IN THE FEDERAL COURT OF AUSTRALIA	**)**	
	)	
VICTORIAN DISTRICT REGISTRY	**)**	**No. VG 704 of 1995**
	)	
GENERAL DIVISION	**)**	

BETWEEN:	**PLAMEN VASSILEV PETROV** Applicant
AND:	**JOHN VRACHNAS** First Respondent
	THE MINISTER FOR IMMIGRATION AND ETHNIC AFFAIRS Second Respondent

CORAM: **EMMETT J**

PLACE: **MELBOURNE**

DATED: **7 APRIL 1997**

EX TEMPORE REASONS FOR JUDGMENT

This is an application brought pursuant to the jurisdiction conferred upon the court by section 486 of the Migration Act 1958 (Cth)("the Act"), being a jurisdiction with respect to judicially reviewable decisions. Section 476 of that Act provides that an application may be made for review by this court of a judicially reviewable decision on any one or more of the grounds specified in section 476(1).

The decision sought to be reviewed is a decision of the Refugee Review Tribunal given on 7 July 1995 that the applicant is not entitled to a protection visa. It is common ground that that is a judicially reviewable decision within the meaning of section 475(1) of the Act. There are three grounds relied upon by the applicant. The first ground is said to fall within section 476(1)(a) namely that procedures that were required by the Act or the regulations to be observed in connection with the making of the decision were not observed.

It is said that that ground is based upon the contention that the Tribunal did not pursue the objective of providing a mechanism of review that was fair and just, contrary to section 420(1) of the Act and that the Tribunal did not act according to substantial justice on the merits of the case, contrary to section 420(2)(b) of the Act. Reference was made to three separate factual findings in respect of which inferences contrary to the interests of the applicant were drawn from facts which were pretty well undisputed.

For example, it was said that visits paid by army officials to the applicant's mother were evidence of political persecution. There was no evidence before the Tribunal as to the reason for those visits and the Tribunal found that the visits by security personnel were related to army duty and not to any political association of the applicant with the United Macedonian Organisation Ilinden ("UMO"), a Macedonian independence organisation. Mr Hurley, counsel for the applicant, frankly acknowledged that such an inference was open to the Tribunal.

Another matter relied upon was an incident where the applicant was arrested following a fight which occurred at a rally organised by the UMO. The Tribunal found that there was clear evidence that people who are identified as members of banned Macedonian groups which the authorities have branded as being separatists, may be at risk of discrimination, particularly if they are leading activists. However the Tribunal found that, while the applicant had made a pro Macedonian remark in the army in 1979 for which he was punished, he has had no significant association with Macedonian issues or groups since that time, except for his attendance at the rally to which I have just referred. He was detained after a fight and escaped without disclosing his identity.

There is no finding by the Tribunal that the arrest had anything to do with the interest which the applicant might have had in the objects of the UMO. Again Mr Hurley acknowledged that the inference drawn by the Tribunal was one which was open to it. The thrust of the argument based on failure to comply with section 420 is in essence a contention that the applicant's submissions were not accepted. I consider that the re-examination of the matters agitated before me is no more than an endeavour to review the merits of the facts found by the Tribunal and is not permissible. I do not consider that there was any failure to comply with the provisions of section 420. It is therefore not necessary for me to give any further

consideration to the question of whether, had I come to a different conclusion, that was a failure to observe the procedures required by the Act.

The second ground relied upon by the applicant, as I understand the argument, was a contention that the Tribunal misdirected itself as to the meaning of discrimination and the significance of discrimination in relation to persecution. The argument was that, while discrimination may in many cases be a stepping stone to a finding of persecution, it is not necessary.

Let it be assumed for the moment that that submission is correct, namely that it is not necessary to find discrimination in order to make a finding of a real chance of persecution. The Tribunal noted that the applicant made no claims of discrimination between 1979 and August 1990, other than those related to education and employment. The Tribunal found, however, that the applicant's education and employment record did not support his claim that he suffered discrimination during that period. Nor does it support a claim that he faces a real chance of persecution should be return to Bulgaria.

The applicant's contention was that the Tribunal misunderstood that even if it found there was no discrimination it might still find persecution. Be that as it may, I consider that a fair reading of that passage in the reasons of the Tribunal indicates that the Tribunal was simply disposing of another submission which had been made by the applicant, independently of the other submissions, namely that there had been discrimination. The finding was that there was no discrimination likely if the applicant returned to Bulgaria. That is a finding of fact for which there is no right of review in this court. I do not consider that the comments of the Tribunal show any misunderstanding of the task before it.

Counsel for the applicant acknowledged that the Tribunal had set forth accurately the legal tests which it must adopt in reaching a conclusion as to whether or not there was a well founded fear of persecution, namely, that the applicant must have a subjective fear but that there must also be an objective justification or foundation for the fear. Fear of persecution will be well-founded if there is a real chance of being persecuted on return to the country of nationality. That real chance must be substantial as distinct from remote or insubstantial or far-fetched.

The third submission on behalf of the applicant was that the Tribunal, in a separate aspect, misdirected itself as to the legal content of persecution. The Tribunal found that the applicant:

> *could return to Bulgaria without facing a real chance that he would be imprisoned or meet with a fatal accident or suffer any other serious harm that amounts to persecution.*

It was contended on behalf of the applicant that persecution might involve something less than imprisonment or fatal accident, and that the Tribunal had put the matter too high in concluding that there was no persecution because it found there was no real chance of imprisonment or a fatal accident being suffered.

However, that observation by the Tribunal, as Mr Hurley fairly pointed out, is derived from a submission which had apparently been made on behalf of the applicant. The reasons for decision record that the applicant feared that if he returned to Bulgaria he will:

> *be imprisoned or meet with a fatal accident because of his political opinions related to his espousal of the Macedonian cause and he will suffer persecution on account of his race, both as a result of official policy and at the hands of other citizens whose violent activities the authorities wantonly ignore.*

In other words, the reference to imprisonment or the possibility of meeting with a fatal accident was simply a rejection by the Tribunal of there being any real chance of that happening.

However, the Tribunal also went on to say that it found that the applicant would suffer no other serious harm that amounts to persecution. Having regard to those parts of the reasons in which the Tribunal indicated the task before it I consider that that is a clear finding of fact that there is no real chance that the applicant will suffer harm that amounts to persecution.

The Tribunal cited J.C.Hathaway in his book *The Law of Refugee Status* (Butterworths, Toronto, 1991) at pp 104-105 where he observed that persecution is defined as:

> *...the sustained or systemic violation of basic human rights demonstrative of a failure of state protection.*

That was said to be consistent with comments made by Mason C.J. concerning persecution in *Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 ("*Chan's case*") as follows:

> *some serious punishment or penalty or some significant detriment or disadvantage if he returns. Obviously harm or the threat of harm as part of a course of selective harassment of a person, whether individually or as a member of a group subjected to such harassment by a person by reason of membership of the group, amounts to persecution if done for a Conventional reason.*

The Tribunal noted that:

> *harm amounting to persecution need not be inflicted over a period of time.*

And referred to the observations of McHugh J in *Chan's case* at 430 that:

> *Nor is it necessary element of "persecution" that the individual be the victim of a series of acts. A single act of oppression may suffice. As long as the person is threatened with harm and the harm can be seen as part of a course of systematic conduct directed for a Convention reason against that person as an individual or as a member of a class, he or she is "being persecuted" for the purpose of the Convention.*

I consider that the Tribunal's finding is a finding of there being no real chance of serious harm which amounts to persecution in circumstances where the Tribunal made clear that it understood the meaning of persecution as laid down by the High Court in *Chan's case*.

In those circumstances, I consider that the application should be dismissed.

The orders are that the application is dismissed and I order the applicant to pay the respondent's costs.

I certify that this and the preceding six pages are a true copy of the Reasons for Judgment of his Honour Justice Emmett.

Associate:

Dated: 7 April 1997

Heard: 7 April 1997

Place: Melbourne

Decision: 7 April 1997

Appearances:

Counsel for the applicant:	T.V. Hurley
Solicitor for the applicant:	Barlow & Co.
Counsel for the respondent:	W. Mosley
Solicitor for the respondent:	Australian Government Solicitor