

File number: CLF  
Client ID number:

## PROTECTION (CLASS XA) VISA DECISION RECORD

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### 1. APPLICANT DETAILS

Family name:  
Given names:  
Known aliases:  
Date of birth:  
Country of birth:  
Country of citizenship:

#### Identity concerns (if applicable)

[List all aliases in the above section. Also include discussion on any unresolved identity issues, providing information on how you have sought to clarify/establish identity and a finding.]

### 2. APPLICATION VALIDITY

The application complies with the validity requirements of the *Migration Act 1958* (Migration Act) and *Migration Regulations 1994* (Regulations). I find the application is valid.

### 3. CLIENT HISTORY/MIGRATION HISTORY

Details of arrival, visa subclass held, and migration history if applicable.

### 4. CLAIMS FOR PROTECTION

Outline applicant's claims

### 5. MATERIAL BEFORE THE DECISION-MAKER

1. Departmental file clf2003/42937 relating to the applicant.
2. The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status (the UNHCR Handbook).
3. Hathaway, James *The Law of Refugee Status*, 1991.
4. Chan vs Minister for Immigration and Ethnic Affairs (1989), 169 CLR 379 (*Chan's Case*).
5. Additional information before the decision-maker

## **6. LEGAL FRAMEWORK**

### **Protection Obligations**

Section 36 and later sections of the Migration Act require that in order for a protection visa to be granted to the applicant the Minister must be satisfied that Australia has protection obligations under the Refugees Convention. This requires an assessment as to whether the person is a refugee in accordance with Article 1 of the Refugees Convention.

Other relevant provisions include subsections 36(3)-(7) and Subdivision AL of Division 3, Part 2 of the Migration Act, incorporating sections 91R-91V, and relevant provisions of the Regulations.

### **Definition of a Refugee – Article 1 of the Refugees Convention**

Article 1A(2), of the United Nations 1951 Convention and 1967 Protocol relating to the Status of Refugees (Refugees Convention), provides that a “refugee” is a person who:

*...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

## **7. REASONS AND FINDINGS**

### **Criteria To Be Met At The Time Of Decision -**

#### **Subclass 866 (Protection) visa**

#### **Migration Regulation 866.221**

866.221 *The Minister is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.*

#### **This includes:**

**What is the applicant's country of reference?**

**Claimed nationality**

**Evidence (and discussion, if applicable)**

**Finding**

I find that the applicant [insert name of applicant] is [a citizen of (insert relevant country)/or is stateless and is a former habitual resident of (insert relevant country)].

**Does the applicant have the right to enter and reside in a safe third country?**

**Claims**

**Evidence (and discussion, if applicable)**

**Finding**

I find that the applicant [does/ does not] have effective protection in a third country either under common law or section 36(3) of the Migration Act.

**Does a cessation clause apply (Article 1C)?**

I find that the cessation clauses in Article 1C [do/ do not] apply to the applicant; **OR**

I find that a cessation clause in Article 1C [does/ does not] apply to the applicant.

[If new claims/no new claims are raised by the applicant the following paragraph may be used, as appropriate, depending upon an applicant's individual circumstances]

I note that the applicant was formerly recognised as in need of protection under the Refugees Convention. I also note that the applicant [has/has not] raised new or additional claims for protection. I will assess the applicant's [current claims/previous claims] for protection against the questions below as to whether the applicant has a well founded fear of persecution for a Convention reason.

**Does the applicant come within one of the exclusion clauses in Article 1D, 1E or 1F?**

I find that the applicant [does / does not] come within Articles 1D, 1E and 1F of the Refugees Convention. I find that s91T of the Migration Act as it relates to Article 1F does not apply to the applicant.

**Is the harm feared for a Convention reason?**

**Claims**

[Insert relevant elements of applicant's claims, and discussion if applicable]

I find that the Convention ground/s of [insert ground/s] [is/are] the essential and significant reason/s for the harm feared as outlined in subdivision AL of the Migration Act.

**Does the harm feared amount to persecution?**

**Claims** [Insert relevant elements of claims as they relate to the harm feared, remembering the application of s91R]

**Analysis and discussion (ie, is the harm feared of sufficient seriousness to amount to persecution and is it systematic and discriminatory?)**

**Finding**

I find that the harm feared [involves/does not involve] serious harm and systematic and discriminatory conduct as outlined in subdivision AL of the Migration Act.

**Is the fear of Convention-based persecution well-founded?**

**Reasons**

[Case officer to clearly present facts and an *analysis of information leading to decision*]

[If the agent of persecution is a non-state agent, insert consideration of whether effective state protection is available to the applicant and/or whether state protection may be withheld for a Convention reason]

[Consideration of whether internal relocation is a viable option for the applicant]

**Finding**

I find that the applicant [has/does not have] a genuine fear of harm and that there [is/is not] a real chance of persecution occurring. I therefore find that the applicant's fear of persecution, as defined under the Refugees Convention, [is/is not] well founded.

[Insert, if *sur place* considerations are applicable]

I find that the applicant [has engaged/ has not engaged] in conduct in Australia otherwise than for the purpose of strengthening the person's claim to be a refugee (s91R(3) of the Migration Act).

**Does the applicant come within Article 33(2) of the Refugees Convention, in respect of its express exception to the prohibition on refoulement?**

I find that the applicant does not come within Article 33(2) of the Refugees Convention further to its application relative to s91U of the Migration Act.

### **Assessment Finding**

I am not satisfied that the applicant, [insert name], is a person to whom Australia has protection obligations for the grant of a Protection (Class XA) visa. Accordingly, I am not required to consider other criteria prescribed in Part 866 in Schedule 2 of Migration Regulations..

### **8. DECISION ON PROTECTION (CLASS XA) VISA APPLICATION**

I am not satisfied that [insert name of applicant with claims] is owed protection obligations for the purposes of section 36 of the Migration Act and regulation 866.221 of the Migration Regulations. I find that [insert name of applicant with claims] has not met criteria 866.221 of the Migration Regulations and therefore has not met the prescribed criteria for the grant of a Protection (Class XA) visa. Accordingly, I refuse to grant [insert name of applicant with claims] a Protection (Class XA) visa.

*[Delegate's signature]*

*[Delegate's name]*

Position no.

Delegate of the Minister for Immigration and Citizenship for the purposes of section 65 of the Migration Act.

*[DATE]*