C A T C H W O R D S

MIGRATION - refugee status - alleged persecution on grounds of ethnic origin and political opinion - alleged discrimination in employment and education - policy of preference to indigenous Malays in employment and education - whether adverse impacts on applicant constitute persecution - time for assessment of determination of refugee status - content of persecution - no error of law disclosed.

Migration Act 1958 s.29, s.36

Judiciary Act 1903 s.485

Goodwin-Gill, *The Refugee In International Law,* Clarendon (1996)

Chan v. Minister for Immigration and Ethnic Affairs (1989) 169 CLR 379

Oyarzo v. Minister of Employment and Immigration [1982] 2 F.C. 779

Chen v. Minister for Immigration and Ethnic Affairs (1995) 58 FCR 96

Ji Kil Soon v. Minister for Immigration and Ethnic Affairs (1994) 37 ALD 609

Thalary v. Minister for Immigration and Ethnic Affairs (unrep. Fed Court, Mansfield J 4/4/97)

United Steelworkers v. Weber 443 U.S. 193 (1979)

MR PERUMAL GUNASEELAN v. THE MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS

No. VG 391 of 1996

FRENCH J

MELBOURNE

9 MAY 1997

IN THE FEDERAL COURT)

OF AUSTRALIA)

VICTORIA DISTRICT REGISTRY)

GENERAL DIVISION) No. VG 391 of 1996

B E T W E E N: MR PERUMAL GUNASEELAN

Applicant

and

THE MINISTER FOR
IMMIGRATION AND
MULTICULTURAL AFFAIRS

Respondent

MINUTE OF ORDERS

CORAM French J

DATE: 9 May 1997

PLACE: Melbourne

THE COURT ORDERS THAT:

1. The application is dismissed.

2. The applicant to pay the respondent's costs of the application.

Settlement and entry of these orders is dealt with in Order 36 of the Federal Court Rules.

IN THE FEDERAL COURT	)	
OF AUSTRALIA	)	
VICTORIA DISTRICT REGISTRY	)	
GENERAL DIVISION	)	No. VG 391 of 1996

B E T W E E N: MR PERUMAL GUNASEELAN

Applicant

and

THE MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS

Respondent

CORAM: French J

DATE: 9 May 1997

PLACE Melbourne

REASONS FOR JUDGMENT

Introduction

The applicant is a citizen of Malaysia who was born in that country on 30 July 1961. He is unmarried, with no relatives in Australia. His parents and two sisters live in Malaysia.

On 13 May 1989, the applicant arrived in Perth on a six month visitor's visa. On 10 September 1990, he lodged an application for refugee status with the Department of Immigration, Local Government and Ethnic Affairs. The application was based on his asserted fear of persecution on account of his activities as a member of the Democratic Action Party in Malaysia. He also claimed to have been subject to discrimination in relation to access to higher education and employment opportunities because of his Indian ethnic origin.

On 15 September 1992, a letter was sent to the applicant attaching a Departmental Case Officer's official assessment of his application. The applicant was invited to respond with any comments on the assessment within 15 days. The assessment indicated a generally unfavourable view of the claim. The applicant responded through solicitors on 2 October 1992.

On 8 October 1992, a delegate of the Minister for Immigration, Local Government and Ethnic Affairs wrote advising that the application had been unsuccessful. a statement of reasons for the decision was attached to the letter. On 30 October 1992, the applicant, through his solicitors, applied for review by the Refugee Status Review Committee of the decision to refuse him the grant of refugee status and for review of a related decision to refuse to grant him a Domestic Protection (Temporary)Entry Permit. He also sought permission to engage in employment in Australia.

On 1 July 1993 the Refugee Status Review Committee ceased to exist and the pending applications were dealt with as applications to the Refugee Review Tribunal. The Tribunal wrote to the applicant on 1 December 1995 to inform him that it was now dealing with his case. The application for refugee status was treated as an application for a protection visa.

On 4 June 1996, the Tribunal made a decision in the following terms:

1. The Tribunal finds that the applicant is not a refugee.

2. The Tribunal finds that the applicant is not entitled to a protection visa.

3. The Tribunal varies the delegate's decisions so that the decisions now have effect as a decision to refuse to grant the applicant a protection visa.

The applicant has applied to this Court for an order of review of the decision of the Refugee Review Tribunal pursuant to s.476 of the *Migration Act* 1958.

Statutory Framework

The grant of visas is authorised by s.29 of the *Migration Act* 1958, which provides, in part:

> "29(1) Subject to this Act, the Minister may grant a non-citizen permission, to be known as a visa, to do either or both of the following:
>
> (a) travel to and enter Australia;
>
> (b) remain in Australia."

The Act provides for prescribed classes of visa and for the prescription of criteria for visas of specified classes (s.31). Section 36 specifies a class of visa known as "protection visas" in the following terms:

> "36(1) There is a class of visas to be known as protection visas.
>
> (2) A criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom Australian has protection obligations under the Refugees Convention as amended by the Refugees Protocol."

Regulations are authorised to provide that visas or visas of specified classes may only be granted in specified circumstances (s.40). Regulation 2.04 of the *Migration Regulations* provides that for the purposes of s.40, and subject to the Regulations, the only circumstances in which a visa of a particular class may be granted to a person who has satisfied the criteria in a relevant Part of Schedule 2 are the circumstances set out in that Part.

Schedule 2 sets out various sub-classes of visa. Subclass 866 is the Protection (Residence) visa. Clause 866.211 of subclass 866 specifies the following criteria for the grant of such a such a visa:

> "866.211 The applicant claims to be a person to whom Australia has protection obligations under the Refugees Convention and:
>
> (a) makes specific claims under the Refugees Convention; or
>
> (b) claims to be a member of the family unit of a person who:
>
> (i) has made specific claims under the Refugees convention; and
>
> (ii) is an applicant for a Protection (Class AZ) visa."

It is also a criterion that the Minister must be satisfied that the applicant is a person to whom Australia has protection obligations under the Refugee Convention (866.221).

The Refugees Convention is the Convention Relating to the Status of Refugees 1954 which is to be read with the Protocol Relating to the Status of Refugees 1973. Article 1 of the Convention, read with the Protocol, defines a refugee as a person who fulfils the following conditions:

> "...owing to 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

Section 411 of the Act sets out a class of decisions designated as "RRT-Reviewable Decisions". The class of decisions so designated includes a decision to refuse to grant a protection visa (s.411(1)(c)). An application for review of an RRT - Reviewable Decision is made to the Refugee Review Tribunal (s.412(1)). Where a valid application is made for review of an RRT-Reviewable Decision, the Tribunal is required to review the decision (s.414(1)). The Tribunal may, for the purposes of the review, exercise all the powers and discretions conferred by the *Migration Act* 1958 on the person who made the decision (s.415(1)). The Tribunal is expressly empowered to affirm or vary the decision under review, remit it for reconsideration or set it aside and substitute a new decision (s.415(2)).

Part 8 of the Act provides for the review of decisions by the Federal Court and in s.475 sets out a class of decisions known as "judicially-reviewable decisions". This includes decisions of the Refugee Review Tribunal (s.475(1)(b)).

An application for review by the Federal Court of a judicially-reviewable decision is limited to one or more of the following grounds:

> "(a) that procedures that were required by this Act or the regulations to be observed in connection with the making of the decision were not observed;
>
> (b) that the person who purported to make the decision did not have jurisdiction to make the decision;
>
> (c) that the decision was not authorised by this Act or the regulations;
>
> (d) that the decision was an improper exercise of the power conferred by this Act or the regulations;

(e) that the decision involved an error of law, being an error involving an incorrect interpretation of the applicable law or an incorrect application of the law to the facts as found by the person who made the decision, whether or not the error appears on the record of the decision;

(f) that the decision was induced or affected by fraud or by actual bias;

(g) that there was no evidence or other material to justify the making of the decision."

The section expressly excludes from the grounds of review breach of the rules of natural justice and unreasonableness (s.476(2)). The reference to improper exercise of power is construed as being a reference to exercise of a power for a purpose other than the purpose for which the power is conferred, exercise of a personal discretion, discretionary power at the direction or behest of another and an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case. Questions of taking into account irrelevant considerations or failing to take into account relevant considerations, the bad faith exercise of discretionary power and other abuses of power are expressly excluded from review under the heading of improper exercise of a power (s.476(3)). Section 485 provides that the Federal Court does not have any other jurisdiction in relation to judicially reviewable decisions or decisions covered by sub-s.475(2), other than the jurisdiction provided by Part 8 of the *Migration Act* 1958 or by s.44 of the *Judiciary Act* 1903. The operation of s.39B of the *Judiciary Act* 1903 is expressly excluded (s.485).

The application for review in the present case included a claim for relief under s.39B of the *Judiciary Act*. In light of the exclusion of the operation of s.39B that aspect of the application was not pressed.

The Tribunal's Decision

The Tribunal made some findings of fact in relation to the applicant. There are two relevant sections in its reason for decision. The first is headed “Claims and Evidence of the Applicant”. The second is headed “Findings. The “Findings” have to be read with the “Claims and Evidence” in order to ascertain their full content, which is summarised below.

The applicant is a Malay citizen of Indian ethnic origin. His parents and sisters live in Malaysia. He received a certificate of education at secondary school and worked thereafter in Kuala Lumpur as a machine operator. He completed a diploma with first class honours in mechanical engineering at a privately operated trade school in 1984. He said he could not get entrance to university because the government gave preference to indigenous Malays (Bumiputras). As to that the Tribunal found that he was never denied the opportunity for education although he may have had to pay for his tertiary course.

After graduation, the applicant worked as a maintenance technician with an electrical firm in Singapore from 1985 to 1988. He left that employment of his own accord. A letter dated 3 February 1989 from a company in Kuala Lumpur, lodged in support of his original application for a visitor visa, stated that he was employed by that company as an assistant sales manager and would be taking annual leave to visit Australia. The applicant told the Tribunal that he had not worked in Kuala Lumpur since 1984 and that the letter was lodged by a friend who provided false information. The Tribunal made no finding as to whether he was in truth employed as asserted in the letter. The view it took in the end was that there was no evidence to show that the applicant would be refused employment on the ground of his ethnic origin.

In 1983 the applicant had joined the Democratic Action Party (DAP). He paid a member’s subscription but did not renew in following years. He took part in a

demonstration against the Official Secrets Act and the award of a public works contract to the Bumiputras. He was arrested and detained for two weeks. He claims to have been interrogated and tortured. As to that the Tribunal made no finding, although it did accept that he was released after his father had bribed an official. Although, according to the applicant, police visited his home several times after his release, he had no further contact with them. This, he said, was because, following his release, he stayed with a friend in Johore for some time and from there went to Singapore to obtain work.

The applicant returned to Malaysia on numerous occasions between 1983 and 1989. The Tribunal noted 98 transactions on his passport reflecting the number of times he passed through the Malaysian immigration authorities and had his passport stamped in that period. His last departure stamp was from Malaysia on 11 May 1989.

The applicant claimed he would be arrested because of his prior involvement with the DAP were he to return to Malaysia. He would, if forced to return, have to live in fear. He could be picked up at any time because the authorities aimed to eradicate opposition to the regime.

The Tribunal did not accept that the Malaysian authorities would have maintained an adverse interest in the applicant or that he would be punished on account of his 1983 political activity. This conclusion was based in part upon the frequency of his return visits to Malaysia between 1983 and 1988. Even though his visa was issued in February 1989, he did not travel to Australia until May 1989. There are eight entries in his passport from Malaysian authorities for that period. The Tribunal considered it implausible that the Malaysian authorities have had any interest in the applicant since his release in 1983 or that they would have any interest in him in the future for the reasons he claims.

On the question of the implications of the applicant's Indian origin, the Tribunal accepted that indigenous Malays do receive preferential treatment in education, employment and other areas of life. Moreover, Indians, it held, have not fared as well as Chinese under the policy. Nevertheless, non Malays have a real representation in government and genuine concessions have been given to non-Malay interests. The Tribunal quoted from an article by H. Crouch *Malaysia: Neither authoritarian nor democratic*, in *K. Hewison, R. Robison, G. Rodan (eds), South East Asia in the 1990s: Authoritarianism, Democracy & Capitalism* (Allen & Unwin 1993, p.136). These referred to the opportunities available to non-Malays in employment and tertiary education and included the observation:

> "Although dominated by its Malay component, the presence in the government of parties representing the Chinese and Indian communities, as well as the indigenous communities of East Malaysia, means that the Malaysian government lacks the unity of purpose of a truly authoritarian regime."

The Tribunal referred to Malaysia's burgeoning economic growth in recent times leading to general improvements in standards of living. It also cited an observation in Asiaweek Journal that non-Bumiputras control a large proportion of the country's wealth in the order of 60% of listed stock. The report and article referred to did, in the opinion of the Tribunal, support the claim that there is discrimination against Indians in Malaysia. But their experiences, it was said, have not been entirely negative.

On the matter of political activity the Tribunal referred to U.S. Department of State Country Reports on Human Rights Practices (1995) which reported that opposition parties actively contest elections although they hold only 18% of seats in the Malaysian Federal Parliament. The Report did indicate, however, that Malaysia's internal security laws, which allow preventive detention, provide an impediment to effective opposition. The Tribunal concluded that the laws have been used to target DAP members on a number of occasions. It also stated that there are restrictions on freedom of association. This was again based on the US Department of State Reports.

Notwithstanding these considerations, the Tribunal was not satisfied that the applicant had a well founded fear of persecution for reasons of his race or political opinion. For that reason, he was not a person to whom Australia owed obligations under the Convention.

In concluding this section on the Tribunal's findings of fact and evaluation of the application, I do so with a reservation concerning the basis of its fairly generally expressed conclusions about the position of ethnic Indians and of political dissidents in Malaysia. That is not to say those conclusions were wrong. This application for review of the Tribunal's decision does not require the Court to canvass the correctness of its findings of fact. However, the apparent methodology of reference to a few published articles and reports, including material from regional news journals, seems less than satisfactory as a basis for important decision making in the public arena which will significantly affect the lives of individual applicants and which may also involve reflecting upon the political and legal systems of other countries.

Grounds of Appeal

There was a considerable number of grounds of review set out in the application. In the event the only ground pressed relied upon s.476(1)(e) of the *Migration Act*. The ground was expressed thus:

> "The decision involved an error of law being the incorrect application of the law to the facts as found by the RRT within s.476(1)(e) *Migration Act*.

PARTICULARS

(a) The RRT erred, in having found that the economy of Malaysia is structured to limit the involvement of persons who belong to the same

social group of the applicant, in not proceeding to find the applicant had a well founded fear of persecution for convention reasons.

(b) The RRT erred in having found that the applicant was detained by reason of his membership of the Democratic Action Party in December 1983 in not proceeding to find that the applicant feared persecution by reason of his political beliefs."

Discrimination as Persecution

Counsel for the applicant submitted that the Tribunal took too narrow an approach to the kind of persecution which would ground status as a refugee under the Convention. In particular it was put that the Tribunal failed to consider the extent to which denial of employment and systematic discrimination in employment can constitute persecution for a Convention reason.

It was submitted that the Tribunal found facts which supported a conclusion that the applicant would face discrimination in the type of work he would be able to obtain. The Tribunal had erred, it was said, in failing to accept that, selective discrimination in relation to employment, in the context of selective harassment because of the applicant's political views, would amount to persecution because it involved denial of the opportunity of employment in an area in which the applicant was qualified.

The definition of "refugee" under the Convention was considered by the High Court in *Chan v. Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379. The subject matter of the "well founded fear" to be shown by one invoking Convention protection, is "being persecuted" for one of the Convention reasons. The concept of "persecution" for a Convention reason was considered in a number of the judgments. McHugh J, with whose reasons Mason CJ generally agreed, held that the

notion of persecution involves “selective harassment”. It does not have to be directed to an individual. A person may be persecuted because he or she is a member of a group which is the subject of systematic harassment - *Chan* (supra) at 429.

Mason CJ did not express any direct view on discrimination in relation to access to employment or educational opportunities (388). However, McHugh J observed that to constitute persecution the harm threatened need not be that of loss of life or liberty. One of the examples cited by his Honour was loss of employment because of political activity (430). Referring in that respect to a decision of the Federal Court of Appeal of Canada in *Oyarzo v. Minister of Employment and Immigration* [1982] 2 F.C. 779 he said:

> “The Court rejected the proposition that persecution required deprivation of liberty. It was correct in doing so, for persecution on account of race, religion and political opinion has historically taken many forms of social, political and economic discrimination. Hence the denial of access to employment, to the professions and to education or the imposition of restrictions on the freedoms traditionally guaranteed in a democratic society such as freedom of speech, assembly, worship or movement may constitute persecution if imposed for a Convention reason.”

Dawson J considered it unnecessary for the purpose of the case at hand to enter upon the controversy whether any, and if so what, actions other than a threat to life or freedom would amount to persecution (400). Toohey J expressed no view on the point either. Gaudron J confined herself to the observation that whatever else may be within the meaning of “persecution” significant deprivation of liberty certainly falls to be so characterised (416).

The content of persecution for a Convention reason was considered by the Full Court of the Federal Court in *Chen v. Minister for Immigration and Ethnic Affairs* (1995) 58 FCR 96. At 104 the Court said:

> "Having regard to the guidance provided by the judgments in *Chan*, it should be concluded that the denial of access to employment, if that denial is arbitrary and indefinite and part of a process of harassment by authorities for the purpose of suppressing political dissent, may involve detriment or disadvantage of such a magnitude as to constitute harm amounting to persecution for a Convention reason."

No doubt a similar proposition could be enunciated in respect of denial of access to employment on the grounds of ethnic origin. In so saying, it is not to be taken that the passage quoted from the Full Court decision establishes a well defined minimum level of detriment to be inflicted upon a person before it could be said to amount to "persecution". It does, however, suggest that transient or minor detriment will not constitute persecution even if attributed to a Convention reason. As was said in *Ji Kil Soon v. Minister for Immigration and Ethnic Affairs* (1994) 37 ALD 609, the question whether there is a well founded fear of persecution involves questions of fact and degree in the appraisal and weighing of circumstances. It can include loss of employment for political reasons. In that case the applicant had been denied promotion and the chance of overseas travel at work although he was qualified and had passed the necessary tests. The Minister's delegate found that the discrimination which the applicant had suffered prior to 1977 did not amount to persecution and questioning, to which he had been subjected in 1984, was a minor incident. Tamberlin J said:

> "The question as to whether the level of discrimination or harassment or interrogation does amount to persecution is essentially one on which different minds can reasonably differ. In the present case the decision-maker concluded that in the circumstances the failure to gain promotion and the questioning in 1984 did not amount to such a degree or level of harassment or discrimination as to give rise to a well founded fear of "persecution".
>
> In my view the conclusion reached by the decision-maker in the light of the evidence and claims was reasonably open to her on the material before her." (at 616).

Counsel for the applicant relied upon the decision of Mansfield J in *Thalary v. Minister for Immigration and Ethnic Affairs* (unrep. Fed. Court 4/4/97). In that case, however, the findings of the Tribunal as to the existence of discrimination and as to its bases were not clear (at 7-8). Mansfield J at 26 observed:

> "In my view, the Tribunal erred in concluding that the ability to obtain work in private enterprise reflects the State upholding the "right to work", where the State either imposes or tolerates a system which precludes certain of its citizens from working in government employment for reasons of religion or political beliefs. Far from treating its citizens equally, the State then is sanctioning discrimination against some of them for Convention reasons. It is difficult to envisage circumstances where such discrimination may, in a practical sense, be insignificant. That is the more so when there is a significant economic disadvantage consequent upon that restriction, although actual economic disadvantage in an immediate personal sense is not per se the critical matter. It is unnecessary to resort specifically to relatively recent historical examples to make the point. To characterise the circumstances as not sufficiently serious to constitute persecution in my view fails to acknowledge the fundamental significance of the State positively excluding certain of its citizens for Convention reasons from employment by the State and its organs".

In that case, however, his Honour was unclear whether the Tribunal had in fact found that to be the case.

In my opinion the establishment of a State policy of positive discrimination in favour of a particular ethnic group will not necessarily amount to persecution of other groups not the beneficiaries of that policy. The resolution of that question may depend, in each case, upon the nature and extent of the adverse or detrimental impact of the policy upon the non-advantaged groups.

In the second edition of his work *The Refugee In International Law*, Clarendon (1996) at p.67-68, Goodwin-Gill observes that there is a wide margin of appreciation

left to States in interpreting the fundamental term “persecution” and practice reveals no coherent or consistent jurisprudence:

> “The core meaning of persecution readily includes the threat of deprivation of life or physical freedom. In its broader sense, however, it remains very much a question of degree and proportion; less overt measures may suffice, such as the imposition of serious economic disadvantage, denial of access to employment, to the professions, or to education, or other restrictions on the freedoms traditionally guaranteed in a democratic society, such as speech, assembly, worship or freedom of movement. Whether such restrictions amount to persecution within the 1951 Convention will again turn on an assessment of a complex of factors, including (1) the nature of the freedom threatened, (2) the nature and severity of the restriction, and (3) the likelihood of the restriction eventuating in the individual case.”

Positive discrimination in favour of one or other groups in a society may provide assisted access to education or employment opportunities for the members of such groups that is not as easily available to others. The concept of “affirmative action” to redress disadvantage is a familiar one in Australia and the United States - *United Steelworkers v. Weber* 443 U.S. 193 (1979). Resort to “special measures” which are discriminatory on grounds of race or ethnic origin may be adopted to overcome disadvantage and is recognised in the Convention for the Elimination of All Forms of Racial Discrimination 1969 (Article 1.4).

Positive discrimination in favour of Malays in Malaysia appears to have had its origin in colonial policy and their special position is safeguarded in Article 153 of the Federal Constitution of Malaysia - see Phillips, “*Positive Discrimination in Malaysia: A Cautionary Tale for the United Kingdom”,* in Hepple and Szyszczak (eds) *Discrimination: The Limits of Law* (Mansell 1992).

Even if positive discrimination is not able to be brought within the benevolent ambit of affirmative action, it does not follow that its negative impacts on groups or

individuals within groups will constitute persecution for the purposes of the Convention. Whether it does or does not in a particular case will depend upon an evaluation of its nature and operation, its impacts on the applicant who applies for refugee status and, as an element of the consideration of the existence of a well founded fear, its impact upon the group, if there be a group, adversely affected by the policy.

The Tribunal in its reasons for decision expressly adverted to the passages in *Chan* relating to the concept of persecution and the discussion of economic discrimination in Hathaway, *The Law of Refugee Status* (Butterworths Canada Ltd., 1991). It concluded that the government of the country where there exists reasonable employment opportunities must not deny individuals or groups the right to work for Convention reasons. Other considerations would arise where there is less than actual denial of such a right. The Tribunal went on to say:

> "Whether discrimination will amount to persecution is specifically addressed in paragraph 54 of the [Handbook on Procedures and Criteria for Determining Refugee Status (1992 published by the Office of the United Nations High Commissioner for Refugees)] where it is said that it "would be so if measures of discrimination lead to consequences of a *substantially* prejudicial nature for the person concerned, e.g. *serious* restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities." (emphasis added by the Tribunal)

There is no basis for the contention that in taking this approach the Tribunal adopted a wrong test, that it misapplied the test to the facts that it found or that its factual inquiry was conducted on too narrow a base. Important passages in the reasons of the Tribunal on this point are as follows:

> "While the applicant is quite correct in pointing to the preference shown to Malays in education and other facets of life, he was able to obtain his secondary and tertiary education in the period that he lived in Malaysia. He was never denied the opportunity to education although he may have had to pay for his

tertiary course. In a similar vein, there is no evidence to show that the applicant would be denied employment because of his ethnicity. The applicant was employed in Kuala Lumpur for two years after he completed secondary school. Whether or not he was also employed there in 1988/89 as shown in the evidence attached to his visa application, there is no evidence to show that he would in the foreseeable future be refused employment on the grounds of his ethnicity. In making this finding the Tribunal has had regard to the nature of the economy, the applicant's trade qualifications and his work experience. Furthermore, the applicant's concession at the Tribunal hearing that he could obtain casual employment confirms the absence of any objective support for the contention that employment would be denied him because of his ethnicity.

None of the applicant's claims in regard to education and employment support a case of persecution. The Tribunal accepts that there is a policy of discrimination in favour of Malays in Malaysia but, while this has created greater barriers for non-Malays to achieve success in education and employment the policy has not prevented the ethnic minority groups prospering in Malaysia. The policy does not amount to persecution under the Convention." (at 9-10)

In my opinion the Tribunal has not been shown to have erred in law in its approach to the assertions of persecution based upon ethnic origin. And having regard to its findings of fact in relation to the applicant's political activities there was no ground for a finding of a well founded fear of persecution in that respect.

CONCLUSION

For the reasons expressed above, the application will be dismissed with costs.

I certify that this and the preceding

fourteen (14) pages are a true copy of

the Reasons for Judgment of his Honour

Justice French.

Associate:

Date:

Solicitors for the Applicant: Wisewoulds

Counsel for the Applicant: Mr R.M. Niall

Solicitors for the Respondent: Australian Government Solicitor

Counsel for the Respondent: Mr K. Bell

Date of Hearing: 6 May 1997

Date of Judgment: 9 May 1997