

1113349 [2012] RRTA 749 (24 August 2012)

DECISION RECORD

RRT CASE NUMBER:	1113349
DIAC REFERENCE:	CLF2010/123668
COUNTRY OF REFERENCE:	Nepal
TRIBUNAL MEMBER:	Amanda MacDonald
DATE:	24 August 2012
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Nepal, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] September 2010.
3. The delegate refused to grant the visa [in] November 2011, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

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, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file CLF 2010/123668 relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. According to the copy of the applicant's passport submitted with his application, he arrived in Australia [in] August 2008 as the holder of a Student (Vocational Education and Training Section) subclass 572 visa granted [in] August 2008, which he held as a dependent of the primary visa holder. This visa was valid until [a date in] September 2010. The applicant lodged his protection visa application on [that date].

Protection visa application

21. According to information provided by the applicant in his protection visa application forms and accompanying documents, he is a [age deleted: s.431(2)] year-old from [Nepal]. His close relatives are his spouse, three children, parents and two siblings who are all in Nepal.
22. Before coming to Australia, he had resided at one address in Nepal for more than 20 years from [birth] to August 2008. After leaving [High School] in [date deleted: s.431(2)], he completed a [training course] in 1994 and assisted his parents in their agricultural farm until April 1998. The applicant claimed that from April 1998 until August 2008 he was employed as a [police security officer] with the National Investigations Department of Nepal.

23. He left Nepal legally [in] August 2008 and travelled to Australia with a passport issued [in] March 2006 as the holder of a Subclass 572 visa. The occupation field in his passport states that he was employed as a Cook. He indicated that he had some difficulty in obtaining travel documentation because of threats and as a result he obtained his passport in the capital city. He said that he had never previously held any other passport and that, prior to his current journey to Australia, he had never previously travelled outside Nepal. He said that he had never been convicted of any crime or offence and, to the best of his knowledge; he was not the subject of any criminal investigation or any pending criminal charges.
24. The applicant stated in his protection visa application that he left Nepal to escape problems with the Maoists. He stated that if he was caught by the Maoists they would kill him because of his role as a police undercover agent and informer. He claimed that the authorities would not be able to protect him.
25. The applicant submitted the following statement of claims with his protection visa application:

My name is [name]. I was born on [date] with my mother [name] and my father [name] at [location].

I completed high school in [year]. With the cycle of time, I was employed with information department of Nepal police on [date]. My identity card No. is [number]. During that time the Maoist people's war was being carried out. In that time, my job was to find out where and how the Maoists were living and where they (Maoists) were going to attack, I was walking on the way doing social work as a social servant in that time and they did not know that I was working with police information department.

In the year of 1999, I was allocated my own district, [District 1] and [District 2] district for supervision. In this order it was successful that the wife of [Mr A], former chief of the people's government of [District 1] district, currently a Member of Assembly from area No.1 of [District 1] district. The wife of [Mr A] is chairperson of Maoist women's organization and district level leader. It was successful that many activists were captured. Like this, after [name], the chief of Magaraat Mukti Morcha of [District 1] and the chief of people's government of [District 2] district had been reported to be staying in his own house in [District 2], was killed in the action of armed police and Nepal army. The army was successful to capture dozens of Maoists from [location], [District 2].

Since the police was the target of the Maoists from the beginning of the peoples' war, the Maoists were doing things like the Maoists asked these young people who were serving in the police and in the army to resign and if refused to resign they killed them or Maoists went to their houses and beat their families. Maoists were depriving the right to live a life of not only the police and the army but also the ordinary people. They were continuously killing persons with the slogan of destruction of exploiter feudal capitalist group CID.

In that time, after the Maoists were successful to capture my colleagues who worked as Informers and after they were tortured and enquired, my name also was given to the Maoists. The Maoists surrounded my house at night on [date] April 2004 but I was able to survive because at that time I was elsewhere. The Maoists invaded the house and beat my mother, my wife and my daughters who were forced to be out of the house and they set the fire on the house. My mother, my wife and my daughters had to run away and take shelter in neighbours. I have not been able to meet my house and family since that time.

Maoists were carrying out peoples' war in the country and on the other hand, the situation was like the King had taken the authority in the hand. The political parties had been holding big

strikes against the Monarchy. During that time, the Maoists left the peoples' war and joined the strikes. Following the demolition of the Monarchy, republic was declared in Nepal.

With the declaration of republic, Dr. Rambaran Yadav became the president in accordance with the presidential system. With the establishment of republic, the country was immediately in a situation where there were no representatives, no law and no constitution. Immediately the election for Constitution Assembly was declared. The election for Constitution Assembly was declared to be held on 10 April 2008. Even in that time, there was possibility that I could be killed by the Maoists in any situation so I was in an unsafe situation.

With the process of election, my work area was allocated to [District 3]. I had already been to [District 3] before two months ago. Although the Maoists had come to the path of peace, their activists were not in that situation. Since the Maoist activists being instructed from the contemplation of execution, the election was not easily acceptable for them because [name], former [portfolio] minister was competing from [District 3]. As the Maoists wanted to defeat [name] anyhow, it was thought that they could cause a big incidence. They were moving ahead in an anarchical way across the country. As there was a strong possibility that the Maoists could take physical action against [name], former minister of [portfolio], I and my other friends already went and surrounded that village before two months ago. At that time, we were walking as Maoist activists.

The village was engaged in the campaign of publicity. With the weapons they wanted to disrupt the election and capture the ballot box with the aim of casting votes for its party on 11 June 2007 after having decided to go to [Town 4] where their arranged living place was found, which we reported to the [Town 4] Armed Police. Armed Police Force went and attacked the place in which 7 Maoists warriors were killed at the place of incidence and 22 were injured and a large number of weapons were successfully captured.

According to the results of the Constitution Assembly Election, N. C. P. United (Maoists) became the biggest party and Kemal Puspa (C. Parchanda) became the prime minister of the country. When the Maoists' government was formed, from that time it has been very unsafe for me. The government was in our protection until the war continued but after the Maoists government, the situation became like I could be killed anytime because it became easier to find us than during the period of war so I am sure to be killed. They were conducting supervision on me and I was running away from them. I did not have any alternative to survive in the country.

In that time, Australian Government brought a large number of students on student visas. As the policy being that the students were also eligible to bring their partners with them, I contacted an agency which assisted me on condition that I would pay the agency 12,00000 Aus \$24000.00. According to that, I was able to come to Australia as husband of [Ms A] of a resident of Kathmandu 32 Nepal. The fact is that [Ms A] is not my wife. She has been used only as a way of option for me to depart Nepal. After we had arrived in Australia, we went our own way separately from the airport. I haven't met or phoned her for two years.

In fact, my wife is in a situation that she has been displaced in Nepal. She has been living a difficult life with three daughters. My wife's name is [name] and I have three daughters named [name], [name] and [name]. Since my house was burnt out on [date] April 2004, I became homeless and the situation being that I could not go to even my district so my passport was issued from Lalitpur, As my family and I are not safe in my own country so it is like we have been living as refugees in my own country. A human being whose right to live as a human being is prevented. Country is still in turmoil even after the advent of republic. The situation has been getting worse day by day, as country has no representatives, law, and security.

The situation is that country has no prime minister, it has been unable to elect the prime minister despite the election was held for five times. The situation is that citizens are banned and the

Maoists, executioners, and the army with madness insist on their own leadership to be installed and they are on strikes chanting a slogan of civil supremacy. The situation has been difficult for citizens to work and live. With the debate that the Maoists are preparing to fight the final battle array, saying, "If the government is not formed under the Maoist's leadership, we will have to return to the battle array." It has informed everybody about where the country is heading.

If the Maoists government is established again, it will go ahead with the contemplation of army, executioners so the right of the public to live, will be in jeopardy. If there is no government, it will be more dangerous battle than the battle in the past 10 years and the country will go to a civil war. Human being is a free human being so human being wants to live freely. Since Australia is a country of human right and my family and I want to live freely, so I decided to stay here for my future and my family's future.

26. The applicant submitted the following evidence to the Department to substantiate his claims:

- Certified copy of the applicant's Marriage Registration Certificate.
- Two photographs purportedly depicting the applicant's wife's injured forearms.
- Photos of the applicant's wife's medical report and hospital card for treating her injury.
- A photograph of four men sitting on the floor, one of the being the applicant.

Interview with the Department

27. The applicant was interviewed [in] November 2011 by the officer considering his application with the assistance of an interpreter in the Nepalese and English languages. The Department's file contains a CD recording of the interview. The Tribunal has listened to that recording. The Tribunal's summary of the matters discussed at the interview below is not set out in strict chronological order. Some issues discussed at different times in the interview have been grouped together for greater clarity, and some matters which have proved not to be material to the Tribunal's decision, or which merely repeat or confirm details provided by the applicant in connection with his protection visa application have been omitted.
28. The applicant stated that he feared returning to Nepal as he would be killed by the Maoists because he was previously an informant for the police and the army who were then fighting the Maoists. He stated that Nepalese authorities cannot protect him as they are not secure themselves at the present time. He stated that not even the high ranking officers are safe.
29. The applicant submitted five photos during the interview. He stated that his brother emailed the photos from Nepal to him about two months before the interview. He claimed that his wife was tortured and assaulted by the Maoists from the Youth Communist League when they came looking for him in 2011 at the residence in [Town 5]. They broke both her arms and she went to hospital. He stated that his wife did not want to worry him and did not tell him about the incident initially. He stated that his youngest daughter, who was [age deleted: s.431(2)] years old, told him about the incident on the telephone about 10 days after it happened. He later clarified that his daughter told him his wife was in hospital and he found out what had happened from ringing other relatives. When asked when it occurred, the applicant at first pointed to the dates on the documents, then said it happened a four or five months before the interview
30. When asked whether his wife went to the police following her alleged assault, the applicant stated that she did not, because the Maoists threatened to kidnap the children if she did.

31. The delegate asked the applicant whether he had any evidence demonstrating that he had worked for the Nepali police force. The applicant stated that he never used a uniform and that he previously held documents regarding his employment however they were destroyed in the fire of April 2004. He stated that in coming to Australia he abandoned his employment with the Nepali police force because he saw lots of friends and colleagues being killed.
32. The delegate noted that the applicant had detailed in his protection visa application that he lived at the one address in [District 1] from [birth] to August 2008. The delegate asked the applicant about where he resided following the burning down of his residence in [Village 6] during April 2004. The applicant said that he was in [location deleted: s.431(2)] for his work at the time. He stated that he moved around after that incident, depending where he was sent for work. He stated that all of his extended family resided together (parents, brother and sister, wife and kids) and that they had to leave [Village 6], their land was taken from them. He stated that his wife and children now live separately from his siblings and parents in [Town 5]. He said that his father is financially supporting his wife and children.
33. The applicant confirmed that he had been in contact with his family since April 2004. He stated that his family relocated to the town of [Town 5] following the loss of the house and that he met them there some 15 to 20 days later. He stated that he continued to visit them at night or during rain storms, in order to avoid detection by any Maoists in the [Town 5] area.
34. When asked about the fact that his passport indicated that his profession was that of a Cook, at a time when he allegedly was employed by the Nepali police force, the applicant stated that he had to pay some people money and follow their advice not to reveal his true employment. He stated that he was told by his employer, the National Investigation Department, that he had to hide his identity and that this extended to national documents such as passports, so that he could not indicate in his passport that he was a police officer or connected with the police. He said he had no evidence he was employed with the police.
35. When asked about the reasons for the two year delay in lodging his protection visa application, the applicant stated that he hoped that things would improve in Nepal and that he agreed with the woman with whom he had travelled to Australia as her fake dependent that he would not make any application in Australia while he was on a student visa as her dependant so as not to jeopardise her studies and her visa status.
36. The applicant stated that he could not relocate to another part of Nepal as the Maoists would be able to find him anywhere within Nepal. He said that his name was on a 'black list' and that the Maoists want to kill all of the informants.

Post interview submission

37. Following the Departmental interview the applicant's migration agent provided a further submission dated [in] November 2011. The submission contained reference to country information concerning the political fragility in Nepal among other things. It was argued that the country information provided demonstrated that the security and political situation in Nepal remains very volatile and dangerous, human right violations in Nepal continue despite government promises to curb them and that there is impunity for human rights abusers in Nepal. It was submitted that the Nepalese authorities are unable to provide meaningful protection to the victims. It was further submitted that the applicant had provided evidence that was overall consistent and coherent and therefore should be given the benefit of the doubt unless there are good reasons to the contrary and that even if there was some

inconsistency this did not go against the essence of the applicant's claim, which was that he holds a political opinion against the Maoists and worked against the Maoists as an informer.

Delegate's decision

38. In refusing the visa application, the delegate was not satisfied that the applicant was employed by the National Investigation Department as an informant. The delegate was also not satisfied that the applicant is of adverse interest to the Maoists for his previous claimed activity of informing on them to Nepalese Government authorities.

Application to the Tribunal

39. The applicant was represented in relation to the review by his registered migration agent.
40. [In] May 2012, the applicant's representative submitted additional evidence on the current situation for people holding a political opinion against the Maoists and who worked against the Maoists in Nepal.
41. [On the same date], the applicant's representative submitted a statement from the applicant, stating that he came to Australia on the condition that he wouldn't apply for any case for two years, otherwise his family would face various forms of trouble. He thought that the situation in Nepal would be ok but it got worse and he didn't know there was a place he could tell his troubles. Later he knew from friends that he could apply to be a refugee. He stated that as he was advised by high ranked officers not to disclose his occupation and his passport stated his occupation was that of a cook. He stated that all his evidence was burnt with his house and it was not possible to carry the evidence because he had to move as an ordinary citizen. As such he is unable to provide all the evidence, although he arranged a letter from the high ranked officer who knows him. He stated he had collected and submitted evidence about his wife, including a doctor's report, an x-ray and a police report. The applicant submitted additional documents including:
- A certificate of honour from [Village 6] Secondary School in [District 1], dated [in] February 2008 and signed by the Headmaster, the Chairman of the Happy festival organiser main committee and the Chief Guest of the Happy Festival Ceremony. The certificate stated '[o]n this sacred occasion of happy festival ceremony, this letter of honour is presented to you, [name], as you have provided invaluable contribution to the institutional development of [Village 6] Secondary School by being a social servant and your contribution to this school has been highly praised.'
 - A letter dated [in] January 2012 from the sub-inspector of police in [Town 5] referring to an incident that occurred [in] January 2011 to [name], stating that she was beaten by a group who had been looking for the applicant accusing him of breaching some groups' confidential matters and causing obstacles in the work when he worked as a state informer for the government of Nepal. It stated that both of [name]'s hands were fractured from the palms in the incident.

Hearing [in] May 2012

42. The applicant appeared before the Tribunal [in] May 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Nepali and English languages.

43. The Tribunal explained the relevant law as set out above, including the introduction of the complementary protection criteria from 24 March 2012.
44. The applicant brought his passport with him to the hearing. When asked why he obtained the passport in 2006, the applicant said it was because of the risks involved in his job. It provided a means to escape if needed. When asked why he made it in particular in 2006, the applicant said he had difficulties returning to his own district. At this time there was a change to the regulations allowing people who were unable to return to their own district to apply for a passport elsewhere. It was possible to make an application for the passport in Lalitpur. This is his first passport.
45. In Nepali year 2055 (1998/1999), the applicant started his job in the investigation department. He was in danger from this time on from the Maoists. When asked why it took until 2006 to get the passport, the applicant said it was only when the trouble started that he obtained the passport. He was living like a refugee in his own country and he could not return to his own home.
46. When asked what trouble he was referring to, the applicant said it was because he worked as a spy and his function was to give information about the Maoists to the authorities, about what they were planning and where they were going to attack. His job involved giving information to the Combined Security Force on a monthly basis about the Maoists and about their future plans. The situation in his village in 2055 was such that people had two choices; either to join the Maoists or the armed forces. He indicated that if they did not join the armed force, the Maoists would forcefully take them away to make them join the party. It was mandatory for one person to go to the Maoists from each household. He was given the responsibility of looking after the two districts [District 1] and [District 2] in 2058. In [District 1], the area commander and his wife were involved with the Maoists. He gave information to the security forces about them, including that they went to district, villages and local settlements, attracting women to cells or units and instructed how they should attack and how to use the ammunition. At that time there was no other means of communication and so the women were used as the means of communication and he found out the information through these women. They used simple uneducated women and brainwashed them for communication between cells about the army and where the security forces were located.
47. In [District 2] the [district chief] of the Maoists in that area was the mastermind who made all the plans and used the women to communicate information between [District 2] and [District 1]. When he came to know about this, he told the armed security forces. This was in 2058. Security forces killed this person in his house in 2058 (2001/2002). A few of his friends were arrested but he was not known, nor was his information available to anyone. He gave information about where the ammunition was stored and during the Constituent Assembly election; he gave information about their plans, including how they planned to abduct people and where they stored their ammunition in schools and village. This was in 2064 (2007/2008). When asked what he was doing at that time in 2064, he said he was employed in [District 3] and [Town 4]. When asked why he was there, the applicant said that during the Constituent Assembly election his Department deployed him there because he couldn't go back to his home village as he had been discovered and all details about him were known. When asked whether he was discovered while working in [District 3] and [Town 4], the applicant said he was discovered from 2060, [12th month] ([April] 2004) when they went to his house in [District 1], burnt it and chased away his family. He was still working for the intelligence service until the date of the election, although he was living like a refugee. He

said that he didn't work for the intelligence service after the election because the Maoists won the election.

48. The Tribunal noted that the applicant had the assistance of his migration agent when completing his application and detailed that he worked for the National Investigation Department from April 1998 to August 2008. The applicant said he completed the application himself. When asked why there is a discrepancy about the end date of his employment, the applicant said he did not resign work due to insecurity and fear.
49. The Tribunal noted that in both the protection visa application and the personal particulars form the applicant detailed that he resided in [District 1] until August 2008. When asked why he declared he was living in [District 1] until August 2008, the applicant said he did not live in [District 1] from 2060. His land has been made into a government school. When asked again why he declared that he lived in [District 1] until August 2008, the applicant said this is the address for his citizenship from [District 1] and he continued to use the [District 1] address even when applying for his passport. The Tribunal noted that the applicant had the assistance of a migration agent and the question on the protection visa application asked where he was living. When asked why he would state he was living in [District 1] until August 2008 when he now claims he had not lived there since 2004, the applicant again said that this is his address for his citizenship. He still uses [District 1] as his address.
50. When asked for details of what he did between 2055 and 2064 (1998/1999 to 2007/2008), the applicant said that in 2055, after the incident of [District 2], he kept on working as an informant. An incident happened to him but he kept working. He also worked as a social worker with women and children and at the same time, he was collecting information. In 2060, his house was burnt and his family and children had to take refuge in their relatives' house while he hid from village to village.
51. When asked whether anything happened to him from 2004 to 2008, the applicant said that his house continued to be searched after it was burnt. There was a note on his house stating "spies and informers will be killed" He stated that his name was written on the notice paper. The person who did this was [Mr A]. He is now a member of the Parliament and was also his neighbour. His wife was the leader of a women's cell and was arrested because the information was provided by the applicant.
52. [Mr A] has all the information about the applicant and is the person responsible for burning his house in 2060. The applicant said that the day after his house was burnt, his wife was dragged with a rope around the neck. When asked where she was living at the time, the applicant said she was living with a neighbour. The Tribunal noted that the applicant had not made this claim in the statement submitted with his protection visa application. The Tribunal checked with the applicant's representative that the claim had not been included in the statement. When asked why he had not included this claim, the applicant said he thought he would do so verbally. The Tribunal said it found this hard to accept because it seemed to be such a significant claim. The applicant said it did occur.
53. The applicant said after the incident, he kept working hiding for the organisation, away from [District 1] and [District 2]. The Maoists could not locate him but his friends were arrested.
54. When asked how he continued to work as an informant when he was in hiding, he said he stayed with the armed security force and worked with them. The security force kept him safe. When asked how he did his job, the applicant said he was told that this was his job; he

had no choice and he continued working. Sometimes he disguised himself and continued with the job by mingling with people and listened to people to gather information. He was then deployed further south towards the Indian border at [Town 7] and [Town 5]. About 5 to 6 days his house was burnt, he took his family to [Town 5] and visited them at night. The applicant worked until the election within the areas of [District 3], [Town 4], [Town 7] and [Town 5].

55. When asked what made him come to Australia when he did, the applicant said he came to Australia to have a secure life as he feel unsafe in his own country. He sought help and security from his seniors but was told that it was his own responsibility. He heard that it was easy to go to Australia as a student dependent and started the process after the election. A person from [District 1] residing in Kathmandu assisted him to arrange an Australian visa. The person asked for his passport and 1.2million rupees to arrange the visa. The applicant did not marry the visa applicant and was unsure how they organised to get him a visa.
56. When asked why he did not claim a protection visa as soon as he arrived to Australia, the applicant said he has been bound by a contract which was that he was not to disclose or change his circumstances or try to change his status for two years. If he did so, the person who assisted him to get the visa threatened that he would disclose information about his family.
57. When asked whether he had disclosed he was bound by a contract, the applicant said he did not think it was necessary to disclose this information. He said it did disclose it in his statement. The Tribunal noted that when the Department interviewed him, he said something different. He said that he hoped things would get better in Nepal and he had agreed with the woman on whose visa he was a dependent that he would not do anything to jeopardise her study. The Tribunal noted that what he had told the Tribunal today was different from the information provided to the Department. The applicant said it was the same statement. He said that he had told this woman he wouldn't apply for any other visa during the two years so as to not jeopardise her study. The Tribunal noted that this indicated he knew about applying for a protection visa. The applicant said he only came to know about the protection visa much later. This was through friends and his involvement with the Nepalese community.
58. When asked when he came to know about it, the applicant said that for the first two years he did nothing and after this he was fearful disclosing his situation to anyone in Australia as he feared Maoists here would discover and harm him. He came to know about lodging the protection visa application about one month before he made the application.
59. The Tribunal noted that the delay in making the protection visa application is something the Tribunal would take into account when considering the genuineness of his fear of harm. The Tribunal noted it had some concerns with the applicant's evidence, including giving a different reason for not making a protection visa application sooner, not mentioning previously the claim that his wife was dragged from the neighbour's house the day after their house was burnt down with rope around her neck, only declaring in his protection visa application that he lived in one address in Nepal, that is [District 1], and declaring in his protection visa application that he remained employed until August 2009 whereas he told the Tribunal that he ceased his employment after election in April 2008. The Tribunal noted that his passport was issued 2006, which is a couple of years after the incident he claimed occurred in 2004, and 3 years before he came to Australia. The passport states that his occupation was that of a cook. The Tribunal noted that in his statement of claims, the applicant said that after fire, he hadn't met his family but in interview with the Department

and today, he said he had moved family to [Town 5] and visited them at night when he could. The Tribunal noted that the applicant had only given few specific examples of what he did in his work. The Tribunal said this was of concern given the length of time he worked as an informant. The Tribunal said that when it put all of this together it may lead it to doubt that the applicant was being truthful. It may lead the Tribunal to doubt that he worked as an informant, that his house was burnt down or that his wife was harmed. It may lead the Tribunal to not give weight to the documents submitted, particularly when the Tribunal considered the availability of fraudulent documents in Nepal. The Tribunal may not be satisfied that the applicant is owed protection. The Tribunal said it was happy for the applicant to provide further evidence to address these concerns.

60. The applicant said he could explain these concerns. He couldn't declare his real occupation in the passport due to security as it would be used and seen in different places by different people. The applicant said that although he obtained the passport in 2006, he was working as an informant before this, providing information. He was unable to state each incident as there are a lot of examples and they would comprise a thick book.
61. The applicant said what had happened to his family around the time his house was burnt down could easily comprise a book. The applicant said that when his house was burnt, his family were dragged out of the house. There was ammunition all around. The Tribunal noted that he had told the Tribunal that the day after his house was burnt, his wife was dragged out from where she took refuge. The applicant said that at the time of the incident all the villagers were called to a meeting and were told about the applicant. They were told of the consequences of working as an informant. The villagers were made to witness his family being dragged out as a result of the Maoists being unable to locate him and because he was working as an informant.
62. The applicant said that he was not present when the incident happened. He was told what happened a long time later. The day the house was burnt, the Maoists came looking for the applicant. His sister was present at the house and told the applicant what happened to his family. He said he did not write about any of these things in his statement. The applicant said the Maoists pointed guns at his family members, asking for the applicant. The woman next door fainted after seeing what happened to his family. His family [relocated] after the incident and he visited them only at night when he could. He said he didn't focus on these events in his statement. He focussed on the main events.
63. After these incidents happened, he was deployed [location deleted: s.431(2)], where his job involved learning how the guns were supplied, where they were imported and how the ammunition was being made. He was a scapegoat. If he quit his job, he could be killed and he was unsafe if he continued his job. He ended up quitting his job at the time of the Constituent Assembly election but never handed in a resignation letter.
64. When asked whether there was anything further, the applicant said he wanted to elaborate on the jobs he did and how his days were spent. Every day when he went out of the house, the applicant went to where people gathered, talked about future plans, protested, and where they talked about arms and ammunition. He wasn't confined to one place. He moved from village to village. He disguised himself as a social worker for children. When asked how the Maoists did not know him from his work as a social worker, the applicant said that before 2004 no one knew his real work; they only knew him as a social worker.

65. He said there was an inspector for each area and he was required to give two or three major pieces of information or report immediately if there was something big happening. Also, he had to report on a weekly basis whether or not he had any information to report. When asked about the situation after 2004, the applicant said all the employees, including those at the top, had dispersed because everyone was fearful for their lives and security was not available. They were concentrated in Kathmandu and everyone was responsible for saving their own lives. He was still responsible for providing information to save the lives of the top officers. He obtained information about an attack on an army camp in [District 1], which stopped the attack because the camp moved from the valley where it was located as a result of his information.. This was about 9 months after his initial training and before his house was burnt down in 2004. It was in about 2057. The original plan was to attack the camp from up the hill but this was not possible when it was relocated and bunkers placed around the camp. He made his reports at the police station every week. He didn't mention this in his statement but did mention another incident at the time of the Constituent Assembly election.
66. During the time of revolution, the applicant gave information about the red army activities but the armed forces were unable to attack the red army immediately as they always use innocent people as shield. The applicant was responsible for providing correct information as to when it was safe to attack and if any innocent people died, he was told he would pay for the consequences.
67. The applicant said the usual practice of the red army was to collect youths from all parts of the country and would deploy them to a different part of the country, making him chief of the army so the villagers would not know the chief. The chief would then make strict rules about what the villagers had to do in providing food, donations and accommodation.
68. The applicant said that before the incident in 2060, each household, including himself, received a letter stating each household had to pay the red army 15,000 rupees and send one person to join the army. After the notes were distributed, the red army investigated who gave the information about this to the army. He gave the information but he was not discovered.
69. From 2004 to 2008, his daily work involved making reports, photocopying information, finding out the movements of each person and what was being planned against to the leaders in the area, including the chief district officers and other higher grade officers. Many innocent people died during the clashes of the armed forces and the red army and the applicant's job description was to find information so this would not happen. The applicant stated that no matter where he was deployed, his role was to find out what was happening each day, what was being planned, how to avoid innocent casualties and how to get information on any future planning.
70. The applicant stated only one inspector in each district would know the identity of the informant. One particular deputy inspector general who was still on duty, [name deleted: s.431(2)] advised the applicant to be safe. The inspector would ask him what he did each day and no matter what he did, he had to report.
71. When asked who he reported to during the period from 2004 to 2008 when everyone was dispersed, the applicant said he still reported to the inspector for the district. Before the leaders fled to Kathmandu, each district had a small police post. When the posts were destroyed, the post in the town centre took charge of their districts. The applicant was to report in a secure area all the things that happened each week.

72. When asked what happened to his wife after he left Nepal, the applicant said in 2010, a group who was involved in the women's cell went to his wife in [Town 5] to look for him. The people threatened his wife and physically assaulted her. His wife was admitted to the hospital with two broken arms. He heard about it from his neighbours. It was hard for him to hear it. When asked to confirm who it was who attacked his wife, the applicant said it was the YCL Maoists' women's cell.
73. When asked why the group were searching for him, the applicant said they were taking revenge for the incident that happened in 2064. The incident occurred during the elections in [Town 4]. There were plans to take action against the [minister] with the red army trained in the use of ammunition which was hidden in schools. The applicant provided this information to the authorities and the day before the election, the authorities attacked resulting in 7 died and 22 people being injured. When his wife was being attacked, the applicant's name was mentioned, along with the incidents in [District 1] and the election.
74. The Tribunal said it was concerned that there were inconsistencies in the applicant's evidence about the incident involving his wife, including the timing and who told him. When asked why there would be such inconsistencies in his evidence, the applicant said he only presented the photographs before. The Tribunal noted these show that his wife had injured arms, not how this occurred. The applicant said he had always said the same thing and there were no inconsistencies.
75. When asked when the incident involving his wife happened, the applicant said it was in Nepali year 2067, [9th month] ([January] 2011). When asked how he could be so precise, the applicant said all the family members tried to hide this from him as they were afraid he would return and be killed. His daughter told him that his wife was in hospital and he contacted the hospital, made further enquiries and the hospital gave him this date. The Tribunal noted that the applicant did not know the date when interviewed by the Department and had given the Tribunal two different time frames. The applicant said it may have been due to him giving the date in English. During the time of the interview with DIAC, he has only presented evidence of the photographs. The dates were not precise as he was still waiting on some documents.
76. When asked whether there is other information he wished to provide, the applicant said the situation in his country is deteriorating and people are dying. The human rights organisations in Nepal are not safe; journalists do not have the freedom to write what they want. The real problems are faced by ordinary people and not the leaders. The leaders and the government tell the international community that everything is settled and peaceful. The truth which they is the opposite. Simple people like him, who are uneducated and ignorant, were being used in the past ten years in the war. The red army is still active in the country. When required to hand over arms and ammunitions, only those that don't work are returned and the others retained by the army. The applicant said that another civil war is being planned, with clashes occurring between groups. During rallies, the red army assaults journalists and the blame is given to someone else.
77. The situation in Nepal is deteriorating day by day and lots of people like him lose their life. He has been lucky enough to come here to have the much needed protection. He has lived in Nepal where the human rights organisations do not have security, journalists and writers do not have the freedom to write what they want. Real problems being faced by the people with a lower profile not the top leaders. Two truths one presented to the international community and the other is what happens.

78. Following an adjournment to consult with his representative, the applicant told the Tribunal that one of the people he reported to was called [name deleted: s.431(2)] and two others called [name deleted: s.431(2)] and [name deleted: s.431(2)]. [Name deleted: s.431(2)] was previously [a high ranking police officer] and is not sure whether he is now at the Deputy Inspector General or one level below that.
79. The Tribunal said it would write to the applicant and seek his comments on or response to information that would be the reason, or part of the reason for affirming the decision under review.
80. The applicant said does not consider it is easy to obtain fraudulent documents in Nepal. The documents such as those he has provided, which are properly stamped and made on a letterhead, are not fraudulent. The Tribunal said that the available information indicates that fraudulent documents are easily obtained in Nepal and it would consider any further documents submitted in light of this information.

Section 424A letter

81. [In] August 2012, the Tribunal sent the applicant a letter and invited him to comment on or respond to information it considered, subject to his comments, would be the reason or part of the reason for affirming the decision under review. The information included claims not made during the departmental interview [in] November 2011 and evidence inconsistent with that provided in the departmental interview. The Tribunal set out the information and why it was relevant. The Tribunal set out that failing to mention significant claims and providing inconsistent evidence may lead it to find that the applicant was not a witness of truth and had not been truthful about his claimed circumstances in Nepal, his claimed reasons for leaving and his claimed fear of harm if he were to return, particularly when considered together with the delay in making the protection visa application and other inconsistencies in the applicant's evidence, such as those around his employment. It noted that it may lead the Tribunal to give little or no weight to the documents the applicant provided in support of his application, including the certificate of honour, the letter from the police in [Town 5], the documents submitted from [the] Hospital, [Town 5] and the photos submitted to the Department. The Tribunal set out that it may not accept that the applicant worked as an informant in Nepal, that he or his family were ever targeted or harmed by Maoists or anyone associated with them as claimed. It may lead the Tribunal to not accept that he or his family would be harmed by Maoists or anyone associated with them if he were to return to Nepal.
82. The Tribunal set out that if the Tribunal does not accept the applicant's claims, it may not find that he is owed protection under the Refugees Convention or on complementary protection grounds. If so, he would not be entitled to the grant of the visa sought and the Tribunal would affirm the decision under review.
83. [In] August 2012, the applicant's representative sought an extension of time on the basis that the applicant needed more time and his representative was to be away from Australia from [two dates in] August 2012. The Tribunal carefully considered the request but did not grant an extension of time, although it did advise the applicant's representative in a letter dated [in] August 2012 that it would take into account anything received before it made its decision. The Tribunal considered that the information in the letter had been canvassed extensively at the hearing.

84. On [a further date in] August 2012, the Tribunal received a statutory declaration from the applicant detailing his response to the information and a submission from his representative on the assessment of credibility.

FINDINGS AND REASONS

85. The applicant claimed he entered Australia [in] August 2008 using a passport in his own name issued by the Nepalese authorities in March 2006. He brought this passport with him to the Tribunal hearing. On the basis of this evidence, the Tribunal accepts that the applicant is a national of the Nepal and has assessed his claims against Nepal as his country of nationality.
86. The applicant claims that he left Nepal because he and his family have been targeted and harmed by Maoists and people associated with them because he was an informant for the police and army. The applicant claims he fears he will be harmed on this basis if he were to return to Nepal. In the Tribunal's view, the applicant is not a witness of truth and has not provided a truthful account of his experiences in Nepal, his reasons for leaving or his fear of harm if he were to return now or in the reasonably foreseeable future. As put to the applicant in its letter [in] August 2012 and at hearing, the Tribunal has the following concerns with his evidence.
87. When the Department interviewed the applicant [in] November 2011, he did not claim that the day after his house was burnt in 2004, Maoists dragged his wife from where she was seeking refuge with neighbours by a rope around her neck, making an example of her in front of other villagers. He did not claim that his sister was in his house when it was burnt down and when his wife was dragged from where she was taking refuge. He did not claim that guns or arms were used at the time the house was burnt in 2004. The applicant did not mention these claims in the statement submitted with his protection visa or in the statement submitted to the Tribunal. The applicant's explanation is that he mentioned one incident in his documents about the Maoists torturing his parents and family and then burning his house. He stated he wrote it as incidents that led him to hide from the Maoists and these claims are just detail of that incident which he submitted later. The Tribunal does not find this a credible explanation for not mentioning such a significant claim as that involving his wife being dragged by a rope from where she was taking refuge after the house was burnt. The applicant gave detail in his statement about what he claimed leading up to the fire but provided no details of what occurred afterwards, apart from stating that his wife and daughters ran away and took shelter with neighbours. Failure to mention such a significant claim leads the Tribunal to doubt that the applicant has been truthful in his evidence about his claimed circumstances in Nepal, his reasons for leaving and his fear of harm if he were to return. The Tribunal does not accept that in 2004, Maoists invaded his house, beat his mother, wife and daughters and forced them out of the house before setting fire to it. The Tribunal does not accept the applicant's evidence that the following day Maoists dragged his wife from where she was seeking refuge with neighbours by a rope around her neck, making an example of her in front of other villagers.
88. At interview, the applicant told the Department that the reasons for the two year delay in lodging his protection visa (according to the applicant's passport, he arrived [in] August 2008 and made the protection visa application [in] September 2010) were that he hoped that things would improve in Nepal and that he agreed with the woman with whom he travelled to Australia, as her fake dependent, that he would not make any application in Australia whilst on a student visa as her dependant so as not to jeopardise her studies and her visa status.

Whereas in the statement [in] May 2012 he stated he came to Australia on the condition that he would not apply for any case for two years otherwise his family would face trouble in Nepal. He stated he did not know he could apply to be a refugee. At hearing he told the Tribunal that he was bound by a contract not to disclose his circumstances or to try to change his status for two years. He then stated that the person who assisted him in getting the student visa threatened that if he did so, he would disclose information about his family. He also stated that he was fearful of disclosing your situation to anyone in Australia as his feared the Maoists would discover and harm his. In response the applicant stated that he was bound by a contract for two years and was hopeful the situation would improve after that time, but found it had, and not wanting to return or live here illegally, he lodged the protection visa application. Whilst this is an explanation for the delay, it does not explain the inconsistencies in his evidence. The Tribunal has formed an adverse view of the applicant's credibility because of the different reasons he has given for the delay such as not wanting to jeopardise the studies or the visa status of the woman with whom he travelled to Australia, or to ensure that his family would face trouble in Nepal, or because he was bound by a contract, or because the person who assisted him in coming to Australia threatened harm to his family, or because he feared Maoists would find and harm him

89. At interview he provided the Department with two photos he claims show his wife with broken arms, a document in his wife's name from the [Hospital], [Town 5], dated 2067/[9] ([January] 2011) and a document with follow up dates of [three further date in] 2067 ([January] 2011 and [February] 2011). The applicant told the Department that Maoists from the Youth Communist League tortured and assaulted his wife when looking for him where she was living in [Town 5]. He said they broke both her arms and she went to hospital. He said that his daughter told him that his wife was in hospital about 10 days after it happened and he found out what happened from ringing other relatives. When asked when it occurred, the applicant at first pointed to the dates on the documents and then said it occurred four or five months before the interview [in] November 2011 (July/August). The information he gave at hearing is inconsistent with this information, in that at first he said this incident occurred in 2010 and then said it occurred on 2067/[9] ([January] 2011). At first the applicant told the Tribunal that he heard about what had happened from his neighbours and then said that his daughter told him and he contacted the hospital, and this is where he found out the date of the incident.
90. The applicant's explanation for the inconsistencies in his evidence is that he gave his information to the Department without any evidence, although he submitted two photos, and he was mentally disturbed because of his wife's torture. In the Tribunal's view, his explanation is inconsistent with his claim at hearing that he could recall the precise date the incident occurred. When the Tribunal noted that he did not know the date when interviewed by the Department and had given two different time frames, his only explanation was that it may have been due to him giving the dates in English or because he only had the photographs at interview, the dates were not precise as he was still waiting on some documents.
91. At interview when asked whether his wife went to the police following the assault, the applicant said she did not because the Maoists threatened to kidnap the children if she did. However, the applicant submitted a document he claims is from the Sub-inspector of police at the Area Police, [Town 5], dated [in] January 2012, in relation to the incident [in] January 2011. It details that [wife's name deleted: s.431(2)] was beaten by a group looking for him accusing him of breaching confidentiality when working as a state informer. It also details that [wife's name deleted: s.431(2)] both hands were fractured. In the statement to the

Tribunal he confirmed that this is the police report about the incident involving his wife. The police report is evidence of his wife having made a complaint to the police following the assault, whereas in the interview with the Department he said that she did not report the incident to the police.

92. The applicant's explanation is that his wife didn't disclose the incident to the police because the Maoists had threatened his family with harm if she did so but because the Tribunal kept asking for evidence of the incident, he asked his wife for evidence of the police complaint. The Tribunal is concerned about this explanation. Firstly, the applicant provided the document he claims is a report from the police before the interview with the Tribunal. Secondly, it indicates that either his wife did go to the police, and he asked her for evidence of having done so, or he asked her to report the incident to the police 12 months after it occurred when he claims the Maoists had threatened to kidnap his children if she did so.
93. In the Tribunal's view, the inconsistencies in the applicant's evidence about this claimed assault on his wife are such that it does not consider his evidence truthful. As such, the Tribunal does not accept that Maoists assaulted the applicant's wife in 2010 or 2011 when looking for him. Whilst the Tribunal accepts that the applicant's wife may have sustained an injury, it does not accept it was for the reason claimed. Having not accepted that the applicant's wife was assaulted as claimed, the Tribunal gives no weight to the police report dated [in] January 2012.
94. The applicant has been inconsistent in his evidence about his contact with his family and where he lived in Nepal as follows:
 - At interview the applicant confirmed that he had been in contact with his family since 2004, which is inconsistent with the evidence in the statement submitted with his protection visa application where he claimed that he had not been able to meet his family since [a date in] April 2004.
 - He claimed at interview that he did not live in [District 1] from April 2004, whereas in the protection visa application he detailed that he lived at the one address in [District 1] from [birth] to August 2008.
 - He claimed at interview that he moved around after the 2004 incident, depending on where he was sent for work. However, he submitted a certificate of honour dated [in] February 2008 presented to him from the [Village 6] Secondary School in [District 1] for his invaluable contribution to the institutional development of the school by being a social servant. This certificate, indicates that he did not move around as claimed and was living in [District 1] in February 2008, which is consistent with the information he provided in the protection visa application.
 - Documents submitted with the student visa application indicate that the applicant was residing in [District 1] in 2008, which is inconsistent with his claim that he did not live in [District 1] from April 2004. These documents include the document dated [in] May 2008 issued by Police Headquarters, the Certificate of Marriage and the applicant's Medical examination for an Australian visa form, which he signed [in] June 2008.
95. The applicant's explanation is that the contact with his family mentioned at interview happened in secret and were of short duration with his wife only. He stated that when he put

in his written statement that he was not able to meet his family, he meant it in the sense that he was not able to meet them openly and spend time with them. The Tribunal doesn't accept this explanation, particularly as he appears to be saying that he met his wife only, whereas at interview with the Department he indicated he met with his family.

96. In terms of where he lived in Nepal, the applicant said that he left [Village 6] in 2004, although all his identity documents relate to that village. He stated he was not living in [Village 6] in 2008 when he received the certificate and the documents were based on his identity documents, which are all from [Village 6], [District 1]. He stated that the certificate was given to him by the school on the basis of his contribution when he lived there. The Tribunal does not accept the applicant's explanation, particularly given the wording of the certificate of honour and its date.
97. The applicant's evidence about his employment in Nepal has also been inconsistent with him detailing in his protection visa application that he worked for the National Investigation Department from April 1998 to August 2008, whereas he told the Tribunal at hearing that he didn't work for the Department after the Maoists won the election. When the Tribunal noted the inconsistency, the applicant at first said that he didn't know why there would be such a discrepancy and then said he didn't resign from work due to insecurity and fear. As put to the applicant at hearing, the Tribunal is also concerned that the applicant's passport, which was issued in 2006, about 2 years after he claimed his house was burnt and about 2 years before he came to Australia, details his occupation as being a cook. The applicant told the Tribunal that he couldn't declare his real occupation due to security but didn't provide an explanation for only obtaining the passport in 2006 but then not leaving Nepal until 2008.
98. The Tribunal is of the view that the applicant's delay of more than two years before making his protection visa application after arriving in Australia is adverse to his claim that he left Nepal for reasons of persecution. The Tribunal does not accept that the applicant would not have taken some steps to seek protection in Australia soon after his arrival in Australia had he genuinely been targeted by the Maoists and people associated with them over a period of years as claimed, particularly as he came to Australia as the holder of a temporary student visa on the basis of being a fake dependent of the primary visa holder. As noted the applicant's evidence about the reason for the delay has been inconsistent. As Heerey J noted in *Selvadurai v Minister for Immigration and Ethnic Affairs* (1994) 34 ALD 347, it is legitimate to take into account an applicant's delay in lodging an application for a protection visa in assessing the genuineness, or at least the depth, of the applicant's claimed fear of persecution. In the Tribunal's view, the significant delay is not consistent with the applicant's claimed fear of harm and indicates that he did not on arrival in Australia have a genuine fear of persecution if he were to return to Nepal.
99. Overall, when the Tribunal considers the omissions and inconsistencies in the applicant's evidence together with the delay in making the protection visa application, it not accept that he is a witness of truth and does not accept that he has provided a truthful account of his circumstances in Nepal, his reasons for leaving and his claimed fear of harm if he were to return. The Tribunal gives no weight to the certificate of honour and the letter from the police in [Town 5] and little weight to the documents submitted from [the] Hospital, [Town 5] and the photos submitted to the Department (see at para 93 above). The Tribunal does not accept that the applicant worked as an informant in Nepal or that he or his family were ever targeted or harmed by the Maoists or anyone associated with them as claimed for reason of him being an informant or for any other reason. The Tribunal does not accept that there is a real chance the applicant or his family would be harmed by Maoists or anyone associated

with them if he were to return to Nepal now or in the reasonably foreseeable future. The Tribunal also does not accept that there is a real chance that the applicant would suffer harm because of the security situation in Nepal.

100. As these are the only reasons he has claimed he will be harmed, the Tribunal is not satisfied that there is a real chance that the applicant will be targeted or harmed in any way by Maoists or people associated with them if he were to return to Nepal now or in the reasonably foreseeable future.
101. Having considered the applicant's claims singularly and cumulatively, the Tribunal finds that there is no real chance that the applicant will be persecuted for any Convention reason, or a combination of reasons, if he were to return to Nepal now or in the reasonably foreseeable future. The Tribunal finds that the applicant does not have a well-founded fear of persecution. Therefore he does not satisfy the requirements of s.36(2)(a) of the Act.

Complementary protection

102. The Tribunal has also considered the application of s.36(2)(aa) to the applicant's circumstances. On the basis of the applicant's passport, the Tribunal finds that Nepal would be the receiving country if the applicant were returned because he is a national of Nepal.
103. The applicant claims he is at risk of significant harm because he is perceived to have a different political opinion to those who harmed him in Nepal, being the Maoists and others associated with them. The applicant claims that the country information and his personal circumstances indicate that he faces a foreseeable, real and personal risk of torture if he returns to Nepal.
104. As set out above, the Tribunal does not accept that the applicant is a witness of truth. It does not accept that he has given a truthful account of his circumstances in Nepal, his reasons for leaving or his fear of harm if he were to return now. The Tribunal does not accept that the applicant or his family were harmed in any way by the Maoists or people associated with them. The Tribunal does not accept that there is a real risk that the applicant will be perceived by the Maoists or people associated with them as having a different political opinion. The Tribunal also does not accept on the evidence before it that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Nepal, there is a real risk that he will be arbitrarily deprived of his life, that the death penalty will be carried out on him, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment as defined. Accordingly, the Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's being removed from Australia to a receiving country, (Nepal), there is a real risk that he will suffer significant harm from the Maoists or people associated with them or because of the security situation in Nepal or for any other reason.
105. Having considered the applicant's claims singularly and cumulatively, the Tribunal finds that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to Nepal, there is a real risk that the applicant will suffer significant harm. The Tribunal therefore finds the applicant does not satisfy the criterion set out in s.36(2)(aa).

CONCLUSIONS

106. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
107. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).
108. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

109. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.