

1203560 [2012] RRTA 687 (8 August 2012)

DECISION RECORD

RRT CASE NUMBER: 1203560

DIAC REFERENCE(S): CLF2010/154342

COUNTRY OF REFERENCE: Serbia

TRIBUNAL MEMBER: Kira Raif

DATE: 8 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 Serbia, 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] November 2010.
3. The delegate refused to grant the visa [in] March 2012, 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 relating to the applicant. The Tribunal also has had regard to other material available to it from a range of sources.

Primary application

20. According to the primary application, the applicant is a male born in Bosnia and Herzegovina in [date deleted: s.431(2)]. He stated that he was orthodox. He is married and his spouse and two children remain in Serbia. The applicant claims to have completed twelve years of schooling and worked as a driver for various companies since [date deleted: s.431(2)]. He stated that he had travelled to the Eurozone due to his employment as a driver. The applicant provided with his application a copy of his passport, which shows that the applicant had been granted a Visitor visa [in] September 2010 and he entered Australia [in] November 2010.
21. The applicant provided the following information in response to questions on the application form:
 - a. He is seeking protection so that he does not have to go back to Serbia. He left that country because his political views had made him an outcast and a security risk in danger of being killed or seriously harmed by fellow Serbians.

- b. Additionally, the military and police would be unlikely to protect him. Because of his known political anti-government views, he is in grave danger of harm or being killed if he goes back to Serbia.
 - c. He is known about socially and to the military to be against the government policies. He was assaulted several times in Serbia by ordinary Serbian nationalists and by police for being vocal about these political views in public.
 - d. If he goes back, he will be an outcast in mortal danger. He will be security risk in danger of being killed or seriously harmed by fellow Serbian nationalists.
 - e. The military and the police would be unlikely to protect him. They may assist or turn a blind eye to any danger he may be in as his views as being pro-Muslim and Croatians. He had been previously assaulted by the army and police.
 - f. Because of his known political views, he is in grave danger of harm or being killed if he goes back to Serbia. He is known about socially and to the military to be against the government's policies. [It] will most definitely be unsafe until the establishment of a safe peace between Serbia and Kosovo.
 - g. He believes that by his going back to Serbia in today's political climate, he will be killed or seriously harmed deliberately due to his views and political opinion.
 - h. He would be killed or seriously harmed by Serbs who are anti-Croatian. Additionally, the military and police would be unlikely to protect him. They may possibly assist or turn a blind eye to any danger he may be in. The Secret Service is well known and notorious for their underhand illegal tactics and will harm him.
 - i. His political views, being extremely pro-Muslim and Croat have made him an outcast and a security risk in danger of being killed or seriously harmed by fellow Serbians.
 - j. He had been previously assaulted by the army and the police. He was assaulted several times by ordinary Serbs and police and military personnel for being vocal about these political views in public.
 - k. If sent back to Serbia, he is certain that he will suffer serious harm or other consequences, even death, as a result of the above as the authorities have already established state of animosity towards him as evidenced above.
22. The applicant attended an interview with the delegate [in] November 2011. The following is a summary of his evidence at the interview.
- a. The applicant confirmed that he travelled around Europe about a year before he migrated to Australia. He visited [a number of countries within Europe].
 - b. The delegate asked the applicant why he left Serbia. He said that he was scared for his life. He said that during the Milosevic regime they struggled for democracy and when the democratic government came to power, he hoped that democracy came to power but the Serbian ultra-nationalists came to power and opposed democratic changes. He was publicly involved in protests and publicly expressed support for other, non-Serbian nationalities. He started getting involved in public since 2002 or 2003.

- c. The delegate referred to the applicant's claim that the applicant's views were anti-government and asked him to explain what he meant by that. He said that he believes the ultra-nationalists have tentacles in the government and the government is not free from their influence. There are many instances where the government is unable to resist the ultra-nationalists, for example, this year the Gay Parade was cancelled. The delegate noted that the applicant also claims that his pro-Muslim views would put him at risk of harm. He said that in his country, whoever is not Serbian is not popular. He stands for equal rights for everyone and publicly supports those who claim that minorities should have equal rights. He was 'marked' by the ultra-nationalists who had threatened him. There was no concrete action taken by the police and the threats continued. The delegate asked the applicant when he was threatened. He said that the threats were constant and started around 2002 or 2003. He said that the ultra-nationalist groups threatened him by phone, came to his house to threaten him and also threatened him on the street.
- d. The delegate referred to the applicant's claim that he was assaulted by members of the police and the army. He said that a year before last there was a Gay Parade and there was a public gathering, so the nationalists could not harm him but on the way home he was walking with a gay friend and he was assaulted and injured. There were two police officers present when he was assaulted by the ultra-nationalists and they did nothing. He thinks they are connected. The delegate asked the applicant if he was ever assaulted by the police. He said that the police did not assault him but he believes there is a connection. The delegate asked the applicant if he was ever assaulted by the army. He said he was not. The delegate asked the applicant what injuries he had suffered. He said that his two teeth were broken and he was hit on his forehead.
- e. The delegate asked the applicant whether he had been assaulted by the nationalists on any occasions other than in 2009 after the Gay Parade. He said that because of that, he could not stay in one place and had to move from place to place. He lived at his sister's and other place. The delegate asked the applicant whether he had ever been assaulted again. He said there were no other assaults but he was threatened because they saw him as a traitor of Serbian people.
- f. The delegate referred to country information which indicated that people can express anti-government views freely and that there was no information suggesting there was any discrimination or persecution against people holding anti-government views. The applicant agreed that democratic government was elected but said that it is only on paper and in real life it is different.
- g. The delegate referred to the applicant's claim that his pro-Muslim views brought him into conflict while country information suggested that Islam was one of recognised religions and there was no country information to indicate that there was discrimination against Muslims or those holding pro-Muslim views. The applicant said that he has Muslim friends and one of them is a godfather and because of that he was threatened to be killed.
- h. The delegate noted that from December 2009 Serbian passport holders were given right of entry to European countries without a visa. The delegate asked the applicant why he did not go to one of the European countries to seek protection if he was concerned for his safety. The applicant said that he has relatives in Australia and he was told that he would be much safer in Australia. The delegate pointed out that if somebody is fearing

persecution in their country, it would be reasonable for them to seek protection from persecution at the first available opportunities and he had opportunities due to his past travel. The applicant did not comment.

- i. The delegate asked the applicant what would happen to him if he returned to Serbia. He said that there are constant threats from the nationalists towards him and he had to move from place to place. They heard that he was here and they continued to threaten him. A month ago 'his people' told him that he would not be alive if he comes back. If he goes back, he would be harmed by the nationalists because he publicly stated his support for other nationalities in Serbia.
 - j. The delegate asked the applicant whether he had ever been a member of any political party. He said that he was not. The delegate asked him where he had publicly stated his position. He said that every time there is a public rally or discussion or a gay parade but there are not many such gatherings. The delegate asked the applicant whether he had publicly spoken at such rallies. He said that he did not speak but he is in the front row of such rallies.
 - k. The delegate asked the applicant whether the authorities would protect him. He said that they cannot protect him because they are powerless. He had already contacted the police and government institutions when he was threatened but they had not done anything. The applicant said that people in the army do not support government policies in relation to Kosovo and he believes that big problems will occur and the war will be reignited.
23. [In] March 2012 the delegate decided to refuse to grant the visa to the applicant. The delegate noted the applicant's claim that the applicant was assaulted after the Gay Parade in 2009 but noted the media reporting that the parade was cancelled. The delegate noted that the applicant claims that his views would be known because he participated at various rallies but he also stated that there were not many such activities. The delegate was not satisfied that the applicant's views would be known to the authorities or nationalist groups. The delegate noted that since December 2009 Serbian passport holders had the right of visa-free entry to all EU countries yet the applicant did not take the earliest opportunity to travel to such country to seek protection, suggesting he had no genuine fear of harm. The delegate accepted that the applicant may hold anti-government, pro-Muslim or pro-Croatian views, but the delegate was not satisfied that these views had given him a profile that would bring him to adverse attention of Serbian authorities or nationalist groups. The delegate found that the applicant's reasons for wishing to remain in Australia were not Convention-related.

Application for review

24. The applicant sought review of the delegate's decision [in] March 2012. He provided to the Tribunal a copy of his primary application and of the primary decision record.
25. The applicant appeared before the Tribunal [in] August 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Serbian and English languages. The applicant was represented in relation to the review by his registered migration agent. The oral evidence before the Tribunal is summarised below.

26. The applicant confirmed that all information in his application was correct and accurate and that he was familiar with the content of his application. The applicant said that he did not wish to change anything in his application.
27. The applicant said that his wife and two children live in Belgrade in the same place where he lived before coming to Australia. He confirmed that his family continued to live in the same place where he lived before. The applicant said that his sister lives in Belgrade. His father passed away and his mother also lives in Belgrade. The applicant said that he has a distant relative in Australia.
28. The applicant said that before coming to Australia he worked as a driver at two different companies. He confirmed that he worked for his last company since 2003 until he came to Australia. The Tribunal asked the applicant whether he lived at the same address during that same period. He said that he lived privately in different places. He lived in another suburb in Belgrade. The Tribunal asked him why he lived there. He said that after the marriage they wanted to live on their own but when they had children, they wanted his mother in law to help. The Tribunal noted that in the application form he mentioned one address where he lived between 1996 and 2010. The applicant said that he was not registered at other addresses but he lived in other areas where he moved about 4-5 years ago. The applicant said that his wife lived with her mother while he lived at another address.
29. The Tribunal asked the applicant which countries he had visited before he came to Australia. The applicant said that because he was a driver, he did not live in other countries but he visited [a number of countries in Europe]. He said that he never lived in these countries but it was work-related. The Tribunal asked the applicant whether he had a right to enter and reside in any of these countries. He said that he did not. The Tribunal asked the applicant whether he needed a visa to enter any of these countries. The applicant said that they do not need a visa for travelling but he did not think he could stay there for longer than three months. The Tribunal informed the applicant that it would consider whether he had a right to enter and reside in another country. He said that he did not.
30. The Tribunal asked the applicant why he feared returning to his country. The applicant said that he is not a political figure but he was lobbying for Muslims, Croats and homosexuals to have equal rights in the country. The Tribunal asked the applicant how he was lobbying. He said that he was attending protests for equal treatment. He said that there are many nationalists where he lives. The Tribunal asked the applicant what form his lobbying took and whether he did anything other than attend protests. The applicant said that what he did is he went to protests and voiced his opinion openly and everyone knew what his opinion was and he was bashed a few times and that is why he was forced to leave his home. The Tribunal noted that he stated earlier that he left his home because he did not want to live with his mother in law after he got married. The applicant said that he lived at different addresses because of that reason as well. The nationalist group in Belgrade is quite powerful and as soon as they hear such views, they force people to leave the area.
31. The Tribunal again asked the applicant if he did any lobbying other than attending protests. The applicant said that he was not doing anything in particular, he was just voicing his opinion openly about the need for inclusion of other people as Serbia was becoming part of Europe. The Tribunal asked the applicant to confirm that he was not voicing his opinion in any way other than by participating in protests. The applicant said that he only participated in protests. He went to a couple of protests and they found out and in Serbia if they find he was supporting homosexual, he was as good as dead. The applicant confirmed that apart from

participating in protests, he was not doing anything else. He said that he had not voiced his opinion publicly and had not participated in any other action.

32. The Tribunal asked the applicant when he first started attending the protests. He said that when he first attended, he was bashed. The Tribunal asked the applicant when he first attended a protest. He said that he could not remember exactly but it was about 10 years ago. The police let them through and they bashed everyone. The Tribunal asked the applicant who he was referring to. The applicant said that there are nationalists that attend soccer matches. The Tribunal pointed out that the applicant was very vague in his claims. The Tribunal asked the applicant when the protest was held, who organised it, who was there and who bashed whom. The applicant said that it was a gay parade. He is not gay but he supports them. The Tribunal asked the applicant to provide details about this event. The applicant said that the police granted permission for the homosexuals to have the parade. The police let the people through and they started bashing everyone. There were a few thousand people there and they were soccer supporters.
33. The Tribunal asked the applicant whether everyone got bashed or whether he was targeted specifically. He said that he was not targeted but they came to bash the homosexuals and those in support of the homosexuals.
34. The Tribunal asked the applicant what happened after that. He said that people found out where he lived and started harassing him. The Tribunal again asked the applicant to provide details. The Tribunal asked the applicant who he was referring to and how they were harassing him. The applicant said that he did not hide his opinions and they know. The Tribunal asked him who 'they' were and what they did as a result. He said that he was referring to the nationalists. The applicant said that they are a strong group of nationalists. They were people from his area and knew where he lived. He was socialising with friends in the area and they knew. The Tribunal noted that he had no political profile and was not actively engaged in any activity and asked the applicant why anybody would be concerned about his opinion. The applicant said that this is Serbia.
35. The Tribunal asked the applicant how they came to harass him. He said that they were belittling him and threatening him. The Tribunal asked the applicant if he could be more specific. The applicant said that they were calling him a homosexual and if he went to a shop, he would be asked to leave. They threatened to break his bones and bash him or kill him. The Tribunal asked the applicant if they did anything against him. He said that they broke his teeth and bashed him. This happened in 2009. The Tribunal asked the applicant why they had been threatening him from 2002 but did nothing until 2009. The applicant said that when they found out that he was talking about this openly in public, they found out that he was speaking about this more publicly. The Tribunal notes that he claims that from 2002 he claims they threatened to kill him and asked him if anything happened to him from 2002 until 2009. The applicant said that they threatened him but did not harm him. The applicant said that other things happened, for example, they were kicking him out of places such as coffee shops and restaurants and calling him names. The Tribunal asked the applicant what soccer hoodlums had to do with coffee shops and restaurants. He said that most of them are nationalists.
36. The Tribunal noted that the applicant was extremely vague in his claims and the Tribunal had considerable difficulty accepting his evidence. The applicant said that he did not know what else to say.

37. The Tribunal noted that he claims that from 2002 he had been threatened and harassed. The Tribunal asked the applicant whether he reported the matter or how he dealt with it. The applicant said that he did report it but nothing happened. The Tribunal asked the applicant who he reported the incident to or whether he had any evidence of the report or names of the person he reported to. The applicant said that he did not have the name of the person and he did not have the evidence because he did not bring it. The Tribunal noted that he could not state which police station he made the report to, he could not state who he made the report to and he had no documentary evidence of the report even though it was common practice to issue a document once a police report is made. The Tribunal noted that it was hard to accept that he did make the report. The applicant said that he did not know what to say.
38. The Tribunal asked the applicant when he made the report. He said that he reported it when it started happening in 2009. The Tribunal noted that he claims it started in 2002. The applicant agreed. The Tribunal asked him why he waited 7 years to report the matter to the police. The applicant said that it was more serious in 2009. The Tribunal asked him whether being threatened with being killed and being kicked out of restaurants and coffee shops was not sufficiently serious. He said that there were little incidents before 2009 but as they got to know what he was saying and doing, it started being more serious. The Tribunal noted that he claims they knew what he was saying and doing since 2002. The applicant said that it was more serious later.
39. The Tribunal noted that he claims that he moved house partly because of the threats and asked him when he moved. The applicant said that he moved in 2008. The Tribunal noted that he thought that in 2008 the situation was sufficiently serious for him to move but not sufficiently serious for him to report it to the police. The applicant agreed. He said that he thought the situation would calm down once he moved.
40. The Tribunal asked the applicant whether anything else happened between 2002 and 2009. The applicant said that nothing happened apart from threats. The Tribunal noted that he was bashed in 2002, since then he was threatened and kicked out of coffee shops but nothing happened until 2009. The applicant said that he was not bashed in 2002, the first time was in 2009. The Tribunal noted that he claimed earlier that in 2002 he went to the gay parade and was bashed, while he now claims he was first bashed in 2009. The applicant said that in 2002 he was bashed with everyone else when he went to the gay parade but in 2009 he was specifically targeted because of what he was saying.
41. The Tribunal asked the applicant to talk about the 2009 incident. He said that he was in a coffee shop. They came in and called him to go outside. It was early evening and they were waiting around the corner and that is when it happened. The Tribunal asked him who he was referring to. The applicant said that he knew they were the nationalists when they came in. The Tribunal asked him why he went with them if he knew who they were. He said that they kicked him out of the coffee shop. The Tribunal asked him whether he was kicked out or whether they came in and asked him to go outside. The applicant said both. The Tribunal informed the applicant that it had considerable difficulties accepting his evidence.
42. The Tribunal asked the applicant when this happened. He said that he could not remember but it was March or April 2009. The Tribunal noted that he first claimed they came into the coffee shop and asked him to come out of the shop and he also claims that he was kicked out of the coffee shop. The applicant said that the local nationalists asked him to come out and then he got kicked out. They waited for him around the corner and punched him on the head and stomach, hurt him and ran away. He then went to report it but nothing happened. The

Tribunal asked the applicant if he went to report the matter and then went home and nothing happened. The applicant said that the police was supposed to do a line up but nothing happened. The Tribunal asked the applicant whether the nationalists saw him again. He said that they continued to call him names. He did not report it to the police because the police did not do anything the first time.

43. The Tribunal noted that if anyone had any intention of harming the applicant since 2002 when he started engaging in the protests and until 2010 when he left the country, they had plenty of opportunities to harm him. The applicant agreed.
44. The Tribunal asked the applicant whether there were any other serious incidents other than 2002 or 2009 bashings. He said that there was nothing else, only verbal threats.
45. The Tribunal asked the applicant if he had ever been bashed by the police or the army. He said that he was not. He was only bashed by the nationalists but never by the authorities. The Tribunal asked the applicant if he had any fear of harm from the army or the police. He said that he was "kind of" afraid because they did not react due to what happened to him, so they may be behind it. The Tribunal asked the applicant why he stated several times in his written statement that he was previously assaulted by the army and the police. He said that it was during the protests. The Tribunal noted that he was either assaulted by the army or the police or he had not been. He claimed in his oral evidence that he was not assaulted by army and the police while he refers to being assaulted several times by the army and the police in his written submission. The applicant said that it was only during the protest. The applicant said that he was only assaulted once and it was not the army. The Tribunal noted that in written evidence he claims it was several times, in his oral evidence he initially stated that it never happened and he now claims it was happened once by the police and not by the army. The applicant said that it was only the police during the protest and not the army and he cannot remember referring to the army. The Tribunal noted that he did expressly refer to the army and the police in his written statements. The Tribunal informed the applicant that it may find that he had not been truthful in his evidence. The applicant said that he was talking about what he had experienced.
46. The Tribunal asked the applicant to talk about the 2009 gay parade when he claims he was bashed. The applicant said that in 2009 the gay parade was fine and there were no incidents. The Tribunal noted that he claimed he was bashed during the 2009 gay parade. The applicant said that the security for the parade was fine. When the parade finished, there were people waiting around and harassing him verbally and he ran away and he was not bashed. The Tribunal noted that in his interview with the delegate he claimed that on the way home from the gay parade in 2009 he was bashed. The applicant said that it was not at the parade but on the way home. The Tribunal noted that he now claims he was not bashed but it was only verbal harassment. The applicant said he was not seriously bashed, only a few pushes. The Tribunal noted that he had initially claimed that he was not bashed at all and there was only verbal harassment and he ran away. He previously stated that he was bashed in 2009. He now claims there were only a few pushes but he was not bashed. The Tribunal asked which was the true version. The applicant said that it was not physical, only a minor hit and he ran away. The Tribunal asked the applicant why he would only mention the minor hit after the Tribunal reminded him of his claim that he was bashed after the parade. The applicant said that this is what happened. The Tribunal informed the applicant that it had considerable concerns about his evidence.

47. The Tribunal asked the applicant whether his written claim that he was bashed several times by the police and the nationalists was not true. He said that it was true with respect to the nationalist but he police bashed him only during the first protest.
48. The Tribunal asked the applicant how many times he had been bashed by the nationalists. He said that it was in 2009 and once in 2010. The Tribunal invited him to talk about the 2010 incident. The applicant said that when he left the bistro one day, he was hit. The Tribunal asked him when this happened. He said that it was summer, around June or July 2010. At first they taunted him and then hit him several times. The Tribunal asked the applicant why he failed to mention that in his application. He said that he was not sure if he mentioned that, maybe he did not. The Tribunal asked the applicant why he did not mention it. He said that maybe he did not remember it. The Tribunal asked the applicant how he could not remember being bashed. He said that maybe could not remember it at the time. The Tribunal noted that his application for the visa was made nine months ago and asked the applicant whether in the nine months he could not remember being bashed. He said that it is possible. The Tribunal suggested that it was highly unlikely.
49. The Tribunal asked the applicant whether the police was present when he was being bashed after the 2009 gay parade and whether the police intervened. The applicant said that the police was there but they did not do anything. The Tribunal asked him how many policemen were present. The applicant said that there was one police officer. The Tribunal asked him why he mentioned two police officers in his interview with the delegate. He said that he was not sure but there was at least one. The Tribunal again noted that he referred to two police officers being present in his interview. The applicant said that he could not remember but he knew there was one.
50. The Tribunal asked the applicant when the gay parade was held in 2009. He said that he could not remember but he thought it was early June. The Tribunal noted that this is the time when he claims he was bashed and ran away and asked him why he could not remember. The applicant said that he could not remember the dates. The Tribunal noted that the information before it indicated that the gay parade was to be held in September and not June and it was cancelled in 2009. The Tribunal asked him how he could have been bashed after participating in a gay parade which did not take place. The applicant said that there were two events. The first one was cancelled and there was a second parade. The Tribunal noted that if the one in September was cancelled, it was hard to see how the second one could be held in June after that. The applicant that he could not remember when it happened but he went to the second one.
51. The Tribunal noted that he had been threatened since 2002 and bashed twice. The Tribunal asked the applicant whether he moved away from Belgrade or take any action to reduce the risk. The applicant said that he did not move outside of Belgrade but he moved suburbs. The Tribunal noted that he claims he continued to be harassed after he moved suburbs and asked him why he would not move outside of Belgrade. He said that there is no work outside, so he had to stay.
52. The Tribunal asked the applicant if they continued to harass him after he moved. He agreed. The Tribunal asked the applicant why he felt the need to move if they continued to harass him and kick him out of restaurants and coffee shop. He said that he thought it would get better and he had friends living in these areas.

53. The Tribunal noted that he claims he had been harassed since 2002 yet he continued to stay in Serbia until 2010 and did not seek protection in any European country where he travelled. Instead, he travelled to Australia to seek protection. This may suggest that he did not experience the threats and the harm as he claims. The applicant said that he came to Australia to be with his relative until things die down. The Tribunal noted that he travelled all over Europe and did not seek protection [any other country] but returned home after every trip. The applicant said that he came here until things died down from the threats. Here he realised that everyone was treated fairly and rights are protected. The Tribunal again noted that he claims to have been harassed for ten years and to be worried about his safety, yet he had made no attempt to seek protection in any other country where he travelled and he continued to stay in his country for a further ten years. The applicant said that he did not have any relatives in Europe. He came here to get away to get from it all. His intention was not to stay here but he saw people had rights here and his relatives helped him out. Instead of going back he wanted to apply for protection. If not granted the visa, he has no choice but to go back. The Tribunal pointed out that if he was fearful of serious harm, he would have taken the first opportunity to seek protection and most of the countries where he travelled in the past had protection regimes. The applicant said that he did not. The Tribunal noted that the fact that he did not may suggest that he did not have a genuine fear of serious harm or significant harm and had not been truthful in his evidence. The applicant said that it is dangerous for him. The Tribunal noted that if it was dangerous for him, he would not remain in the country for ten years, he would not return to his own home after every trip overseas. The applicant said that he was hoping things would change. The Tribunal asked if he hoped things would change for ten years. He agreed. The Tribunal informed the applicant that it had some concerns about the truthfulness of his evidence.
54. The Tribunal noted that the country information also indicated that there is freedom of expression and that people do get protection from the authorities. The applicant said that this is what is reported on the internet and is not the reality.
55. The Tribunal asked the applicant if he thought he could avoid these problems if he moved away from Belgrade. The applicant said that he had nowhere else to live, he has no house and there are jobs outside of Belgrade. The Tribunal asked the applicant what work he was doing in Australia. He said that he has not been working and his relative is supporting him. The Tribunal asked him if his relative could also support him if he moved outside of Belgrade and could not find a job. He said that he did not think so. The Tribunal asked him why his relative would help him here but not outside of Belgrade. The applicant said that his relative only helps him temporarily but he does not want anyone to support him.
56. The Tribunal asked the applicant if he wished to add anything that may satisfy the Tribunal that he would suffer serious harm or significant harm if he returned to his country. The applicant said that he wished he had more evidence. He is not a political figure. In Serbia, if one is not a nationalist and has different opinion, that is what happens. He cannot prove it. The Tribunal again noted its concerns that the applicant's evidence was extremely vague and inconsistent and asked him if he wished to comment on these concerns. The applicant said that he had nothing else to add. The applicant said that he cannot live in a place where there is discrimination. The Tribunal pointed out that he continued to live there for the past ten years. The applicant said that this is the situation there but he cannot prove it.

FINDINGS AND REASONS

57. The applicant travelled to Australia on a Serbian passport and claims to be a national of Serbia. The Tribunal accepts that the applicant is a national of Serbia and has assessed his claims against Serbia as his country of nationality.
58. The Tribunal found the applicant to be completely lacking credibility. His claims were very vague. He was unable to provide any details about the events which he claims to have experienced, such as dates, locations or circumstances. In the Tribunal's view, if the applicant did experience these events, as claimed, he would have been able to offer considerably more details about them. The Tribunal also found that the applicant's evidence changed and shifted in response to the Tribunal's concerns and there were significant discrepancies in his evidence. The Tribunal's concerns are noted below.
- a. The applicant claimed in oral evidence that he moved addresses to avoid harm. In his application form, the applicant gave one address where he lived from 1996 until his departure from Serbia. The applicant informed the Tribunal that he was not registered at other addresses but the application form is not limited to registered addresses.

When asked why he moved, the applicant informed the Tribunal that after the marriage he and his wife wanted to live separately but after the children were born, they needed help from his mother in law. This suggests that if the applicant did change addresses, he did so because he wanted to live independently with his wife and not for any security reasons.

Further, the applicant claims that even after he changed addresses, he continued to be harassed. He could not explain to the Tribunal why he felt the need to change addresses if his whereabouts were known to the nationalists and if the harassment did not stop.

- b. The applicant claims to have been 'lobbying' for his views, yet when asked to describe what form his lobbying took, he referred to attending protests and stated that he had not engaged in any other activities. It remains unclear to the Tribunal how participation in large scale protests could be construed as 'lobbying'.
- c. In his oral evidence to the Tribunal, the applicant initially claimed that he first participated in a protest in support of homosexuals around 2002. He claims that the police let through the soccer hooligans who bashed the protesters. The applicant suggested that he was bashed by the hooligans. However, in his later evidence he claimed that this was the only occasion when he was bashed by the police. In the Tribunal's view, the applicant should have been able to make the distinction between being bashed by the police or by the hooligans.

In his subsequent oral evidence the applicant stated that he was not bashed in 2002 and that he was first bashed in 2009. When the Tribunal reminded the applicant about his earlier claim that he was bashed during the 2002 gay parade, the applicant changed his evidence and stated that in 2002 everyone was bashed but in 2009 he was specifically targeted. This does not explain why he would claim that he was not bashed in 2002 and that the first time he was bashed was in 2009.

- d. The applicant repeatedly stated in his written submission that he was assaulted several times by the nationalists and by the police for expressing his views. He repeatedly stated that he was assaulted by the army and the police. In his oral evidence to the Tribunal he initially stated that he was not bashed by the army or the police, contrary to his written claims. When reminded about his written claims, the applicant changed his evidence and stated that he was bashed by the police once during the first protest and that he was never bashed by the army. That also contradicts his written claims that he was bashed by both the army and the police and that it happened several times.

Further, the applicant provided to the Tribunal a copy of the primary decision which outlines the applicant's oral evidence in his interview with the delegate. It indicates that in his interview the applicant informed the delegate that he had not been assaulted by the police or the army personnel That contradicts both his written evidence that he was bashed by both several times, and his oral evidence to the Tribunal that he was bashed by the police once.

- e. The applicant claims that the nationalists knew his views, knew where he lived and had been threatening to bash or kill him since about 2002, yet he claims that no action was taken against him until 2009. The applicant claims that he had been asked to leave restaurants or cafes but that appears to be inconsistent with the threats to kill him.
- f. The applicant informed the Tribunal that he made the report to the police. He had not provided evidence of a police report, although such evidence should have been available to him if he did make the complaint. He could not remember any details about the alleged report, including information as to when or to whom it was made. When asked when the police report was made, the applicant said that he made the report when it 'started' in 2009, which contradicts his claims that he had been harassed and threatened since 2002. The applicant suggested that it became more serious in 2009, which does not accord with his claim that since 2002 he was threatened with being bashed or killed.
- g. The applicant claims that he moved house in 2008 to avoid the threats. He has not explained to the satisfaction of the Tribunal why he believed in 2008 the situation was sufficiently serious for him to move house, but not sufficiently serious to make a complaint to the police.
- h. In his oral evidence to the Tribunal the applicant claims that he was first bashed in 2009 when he was in a coffee shop. He claims, alternately, that he was kicked out of the coffee shop and also that the nationalists came into the coffee shop and asked him to go outside and then bashed him. He could not recall when this incident occurred and was very vague in his description of it.
- i. The Tribunal considers it implausible that the nationalists or anybody else would continuously threaten to harm or even kill the applicant since 2002, yet take no action against him until at least 2009, despite the fact that they knew the applicant's whereabouts and, he claims, he continued to express his views.
- j. When asked by the Tribunal if there were any other incidents other than 2002 and 2009 bashings, he said that there were no incidents, only verbal threats. In his interview with the delegate, the applicant also stated that he was only assaulted by the

nationalists once after the 2009 gay parade and that he received threats on other occasions but there were no other assaults. (This is evidence from the primary decision record, a copy of which the applicant provided to the Tribunal.) However, in his subsequent oral evidence to the Tribunal, the applicant referred to another incident in 2010 when he was assaulted. This contradicts his oral evidence to the Tribunal in which he claims there were only two assaults in 2002 and 2009 and no other assaults, as well as his evidence to the delegate in which he referred to one incident in 2009 and no other incidents.

- k. When asked to talk about the 2009 gay parade, the applicant claimed in his oral evidence to the Tribunal that the security at the parade was fine and after the parade he was verbally harassed but he ran away and was not bashed. The applicant's oral evidence to the delegate (which is recorded in the primary decision record) was that he was attacked by the nationalists after the gay parade. When the Tribunal pointed out this inconsistency to the applicant, he stated that he was not bashed but only pushed lightly, which contradicts his earlier oral claim that nothing happened during or after the gay parade, other than verbal harassment. It also contradicts his claim to the delegate that he was attacked by the nationalists.
- l. Further, in his earlier oral evidence to the Tribunal, the applicant claimed that he was bashed in 2009 and his teeth were broken. He claims there was only one incident of physical assault in 2009, so if he was referring to the incident after the gay parade when he was assaulted and his teeth were broken, it is inconceivable that the applicant would refer to that incident as a minor one when he was pushed a little and ran away and nothing happened.
- m. When asked by the Tribunal how many times he was bashed by the nationalists, the applicant referred to the 2009 and 2010 incidents. The applicant gave no description of the second incident in his written claims. In his interview with the delegate the applicant was asked if he had been assaulted by the nationalists on any other occasion following the 2009 gay parade and the applicant stated that there were no assaults. (This is evident from the primary decision record.) The applicant's evidence to the Tribunal about the 2010 incident contradicts his claim to the delegate.

When asked why he made no mention of this incident in his written claims, the applicant said that maybe he did not remember this at the time. The Tribunal notes that more than eight months passed since the application was made. The Tribunal does not accept that the applicant could forget an incident in which he was bashed, particularly if he claims that he was only bashed on two or three occasions. The Tribunal does not accept that in more than eight months since the application was made, the applicant could not 'recall' being bashed.

- n. In his oral evidence to the Tribunal, the applicant claims that when he was bashed after the gay parade in 2009, one police officer was present. The primary decision record indicates that in his interview with the delegate, the applicant is recorded to have stated that there were two police officers present. When this inconsistency was pointed to him, the applicant said that he could not remember but there was at least one police officer. This does not explain why he initially appeared to be certain in his oral evidence to the Tribunal that there was one police officer and in his oral evidence to the delegate that there were two.

59. The Tribunal is also most concerned that the applicant had taken no steps to avoid harm since the claimed harassment started in 2002. He had not moved to another city, claiming that there were no employment opportunities and while he claims to have moved to another area of Belgrade, he also claims that the nationalists knew his whereabouts and continued to harass him. He has not indicated that he attempted, but could not find a job outside of Belgrade rather it appears that he made no attempt to move at all. Equally significantly, the applicant informed the Tribunal that he had travelled to several countries as part of his employment, including several European countries where he could have sought protection. He had not done so, instead returning to his home after each trip. In the Tribunal's view, if a person is experiencing ongoing harassment and threats and if a person is fearful as a result, that person will take the first available opportunity to remove himself from such harm and to seek protection. The fact that the applicant had not done so for close to ten years suggests to the Tribunal that the applicant had not been truthful in his claim about the harassment, threats and bashings that he claims to have experienced.
60. The Tribunal finds these inconsistencies and deficiencies significant and the combination of these to be fatal to the applicant's credibility. The Tribunal has formed the view that the applicant had been entirely untruthful in his evidence and that he had fabricated his claims for the purpose of his protection application. The Tribunal does not accept the applicant's claims. The Tribunal does not accept that the applicant participated in demonstrations, rallies, protests or gay parades. The Tribunal does not accept that he had otherwise publicly expressed his views and opinions, whether pro-Croat, pro-Muslim, pro-ethnic and religious minorities, pro-gay, anti-government or any other. The Tribunal does not accept that the applicant's political views and support for various groups were known to the nationalists, the government, the secret service or to anybody else or that the applicant was of adverse interest to anyone as a result of such views. The Tribunal does not accept that the applicant had been targeted either by the nationalists or by the police and the army, or by anybody else. The Tribunal does not accept that the applicant was bashed in 2002, 2009, 2010 or on any other occasion. The Tribunal does not accept that the applicant had ever received any threats or that he was verbally harassed, 'kicked out' from restaurants and cafes or that he was otherwise harmed in any way. The Tribunal does not accept that the applicant moved residence to avoid such harm. The Tribunal does not accept that the applicant made a complaint to the police but no investigation was carried out and the Tribunal also does not accept that the police refused to intervene in any incident. The Tribunal rejects the entirety of the applicant's claims because the Tribunal is of the view that the entirety of the claims had been fabricated.
61. The Tribunal finds that the applicant will not be of any adverse interest to anybody if he returns to Serbia. 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 Serbia now or in the reasonably foreseeable future. The Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention reason. The Tribunal finds that the applicant does not meet the refugee criterion in s. 36(2)(a).
62. Having rejected the entirety of the applicant's claims for the reasons stated above, the Tribunal also finds that there are no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country (Serbia), there is a real risk that he will suffer significant harm. The Tribunal finds that the applicant does not meet the complementary protection criterion in s.36(2)(aa).

CONCLUSIONS

63. 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).
64. 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).
65. 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

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