had a well founded fear of persecution for a Convention reason.

FEDERAL COURT JUDGMENTS

SZKUO v MIAC

[2009] FCAFC 167

Federal Court of Australia, Moore, Jagot and Foster JJ, NSD 552 of 2009, 3 December 2009

This was an appeal from a decision of the Federal Magistrates Court refusing a declaration that the appellant was not liable to detention or removal from Australia as an unlawful non-citizen.

The appellant had applied to the Refugee Review Tribunal (the Tribunal) for review of a decision of the Minister's delegate refusing to grant him a protection visa. Due to an administrative error the Tribunal had affirmed the delegate's decision without first giving the appellant an opportunity to appear before it as required by s.425 of the *Migration Act 1958*. The appellant sought judicial review of the Tribunal's decision and on 21 December 2007 the Federal Magistrate's Court found that jurisdictional error on the part of the Tribunal had been demonstrated, but in its discretion refused relief due to the appellant's 'unwarrantable' delay in bringing the proceedings. An application for an extension of time to appeal against that decision was dismissed on 16 February 2009. On 9 April 2008 the Department detained the appellant in accordance with s.189(1) of the Act. Section 198(6)(c)(i) of the Act requires removal of an unlawful non-citizen if, relevantly, "the grant of the visa has been refused and the application has been finally determined". Under s.5(9)(a) an application is "finally determined" when "a decision that has been made in respect of the application is not, or is no longer, subject to any form of review under Part 5 or 7".

The appellant contended that he was not liable to detention or removal from Australia as an unlawful non-citizen for reason that his visa application had not been "finally determined". He contended that, because the Tribunal had not complied with its obligation under s.425, the process of review under Part 7 of the Act remained incomplete and there was no "decision on review". It also followed, on his analysis, that there had been no notification of a decision of the Tribunal and that his bridging visa therefore remained valid.

Held: per Moore, Jagot & Foster JJ appeal dismissed.

- (i) Subparagraph 198(6)(c)(i) of the Act does not require the Tribunal's decision to be valid or otherwise. It requires only that the visa application is not, or is no longer, subject to any form of review under Part 5 or 7. The reference to "decision" in s.5(9)(a) of the Act is to the decision of the Minister or his or her delegate, and not to that of the Tribunal. The legal effect of the orders made by the Federal Magistrates Court dismissing the application for review of the Tribunal's decision on discretionary grounds, and of the Federal Court refusing an extension of time to appeal against those orders, is that the delegate's decision to refuse to grant the visa is no longer subject to any form of review.
- (ii) *MIMA v Bhardwaj* (2002) 209 CLR 597 does not stand for the proposition that jurisdictional error on the part of an administrative decision maker always means that the decision is no decision or one without legal consequences. The consequences of a decision affected by jurisdictional error will be determined by the Act that empowered the decision.
- (iii) The same reasoning defeats the appellant's submissions about the bridging visa. Sub-subparagraph 010.511(b)(iii)(A) in Part 010 of Schedule 2 to the Migration Regulations 1958 (which provides that a bridging visa remains in effect until "28 days after notification of the decision") operates only when valid notice has been given, but does not require that the decision of which notice has been given to have been validly made. The word "decision", in this specific context, means all types of decisions provided for in the Act whether purported decisions or not.

Li Tian & Ors v MIAC & Anor

[2009] FCA 1406

Federal Court of Australia, Lander J, NSD 1061 of 2009, 2 December 2009

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a Migration Review Tribunal (the Tribunal) decision affirming a decision of the Minister's delegate to refuse to grant the applicant a Employer Nomination (Residence) (Class BW) Subclass 856 visa.

Revetec Ltd had applied for approval of a nominated position pursuant to r.5.19 of the Migration Regulations 1994 (the Regulations) which empowers an employer to apply to the Minister for approval of a nominated position as an approved appointment. The application was approved and the appellant applied for a visa on the basis that she was nominated by Revetec Ltd in respect of an appointment in the business of Revetec Ltd. Clause 856.213(1) of Schedule 2 to the Regulations required that the applicant has been nominated in accordance with r.5.19 by an employer in respect of an appointment in the business of that employer. Clause 856.221 required that the appointment mentioned in cl.856.213(1) be an approved appointment and cl.856.222 required the Minister to be satisfied that the appointment would provide the employment referred to in the relevant employer nomination. The Tribunal found that Revetec Ltd was the employer which had nominated the appellant, but that at the time of its decision the appellant could not be employed in Revetec Ltd's business as it had been deregistered by ASIC and no longer existed. The appellant therefore could not be employed by Revetec Ltd in relation to an approved appointment and accordingly could not satisfy cl.856.221 of Schedule 2 of the Regulations.

The appellant contended she satisfied the criteria because she would be employed by Revetec Holdings Limited which had acquired the business of Revetec Ltd and she would therefore be employed in the same business for which approval was given under r.5.19 of the Regulations.

Held: Application dismissed.

- (i) The decision of the Tribunal was not infected with error. The approved appointment in r.5.19 is not at large. It is for a nominated position with the employer who made the application under the regulation. As soon as Revetec Ltd either ceased to carry on its business or ceased to exist it was not capable of providing any appointment to the appellant. In the circumstances, cl.856.222 could not have been satisfied as Revetec Holdings, which had secured the appointment, could not have provided the employment referred to in the relevant employer nomination.
- (ii) The relevant employer nomination was made by Revetec Ltd and the position for which it sought approval was with it. The appellant could only rely upon Revetec Holdings Ltd in support of her application if Revetec Holdings Ltd had first been approved as an approved appointment under r.5.19.

SZLGP & Anor v MIAC & Anor

[2009] FCA 1470

Federal Court of Australia, Logan J, NSD 655 of 2009, 11 December 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 first appellant (the appellant), a Chinese national, was not a person to whom Australia had protection obligations.

The appellant claimed that he was wanted by the Public Service Bureau (PSB) for protecting relatives who had been embroiled in a dispute with local authorities over land confiscation. He also claimed that shares in his fish farm had been seized. He submitted a letter from the farm, addressed to the authorities with a footer indicating that duplicates were to be delivered to the appellant, which he claimed was given by the fishery to his mother. The letter corroborated his claim that he had held a responsible position at the farm, had been involved in dissident activity, and had come to the adverse attention of the PSB. The Tribunal accepted that the appellant maintained a proprietary interest in a fish farm but found he lacked credibility and dismissed his claims. The letter was given no weight because the Tribunal found that the claim of share-stripping was a concoction. The Tribunal was also not satisfied with the appellant's responses to its questions as to how an apparently original letter, having original letterhead and red print, and addressed to state bodies, had come into the possession of his family.

The appellants contended, among other things, that the Tribunal had denied them procedural fairness and thereby failed to afford them a hearing as required by the *Migration Act 1958* (the Act), in that it conducted the hearing and made its decision on a false premise, failed to make an inquiry in circumstances where it was obliged to do so, and failed to engage with the first appellant's claims as made to it; and that the decision was illogical, arbitrary, perverse and otherwise unreasonable such that it was not a decision authorised by the Act.

Held: Appeal allowed. RRT decision quashed and remitted for reconsideration.

- (i) The Tribunal's decision involved jurisdictional error.
- (ii) It failed to attend conscientiously and appropriately to its statutory obligations. The reasoning by which it made adverse credibility findings by reference, materially, to a false factual premise concerning a critical document was arbitrary and perverse. Alternatively, the Tribunal denied procedural fairness to the appellant by failing truly to engage with the claim as presented by him. It was a denial of procedural fairness to subject him to questioning, upon the answers to which findings as to credibility came to be made, upon a false premise with respect to a critical document, namely, that it was not addressed to him.

The Tribunal constructively failed to exercise its review jurisdiction because it failed to make an obvious inquiry about a critical fact.

FEDERAL MAGISTRATES COURT JUDGMENTS

SZMWO v MIAC

[2009] FMCA 1197

Federal Magistrates Court of Australia, Cameron FM, SYG 1708 of 2009, 8 December 2009

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

The applicant claimed persecution on the basis of his Roma ethnicity. He claimed that he and his family were physically and verbally abused and that whilst he has a right to enter and reside in other European Union (EU) member states, he fears persecution due to widespread discrimination and violence against Roma in Europe. The Tribunal concluded that because of his status as an EU citizen; s.36(3) of the Migration Act 1958 applied to him and consequently it did not need to determine whether he faced a real chance of persecution in the Czech Republic. It concluded that as an EU citizen the applicant had a right to enter and reside in Spain but had not taken all possible steps to avail himself of that right. It also found that there was no real chance that that applicant would experience harm in Spain amounting to Convention-related persecution and that there was no real chance that Spain would return the applicant to the Czech Republic such that s.36(4) and s.36(5) did not apply.

The applicant submitted, amongst other things, that the Tribunal had erred in its consideration of s.36(3) in that the right to “reside” referred to in s.36(3) encompasses incidental rights and/or the practical capacity necessary to establish a residence. He submitted that a theoretical right to “reside” in a country, with no rights to access the welfare benefits available to citizens of that country and no consideration given to his capacity to establish a residence, is not what s.36(3) means by a right to reside. He submitted further that a breach of s.425 had occurred in that the Tribunal failed to raise with him issues that had arisen relating to whether or not there were support groups that could support him in Spain and whether his particular personal attributes might affect his access to employment.

Held: Application dismissed.

- (i) The Tribunal did not err in its consideration of s.36(3). The right to ‘reside’ referred to in s.36(3) is simply the right to reside in a third country where the applicant will not be subject to Convention-related persecution and from which he or she will not be *refouled* to the country in respect of which he or she has a well-founded fear of persecution for a Convention reason. It does not imply residence of a settled character or a particular standard of living, simply freedom from the fear of Convention-related persecution.
- (ii) There was no breach of s.425. Far from being issues themselves, lack of support groups, probable unemployment and denial of access to basic services, were no more than evidence relevant to what was, in fact, the issue which was whether lack of income, combined with accommodation and other difficulties, might put the applicant at risk of serious harm.

Sainju v MIAC & Anor

[2009] FMCA 1206

Federal Magistrates Court of Australia, Smith FM, SYG 1665 of 2009, 17 December 2009

The applicant sought judicial review of a decision of the Migration Review Tribunal (the Tribunal) that it had no jurisdiction to review the decision of the delegate of the Minister for Immigration not to revoke the cancellation of the applicant’s Subclass 572 student visa.

The applicant’s student visa was cancelled by operation of law pursuant to s.137J of the *Migration Act* 1958. She applied for revocation of the cancellation and her application was refused on 9 January 2009. The delegate sent an email to the last e-mail address known to the Minister for the purposes of r.2.55(3)(d) of the Migration Regulations 1994 (the Regulations). The Department’s records reflected the sending of a message to the applicant’s Hotmail address on 13 January 2009, which attached a notification letter dated 13 January 2009 and the Tribunal brochure. There was no “undeliverable email notification” on file or

recorded. On 4 March 2009, the applicant lodged an application for review by the Tribunal. The Tribunal found that the application was outside the mandatory 7 day time limit for applying for review.

The applicant submitted that r.2.55(8) should be construed as only defining the time at which an actual communication is taken to have occurred and that the term "transmitting the document by ... e-mail" in r.2.55(3)(d) means "communicate to" and requires that the email reached the email service provider's mail server and was read by the addressee. The applicant gave evidence to the Court that she never noticed the Department's email in her 'inbox', although she was reading her emails daily.

Held: Application dismissed.

- (i) The application to the Tribunal made on 4 March 2009 was well beyond the 7 day time limit and was therefore incompetent.
- (ii) Regulation 2.55(8) should be construed as deeming the fact of receipt as well as the time of that deemed receipt. It deems receipt of the email to have occurred at the end of the day of its dispatch, regardless of whether this can be proved to have actually occurred, and also regardless of whether it is proved not to have occurred.
- (iii) The elements of a 'transmitting' of the emailed documents, in so far as they are not deemed to have been established by r.2.55(8) did occur in fact on 13 January 2009 and the document was taken to have been received at the end of 13 January 2009.

Obiter

- (iv) On the evidence it could not be concluded on the balance of probabilities that the Department's email never reached the applicant's mailbox. If such a finding were necessary before deciding the Tribunal had jurisdiction, the application would fail.

**SZNOJ v MIAC & Anor
[2009] FMCA 1246**

Federal Magistrates Court of Australia, Cameron FM, SYG 1277 of 2009, 25 November 2009

The applicant, An Iranian national, 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 that in Iran attempts were made to force him to become a member of the Iranian Revolutionary Guards and the Velayat-e Fakhri Islamic Party and that his refusal to join either of them led to various forms of discrimination. He claimed he could not return to Iran because, among other things, he would be forced by the Iranian authorities to become a member of the Guards and the Party and be sent to Iraq, Pakistan, and Afghanistan, and that if he were to refuse, his fate would be imprisonment and death. In relation to that claim, the Tribunal noted that in Iran compulsory military service is a law of general application and was satisfied that a future requirement to perform compulsory military service would not be discriminatory, selective, disproportionate or have a differential impact on the applicant such as to amount to persecution.

Before the Court, the applicant alleged, among other things, that the Tribunal failed to deal with the claim that conscription would constitute persecution of the applicant in view of his claim that he was against war, was a believer in peace, and wanted to help people rather than kill them; and also that it failed to consider the totality of his claims.

Held: Application allowed. RRT decision quashed and remitted for reconsideration.

- (i) The Tribunal constructively failed to exercise its jurisdiction. *Erduran v MIMA* (2002) 122 FCR 150 demonstrates that if an applicant has alleged that he or she will refuse to comply with a non-discriminatory conscription regime the Tribunal is required to determine whether this is because he or she conscientiously objects to it. The Tribunal acknowledged the applicant's allegation that he would refuse to be conscripted or pressed into military or quasi-military service but failed to consider whether this was based on a conscientious objection and one which was in turn based on a ground referred to in the Convention.

- (ii) The applicant did not allege, in terms, that he was a conscientious objector. This was not a claim which arose sufficiently from the materials to require the Tribunal to appreciate its existence. All he expressed was a commonplace preference for peace over war and life over death. However it was not necessary for him to articulate a conscientious objection. The steps which the Tribunal was, in the circumstances, required to take were those set out in *Erduran*.
- (iii) Whether a Tribunal's statement that it has considered an applicant's claims independently and cumulatively should be accepted at face value will depend on whether there is a proper basis for disbelieving what the Tribunal has said. The Tribunal's reasons gave sufficient substance to its statement that it had undertaken a cumulative consideration of the claims for that statement to be accepted on its face. Furthermore, it did not appear that any substantive aspect or reasonably apparent unarticulated claim was overlooked.

MZYEG v MIAC & Anor

[2009] FMCA 1249

Federal Magistrates Court of Australia, Riley FM, MLG 494 of 2009, 2 October 2009

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

The applicant provided no travel documentation and no evidence of his identity. He made various claims of his circumstances in Papua New Guinea (PNG), claiming variously that he was born in PNG, that he may be West Papuan because his mother was born in West Papua, and that he was West Papuan and did not have PNG citizenship. The Tribunal in its reasons for the decision stated it could make no clear findings about the applicant's identity. On balance, it considered that PNG was the applicant's country of former residence and considered his claims accordingly.

The issue before the Court was whether the Tribunal had made a finding that the applicant was stateless.

Held: RRT decision set aside and remitted for reconsideration.

- (i) The Tribunal committed jurisdictional error by failing to make a finding about the applicant's nationality, if any.
- (ii) The *Convention relating to the Status of Refugees* makes the issue of nationality so critical that it is incumbent upon the Tribunal to make a clear finding one way or the other, that is, to make a finding that an applicant is a national of one country or another or no country at all.
- (iii) It is plain from the wording of the Convention that a claim of being persecuted by reference to a country of habitual residence only arises where a claimant has no nationality.

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 under paragraph 2.12H(2)(f) – Refund of Second Instalment of Visa Application Charges

The effect of this instrument is to operate to enable a refund of a second VAC instalment paid under certain Schedule 1 provisions if that VAC was payable only where the applicant does not meet the English language requirement. This instrument commences on 21 December 2009.

Migration Regulations 1994 – Specification under paragraph 5.36(1A)(a) – Payment of Visa Application Charges and Fees in Foreign Currencies – November 2009 (IMMI 09/100)

This instrument specifies amounts in foreign currencies which correspond to the amounts payable for a charge or fee in Australian dollars. This Instrument commences on 1 January 2010.

Migration Regulations 1994 – Specification under regulations 5.36(1)(a) and 5.36(1)(b) – Places and currencies for paying of fees – November 2009 (IMMI 09/101)

This instrument specifies places and currencies for paying fees in foreign currencies. This Instrument commences on 1 January 2010.

Migration Regulations 1994 – Specification under paragraphs 570.613(3)(b), 572.613(3)(b), 573.613(3)(b), 574.613(3)(b), 575.613(3)(b) and clause 580.111 of Schedule 2; subclause 5A104(1) and paragraph 5A302(b) of Schedule 5A and paragraph 5B102(1)(a) of Schedule 5B

The effect of this instrument is to increase the living costs and further amounts of funds which students will have to declare or demonstrate in order to meet the requirements for grant of a student visa from 12 000 AUD to 18 000 AUD per year from 1 January 2010.

REGULATIONS

Migration Amendment Regulations 2009 (No. 12)

These Regulations amend the Migration Regulations 1994 relating to condition 8201, public interest criterion 4001, Occupational Trainee visas, family violence, de facto relationships and 400 series visas. These Regulations commenced on 9 November 2009.

Migration Amendment Regulations 2009 (No. 15)

These Regulations make minor amendments to the Migration Regulations 1994 relating to Visa Application Charge refunds and skill assessments for General Skilled Migration visas. These amendments commenced on 21 December 2009 and 1 January 2010 respectively.

CASELOAD OVERVIEW

MRT Decisions – December 2009

Decision Category	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Bridging refusal	3	9	1	1	14
Visitor refusal	29	19	2	7	57
Student refusal	23	17	9	11	60
Temporary business refusal	7	17	10	6	40
Permanent business refusal	6	5	5	2	18
Skill linked refusal	69	165	26	12	272
Partner refusal	84	23	14	4	125
Family refusal	22	20	2	4	48
Student cancellation	26	47	1	5	79
Sponsor approval refusal	3	3	4	3	13
Other	11	14	4	3	32
Total	283	339	78	58	758

RRT Decisions – December 2009

Country	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Albania	1	2	0	0	3
Bangladesh	1	3	0	0	4
Burma (Myanmar)	2	0	0	0	2
Cameroon	1	2	0	0	3
China (PRC)	17	33	2	1	53
Egypt	3	0	0	0	3
Fiji	0	7	1	1	9
India	0	10	0	0	10
Indonesia	1	11	0	1	13
Iran	4	0	0	0	4
Iraq	1	1	0	0	2
Israel	0	1	0	0	1
Jordan	1	0	0	0	1
Kiribati	0	1	0	0	1
Korea, Dem Peoples Rep of	0	1	0	0	1

Lebanon	7	5	0	0	12
Macedonia, Fmr Yugo Rep of	0	1	0	0	1
Malaysia	0	10	0	0	10
Nigeria	1	1	0	0	2
Pakistan	3	1	0	0	4
Papua New Guinea	0	1	0	0	1
Philippines	1	1	0	0	2
Russian Federation	1	0	0	0	1
Rwanda	3	0	0	0	3
Somalia	1	0	0	0	1
South Africa	0	1	0	0	1
Sri Lanka	0	7	0	0	7
Turkey	1	0	0	0	1
Ukraine	0	1	0	0	1
United States of America	0	1	0	0	1
Zimbabwe	2	0	0	0	2
Total	52	102	3	3	160

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.

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