

1002606 [2010] RRTA 484 (16 June 2010)

DECISION RECORD

RRT CASE NUMBER: 1002606

DIAC REFERENCE(S): CLF2009/164734

COUNTRY OF REFERENCE: Cambodia

TRIBUNAL MEMBER: Mary Urquhart

DATE: 16 June 2010

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 and Citizenship 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 Cambodia arrived in Australia [in] January 2003 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] December 2009. The delegate decided to refuse to grant the visa [in] March 2010 and notified the applicant of the decision and her review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] April 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. 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. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act 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 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. 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.

10. 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 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. 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.
16. 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 persecution 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.

17. 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.
18. 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.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file 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. The Department file reveals that the applicant is [age deleted: s.431(2)] female from [Province 1], Cambodia She arrived in Australia [in] January 2003 as the holder of a Class TR subclass 676 Tourist visa which was in effect until [a date in] February 2003. The applicant remained in Australia as an unlawful non-citizen before lodging the current application for a Protection visa [in] December 2009.
21. In 2005 the applicant commenced a de facto relationship with [Mr A], an Australian citizen. They are currently expecting their first child.
22. The applicant was interviewed by the Department [in] January 2010 and reiterated her original claims. She added that her first partner, [Mr B], had arranged for her to come to Australia so that his first wife could not harm her.
23. The delegate refused the applicant a protection visa because although she accepted that the applicant belonged to a particular social group comprising "Cambodian women and or second wives in Cambodia " she found the applicant's responses were not sufficiently detailed or convincing to lead the delegate to accept that the applicant was being entirely truthful.
24. Documentation in support of the application includes the following:

- A statutory declaration by the applicant, [name deleted: s.431(2)] as follows:

"I am applying for a protection visa because I believe that my life is danger if I am forced to return to Cambodia. There will be also a risk to my pregnancy. I would like to submit the following list of supporting evidence and explanations for my protection visa application. I am also enclosing supporting evidence with this statutory declaration.

My first partner, [Mr B] in Cambodia obtained a visiting visa subclass 676 in Phnom Penh, Cambodia, and my application was granted on [date] December 2002 with condition 8503, No Further Stay. [Mr B] also obtained a visiting visa, and he and I supposed to travel to Australia together, but at the last minutes, he told me he could not as he was busy with [work]. So I travelled by myself to Australia on [date] January 2003.

My relationship with [Mr B] was a bad one. I had been deceived. I realised he had exploited me as a woman because he is a powerful man in Cambodia. [Details

deleted: s.431(2)] He used his power to take advantage of me and lured me into the relationship.

[Mr B] did not tell me of his previous relationship and any children, nor did I know that he has a wife and children. I had been a prisoner of [Mr B]. I had not been allowed to socialise with him or accompany him in any of his public functions. I have not been allowed to see his family and relatives. He deprived my freedom and liberty.

Later I discovered that he had another wife before and children. From then our relationship was deteriorated, and my life was in danger. [Mr B]'s first wife threatened to throw acid at me and kill me if I continue the relationship with [Mr B]. While I tried everything in my control explaining to [Mr B] that the relationship could not be continued in the situation, he still came to me, and I could not refuse him, or tell him to go away as I explained above he is a powerful man. When I refused, he hurt me and threatened me with pointing his gun at my head. I could only beg him, but he insisted. I had to please him.

[Mr B] has warned me of domestic violence. His first wife had followed him and wanted to find out where I was. He also told me to avoid confrontation with his first wife.

[Mr B] also told me that I should be 'careful'. His first wife may throw acid at me. I believe he realised by then that my life was in danger.

I was so scared, and I asked him to get away from Cambodia to Australia. [Mr B] organised a visa to travel to Australia as he gave reasons that he could not provide me any further protection.

I have seen many Cambodian women in similar situations of mine whom they become the acid victims. I have seen in Cambodian Newspapers and Magazines about the acid attacks such as Marina Tat, Chinda Khiev and Rasmey Som.

After arriving in Melbourne, I was on my own and could not get any help about my visa. Since that time, I have remained unlawfully in Australia.

About two years later, I met [Mr A] who has been nice to me and understanding of my situations. He and I went out together, and then we decided to live together on [date] May 2005.

[Mr A] is an Australian citizen. He is a refugee from [Country 1] background. He and I have lived in a De facto relationship for almost five years, and I am now pregnant. I enclosed the Medical Certificate my pregnancy for evidence.

I have no parents; they both deceased. However, I have two siblings [names] living in Cambodia (for their safety reason, I requested that their names and location not to be disclosed as the last time when I asked my sister [name] to request [Mr B] my personal belonging, he threatened my sister and pointed his gun to her head. He also wanted to know my address in Australia).

I cannot return to Cambodia. I fear for reasons of being persecution and torture from [Mr B] and his first wife. I cannot expect the police or other authorities in Cambodia to protect me. I know from my own knowledge that domestic violence against women by their partners and former partners in Cambodia is very common.

Women in particular the second wives are expected to put up with their partner's domestic violence. The judicial system is not independent. The police and courts are often corrupted. There are many reports of my social group of women who have similar situation of mine have been suffering from violence and acid attacks. Some women have disappeared without a trace. The Cambodian authorities are unwilling and/or unable to provide protection to this social group of women because due to Cambodian culture and tradition. There is no law enforcement agency will take action against powerful people.

As I declared above, I have a de facto relationship with [Mr A] for almost five years. He loves me and I love him, and we are expecting a child from this relationship. We are happy awaiting a child. We have wanted a child for a long time, but I could not conceive it before.

My Doctor advised me that a woman of my age was hard to get pregnant, and my pregnancy required special medical attention. Further, I am advised there is a significant risk of my pregnancy if I am forced to leave Australia.

There are overwhelming supporting evidence of our spousal genuine relationship. If require, I would be happy to provide more evidence. For this reason as well, I believe there is a compelling reason and compassionate ground for me to be in Australia to monitor my pregnancy and with my partner.

Therefore, I sincerely hope that you will give due consideration to my request that asylum be granted to me because I cannot travel back to Cambodia, and my pregnancy required special medical attention in Australia”.

- A statutory declaration by the applicant’s de facto partner [Mr A] which states:

“I, [name] of [address], Victoria, do solemnly and sincerely declare that

I support my partner, [the applicant], for protection visa application because she fears that her life is danger if she is forced to return to Cambodia. There will be also a risk to her pregnancy if she is forced to leave Australia.

[The applicant] explain to me that she had suffered domestic violence from her previous relationship. She had been exploited by her first partner, [Mr B] in Cambodia, and she had been intimidated by his first wife and threatened to throw acid at her and to kill her.

[Mr B] did not tell her of his previous relationship and any children, nor did she know that about his first wife and children. He exploited [the applicant] by using his power in Cambodian.

[The applicant] told me of domestic violence among her former husband and [Mr B]’s first wife. [The applicant] was so scared, and she had to escape from the dangerous situations. She travelled to Australia on [date] January 2003.

About five years ago, I met [the applicant] and we went out together and then we decided to live together on [date] May 2005.

I am an Australian citizen, and I am a refugee from [Country 1] background. I have lived in a de facto relationship with [the applicant] almost five years, and she is now pregnant from our relationship.

[The applicant] cannot return to Cambodia as she fears for reasons of being persecution and torture from people of her previous relationship.

I do not my wife to travel to Cambodia as the risk is too high for her and of her pregnancy. I cannot travel to Cambodia nor could I take her to [Country 1] either.

There are overwhelming supporting evidence of our spousal genuine relationship and for this reason as well, we believe there is a compelling reason and compassionate ground for my partner to be granted asylum.

Therefore, we sincerely hope that you will give due consideration to our request of Australia's protection".

- A Statutory declaration by [Mr C] dated [in] May 2010.
25. The applicant's representative submitted a detailed and extensive submission stating "explanations and arguments" that [the applicant] was discriminated against because of her social group of Cambodian women and/or second partner. The representative referred to numerous news articles about discrimination against women, domestic violence and acid throwing in Cambodia. The representative submitted that the applicant was a victim of domestic violence from her first partner, [Mr B], and his first wife. The representative submitted a number of Human rights reports and set out examples of acid throwing cases:
- Evidence of Cambodian women as a social group, suffering persecution in Cambodia including:
 - "The Vengeance Destroys Faces, and Souls, in Cambodia", The New York Times 22 July 2001;
 - Popular Singer Penha Pich Pov shot and critically injured (Cambodian Calling-Sunday, February 25, 2007.
 - Human Rights Watch: Cambodia: UN Oversight Needed to Address Ongoing Rights Violation.
 - Human Rights Watch: Universal Periodic Review Submission: Cambodia.
 - China: Forcibly Returned Uighur Asylum Seekers At Risk.
 - Amnesty International: Cambodia: Human Rights in Kingdom of Cambodia 2009; 2008 and 2007.
 - Evidence of Ms Rasmey Som who is the victim of acid attack and from the same social group of Cambodian women in Cambodia as the applicant.
 - The Popular Magazine No. 159 Issue 11-20 Feb 2001 Page 9 and 14-15- Cambodian language.
 - Photographic evident of Ms Chinda Khiev who is suffering from an acid attack in Cambodia, based on the Angkor Thom Magazine- Cambodian language.
 - Evidence of Ms Sreynick Touch who has been shot in Cambodia- Cambodian language.

Photograph and script evidence of Ms Pilika Piseth who has been murdered in Cambodia, The Popular Magazine No. 138 Issue 1-10 July 2000 Page 8-9 and 20- Cambodian language.

Photograph and script evidence of those people who are suffering from acid attacks in Cambodia. Those included Marina Tat and Rasmey Som in The Popular Magazine No.138 issue 1-10 July 2000 page 13-14- Cambodian language.

26. The submission sets out (inter alia) the following information:

“[Mr B] is a powerful man in Cambodia. Therefore the Cambodian authorities are unwilling and/or unable to protect the visa applicant, [name], from the risk of persecution that she faces as a woman. For these reasons of being fear of persecution, [the applicant] cannot return to Cambodia. If she were to return to Cambodia, she would be risk of serious violence by her former husband and his first wife, and she would not be afforded legal protection by the Cambodian government. The risk of her persecution is due to her membership of the particular social group fall squarely within the scope of a `real chance' of persecution, which is far from remote. According to the legal test with judicial authority is that whether there is `possibility' as opposed to `probability' of the future persecution.² [The applicant] is therefore required Australia's protection which is an obligation under the Refugees Convention.

[The applicant] was born in Phnom Penh, Cambodia. Both of her parents deceased. She has two siblings [names] living in Cambodia (for their safety reason, [the applicant] requested that their names and location not to be disclosed: as the last time when [the applicant] asked her sister, [name], to get her belongings from [Mr B], he threatened her sister and pointed his gun to her head. He also wanted to know [the applicant]'s address in Australia).

[The applicant] has a de facto partner, [Mr A] who was granted refugee status and who is now an Australian citizen; he was born in [Country 1]. They have an ongoing and long term de facto relationship, almost five years and [the applicant] is now pregnant.

[The applicant] was granted a visiting visa subclass 676 on [date] December 2002 in Phnom Penh, Cambodia. She entered Australia on [date] January 2003.

[The applicant] had previous relationship with [Mr B] who is a powerful man in Cambodia. [Details deleted: s.431(2)].

He used his power to take advantage of [the applicant] and lured her into the relationship. [Mr B] did not tell her of his previous relationship, nor did [the applicant] know that he has a wife before and children from previous relationship. [Mr B] had imprisoned [the applicant]. He would not allow [the applicant] to socialise with him or accompany him in any of his public functions. [Mr B] used [the applicant] as a sex slave.

When [the applicant] discovered that [Mr B] has another wife and children, she requested him to leave because she realised she would be in danger as triangle lovers often become very dangerous relationship, but he threatened her. [The applicant] tried everything in her control explaining to [Mr B] that the relationship could not be continued of the situations; he still came to her, and she could not refuse him, or escape, or tell him to go away as explained above he is a powerful man. When she refused, he hurt her and threatened her with pointing his gun at her head. She could only beg him. He insisted that she was better to please him, or she would end up in more trouble. As Filkins put it:

“... the country where rich and powerful man can force young women “to go with them”.... There are times when the young woman gives in to the persistence of rich, married man. Som Rasmey, the one who was nursing her baby when she was attached, said she was imprisoned in a small house when she tried to leave the military colonel”.

On the other hand, [Mr B]’s first wife also threatened her if [the applicant] continued the relationship with [Mr B]. She would throw acid at her, and made [the applicant] ‘looked like a monster’ [The applicant] received warning from [Mr B] of domestic violence. His first wife had followed him and wanted to find out where [the applicant] lived. He advised [the applicant] to avoid confrontation with his first wife. [Mr B] also told [the applicant] that she should be ‘careful’ His previous wife may throw acid at her. [The applicant] realised that her life was in danger. [Mr B] did not protect her. She was so scared, and she tried to get away from Cambodia. So [the applicant] travel to Australia to escape a danger of her life from her first partner, who kept coming to her and wanted the relationship that she did not want, and her partner’s first wife.

[The applicant] explained that she has seen many Cambodian women in similar situations of her whom they become the acid victims. She has read newspapers and Magazines about the acid victims such as Marina Tat and Rasmey Som. Ms Tat who is a victim of acid attack from her partner's first wife, Mrs Sophal Khoun. Ms Tat was 15 years old girl when she got involved in relationship with Mr Sitha Svay, the Council Ministers Undersecretary of State. This triangle lover story had circulated widely in Cambodian society, but the law enforcement agency did not take any action against the perpetrator.

The US Department of State reported in March 2007 that, “Government agents committed extrajudicial killings, and the security forces acted with impunity. There was little political will to address the failure by government authorities to adhere to the rule of law”. The report further stated, “Corruption was endemic and extended throughout all segments of society, including executive, legislative, and judicial branches of government”. The report highlighted that, “the judiciary was generally viewed as corrupt, political biased, and weak and persons seldom filed complaints because they did not trust the judicial system. The public was especially distrusting of the judiciary to act in a transparent manner when a case was in conflict with the government”.

The Representative refers to a report by Licadho (2003): Living in the shadows- Acid Attacks in Cambodia, published by Project Against Torture, stated:

“Most acid attacks are perpetrated because of family or personal relationship disputes or problems. The most common types of the attacks are wives throwing acid against their husbands' mistresses or second wives: to take revenge and destroy the appearance of the victims so that the husbands will not stay with them”.

[The applicant] has remained unlawfully in Australia since her visitor visa expired after arriving in Australia. About two years after arriving, she met [Mr A] who is an Australian citizen. He and [the applicant] went out together and then they decided to live together on [date] May 2005. [Mr A] and [the applicant] have lived in a de facto relationship for almost five years, and [the applicant] is now pregnant. For details, please refer to the Medical Certificate.

[The applicant] cannot return to Cambodia. She fears for reasons of persecution from [Mr B] and his first wife. She cannot expect the police or other authorities in Cambodia to protect her from her former partner and his first wife. She knows from

her own knowledge that domestic violence against women by their partners and former partners in Cambodia is very common. Women in particular the second wife are expected to put up with their partner's domestic violence. The judicial system is not independent. The police and courts are often corrupted. There are many reports of the social group of women who have similar situation of [the applicant] have been suffering from violence and became acid victims. Some women have disappeared without a trace.

The Cambodian authorities are not willing to provide protection to this social group of women because due to Cambodian culture and tradition.

We submit that country information indicates a social group of Cambodian women as a second partner has been discriminated against and the Cambodian authorities are not willing or inability to protect this social group of Cambodian women. We refer to the above reports.

In our submission, the country information is consistent with evidence of [the applicant]'s concerned that she was unable to receive protection from Cambodian authorities against her first partner and his first wife, and this supports [the applicant] the well found fear of protection and in the future. We submit that the above information proves that the law enforcement agency against the alleged perpetrators of violence against women is very weak, and the Cambodian government is unwilling or unable to protect [the applicant] from persecution that she fears at the hands of her first partner and his first wife.

Cambodian authorities continue to violate its obligations under the UN Refugee Convention returning people of being feared to Vietnam and China. They have threatened the ethnic of Khmer Krom, Cambodian Buddhist monks who distributed "bulletins advocating for the rights of Khmer Krom people".

The Special Representative for the Secretary General of UN, Yash Ghai, reported that "Cambodia still faces serious human rights challenges and 'deep-seated systematic deficiencies that the judiciary and other key institutions charged with upholding and protecting the rights of individuals'."

We submit that the persecution of the applicant by reason of her membership of the particular social group consisting of women in Cambodia and/or women have escaped the domestic violence. The putative social group satisfies all of the necessary legal elements to establish the existence of a particular social group for the purposes of the Refugees Convention.

We also argue that [the applicant]'s de facto relationship with [Mr A], who is a former refugee from [Country 1] and now an Australian citizen, for almost five years with expecting a child from their relationship, would support her claim for compelling and compassionate grounds.

[The applicant]'s Doctor advises that there is a high risk of her pregnancy if she was forced to travel overseas, and a woman of her age was hard to conceive a child.

By refusing [the applicant]'s application, it will simply put her pregnancy at risk and the risk of the whole family to return to Cambodia:

a) financial hardship,

b) Cambodian authority has a record of violating human rights as highlighted above; her partner could not speak Cambodian language.

Similarly it would be risky for [Mr A] to bring his partner to [Country 1].

In conclusion, we submit the above evidence, explanations and arguments that [the applicant] cannot return to Cambodia; she has a continuing well founded fear of persecution by her former partner and his first wife. Hence we submit that the applicant required Australia's protection under the Refugees Convention, and we request the delegate to give due consideration to this protection application”.

27. The applicant appeared before the Tribunal [in] May 2010 to give evidence and present arguments. The Tribunal also heard evidence from [Mr A] and [Mr C].
28. The Tribunal hearing was conducted with the assistance of interpreters in the Khmer, [language deleted: s.431(2)] and English languages.
29. The applicant was represented at the hearing in relation to the review by her registered migration agent.

Summary of Evidence at the Hearing

30. The applicant stated her full name and gave her date of birth as [date of birth deleted: s.431(2)]. She is not married, but in a de facto relationship with [Mr A]. It was her evidence that [Mr A] is younger than she is, having been born [date of birth deleted: s.431(2)].
31. The applicant first arrived in Australia [in] January 2003. She came on a visit for a holiday. It was her evidence that her then partner (who will be referred to as her “husband”) organised the paperwork for her visa.
32. The applicant told the Tribunal that her parents had passed away, but she has two sisters who are married and living in Cambodia. She has no family in Australia except her de facto [Mr A]. It was her evidence that their baby was due [in] 2010. The applicant produced medical evidence in support of the pregnancy and the expected birth date.
33. The applicant gave evidence that when she arrived in Australia the visa she had was only for a short stay, perhaps for some four weeks. It was her evidence that when it expired she “escaped to stay here” because she was frightened of going back to Cambodia. The Tribunal questioned the applicant as to why she did not go to the authorities at this time. She replied that sometime in 2009 before Christmas she met her representative and asked him for help. She told the Tribunal she had another friend who had been to this particular migration agent and he had helped them.
34. The Tribunal asked the applicant what she had done between 2003 and 2009 when she went to the representative and lodged her application. In response she told the Tribunal that she had a friend who had a house in [Location A] and asked her to go and stay there and that in return for housekeeping, cooking and work around the property, she was given full board. It was her evidence that she lived in the house with the friend who was the owner of the house and that she shared a room and that there were others in the house as well. The Tribunal questioned the applicant as to

how long she lived in the house. She replied over one year. She said she then met [Mr A]. She said she was not sure how many years that she was still in the house, but that [Mr A]. was there too. At this point the Tribunal raised with the applicant issues of credibility under s.424AA of the Act. The Tribunal put particulars of adverse information to the applicant which, in the Tribunal's view, were directly relevant to her credibility and explained that this may be the reason or part of the reason for the Tribunal affirming the decision under review. The Tribunal pointed out to her that in her answers to questions the Tribunal might think that she was being evasive and vague in relation to what she had done and who she had lived with in [Location A]. The Tribunal asked her again what year she first went to [Location A] and she replied 2004. The Tribunal asked her if she was in the same house and she replied she had now shifted to Melbourne. She said she came to Melbourne to look after her baby. She said she came when she first became pregnant and when she lodged her application and that this was in November 2009. She said she sometimes goes back to [Location A] and that she was last there in December 2009. She gave her current address as [address deleted: s.431(2)]. She told the Tribunal that this was a house owned by a friend; that she shared the house with her; and that her name was [Ms D]. It was her evidence that she had known [Ms D] for one year.

35. The Tribunal asked the applicant about her life before she left Cambodia. She said she had a friend who owned [Business A] and she worked there as a cleaner and then when she "got" her "husband" she stayed home, and that that was in the year 2002.
36. The Tribunal asked the applicant about her education, in particular if she had been to school. She said she had been to school. The Tribunal asked her how many years she was at school. She replied until Year 11. The Tribunal asked her how old she was when she left school. She replied she could not recall. The Tribunal asked her the name of the school she went to and she could not recall. The Tribunal asked if there were primary and secondary schools in Cambodia and she said there were. The Tribunal asked her how many years it took to complete secondary school. The applicant did not reply. The Tribunal asked the applicant how old she was when she started school and she said she couldn't recall. The Tribunal asked if she had any approximate idea of how old she was when she started school. She said she couldn't answer the question as she doesn't remember. The Tribunal pressed the questions asking her if she remembered how old she was when she finished school. In response she said she was over 10 years old. The Tribunal asked the applicant about the school system in Cambodia. She replied she couldn't answer the question because she couldn't remember at this stage. She said when she did remember she would let the Tribunal know. It was her evidence that after Pol Pot it was a bit hectic and so she couldn't remember details.
37. There was some discussion with the representative and the applicant in relation to schooling in Cambodia. The applicant then told the Tribunal that in Cambodia school begins at Year 12 and runs backwards. The Tribunal then put to the applicant that if she finished school in Year 11 she had only completed two years of schooling and she replied that was right and that during the time there were not many schools.
38. The Tribunal asked the applicant if she had done any work other than the work in her friend's [Business A] and she said no. She said she had lived with her sisters and helped them with housework. It was her evidence that she also sold things for her sister who had a small [Business B] which was operated from home.

39. The Tribunal asked the applicant if she was married and she replied that she had a boyfriend in Cambodia and that in Cambodia if you live together then you are called “husband and wife”. Although she said she was not married and she had never been married she was what is known as “a second wife”. She said that her “husband” [Mr B] was married to a first wife. She told the Tribunal he was still married to his first wife and he had lied to her about this. She had found out about the first wife; however her “husband” told her he loved his first wife and her at the same time.
40. It was the applicant’s evidence that because she found out that her “husband” already had a marriage she didn’t want him to stay with her, but he wouldn’t let her go. She begged him to let her go anywhere in order to stay away from him. It was against this background that he organised for her to come to Australia; however, he organised visas for both of them and told her he was coming with her. At the last minute he changed his mind and did not come with her. It was her evidence that he had a friend in Sydney who had helped by inviting them to visit.
41. The applicant told the Tribunal that the first wife did not want to share her husband with the applicant. The husband knew this and to protect her organised the trip to Australia. The applicant said that even though at the last minute her “husband” changed his mind, she came anyway. She did not know anyone in Australia, but asked some Cambodian people who were on her flight to assist her and she went with them to [suburb deleted: s.431(2)]. Before she went with these people she had expected to have been met at the airport by a friend of her husband, but no-one showed up. It was the applicant’s evidence that she has not had contact with her “husband” in Cambodia since she arrived in Australia.
42. The applicant told the Tribunal that the first wife would do things to frighten and scare her and warned her to stop having a relationship with her husband. She threatened that if the relationship continued she would kill the applicant. The applicant told the Tribunal that the first wife sent her bodyguard round to threaten her.
43. The applicant told the Tribunal that when she arrived in Australia she did try to phone the “husband” in Cambodia, but that he did not answer. She also asked her sister in Cambodia to ring him, but he did not answer her sister. She told the Tribunal she had had no contact with him since being in Australia, nor had she had any contact with the first wife since she had been here. She reiterated she was still frightened of the first wife. She said she had information from her sisters in Cambodia that the first wife hates her and wants to kill her and has frightened her sisters and their families to the extent that they have moved and she has not been able to contact them. She does not know where they are.
44. The applicant told the Tribunal that her “husband” threatened her sister who had been to see him to try and obtain some documents on behalf of the applicant. It was the applicant’s evidence he threatened her with a pistol because she would not tell him where she was in Australia. This incident occurred some two years ago.
45. The applicant told the Tribunal that her “husband” was a very important person in Cambodia and was [position deleted: s.431(2)]. She was not quite sure what this involved him in; however, because he had power she said he could do what he liked and he did.

46. The applicant then gave evidence of domestic violence, mistreatment and sexual abuse which she suffered as the second wife of her “husband” The abuse included engaging in unwanted sex and being slapped about at the same time. It was her evidence that she did not report him to the authorities, but that she had confided in friends about the mistreatment. It was her evidence that she would not go to the authorities because he has “high power” and in Cambodia she said it was very difficult if someone had high rank and high power because the authorities wouldn’t do anything.
47. The Tribunal asked the applicant why she did not seek protection straight away when she arrived in Australia. In response she said at the time she didn’t know how to apply and she thought if she told the authorities that she was in Australia and wanting to stay she would be deported back to the danger. The Tribunal asked if she had ever thought of approaching a women’s crises centre or similar organisation in Cambodia to help her. She replied she was even too scared to do this because if her “husband” knew he would do something very bad to her.
48. The Tribunal questioned the applicant about what she feared the first wife would do to her. She responded that she was scared of being killed and she was scared that the first wife would ask someone to harm her. The Tribunal asked what sort of harm she feared. She said first of all she feared there may be another bodyguard sent to frighten her. She then told the Tribunal that she was afraid that the first wife would organise for acid to be thrown at her. She told the Tribunal that this is something which happens to women in Cambodia. The Tribunal questioned her about acid throwing. She replied she knew about it from seeing it, reading about it and from the publicity about it.
49. The Tribunal asked the applicant what it meant to be “a second wife” She replied the second wife was a second woman. She said after the first wife when the husband needs to have sex he would come to the second wife, but would not stay. The Tribunal asked if she knew the word mistress and if it had the same meaning. She replied she did know the word mistress and that it was similar, but second wives were not legal and husbands did not stay regularly. She said there were many second wives in Cambodia because men have power to have second wives. It was her evidence that many of these second wives suffer acid being thrown on them by jealous women.
50. The Tribunal asked the applicant why, after the amount of time she had been in Australia and given that she had no contact with her “husband” or his first wife, she was still afraid that the first wife would harm her. She replied that her “husband” would still be looking for her. She said if the first wife thought that she was back in Cambodia she would be afraid that she would again take her husband and so she would be looking for her and looking to do some harm to her.
51. The Tribunal asked the applicant what her biggest fear was in returning to Cambodia. She said she was frightened of the first wife who would still be looking for her. She said as well she would be a single mother with a baby on her own and no financial support and no property. The Tribunal questioned her about relocation. It was her evidence that she would not be able to relocate. She said she had no-one to look after her baby and no job prospects. She said she would be without her partner and the baby would have no father.

52. [Mr A] gave evidence. He stated his full name and gave his date of birth as [date of birth deleted: s.431(2)]. He is an Australian citizen. He first came to Australia [in] 2001. He met the applicant in 2004 and in May 2005 they decided to live together. He said he moved to [Location A] around about Christmas 2005. He said he and the applicant were sharing a house in [Location A] with the owner of the house, a Cambodian woman. He said he was working part-time at [several locations deleted: s.431(2)]. It was his evidence that he was no longer living in [Location A], but that he was living with the applicant in [suburb deleted: s.431(2)] with a Cambodian woman, [name]. He told the Tribunal he was the father of the applicant's baby and he acknowledged that the applicant was an older woman. It was his evidence the baby was a boy and was due in [month deleted: s.431(2)]. He told the Tribunal that he was not working at the moment. He said he did go back to [Location A] from time to time and that he was back there [in] February this year, 2010. He had never been to Cambodia. He had never met the "husband" of the applicant.
53. It was Mr [A]'s evidence that he wanted the applicant to obtain a visa. He knew of her problems with her former "husband" and his first wife in Cambodia. He was very worried that if she went back there would be threats from them; that she would have no house; no job; and he was worried for his child as well. He said he could not go back to be with her. There were no jobs; he doesn't speak Cambodian; and he wants her to be here with him in Australia. It was his evidence that he is in receipt of a partnership pension. He told the Tribunal that he and the applicant communicate in English, neither of them speaking it particularly well. He acknowledged his statutory declaration in support of the application.
54. The witness [Mr C] gave evidence. He gave his birthday as [date of birth deleted: s.431(2)]. He first came to Australia in 2004. He said he was born in Cambodia and was still afraid of the authorities. [Details deleted: s.431(2)]. He knew the applicant through his wife. He had told the applicant about the representative who had helped him and his wife to regularise their immigration status. He and his wife introduced the applicant to her representative. He had submitted a statutory declaration which he said was true and correct and he adopted the contents of it. He told the Tribunal that the second wife of a powerful man was in a difficult position. He said powerful men can do anything. He said first wives are always jealous. He said if the applicant were to go back to Cambodia she was at risk of harm from the first wife, even though there have been a number of years since she lived there. He said in Cambodia powerful people could not be trusted. He told the Tribunal he was very frightened for her safety if she returned to Cambodia.
55. The applicant reiterated that as she was pregnant she could not go back to Cambodia and live apart from her partner. She said she was frightened for the future and scared of the first wife in Cambodia. She also told the Tribunal that at her interview she had been asked about her papers to come to Australia. It was her evidence that the application showed that she was a teacher. She said her "husband" had said that she was a teacher, but that she was not a teacher and she reiterated that she was scared to live anywhere in Cambodia. She apologised for the incorrect information.
56. The representative asked the Tribunal to acknowledge the applicant's apology in relation to the misleading information that she was a teacher. He asked the Tribunal to consider that a second wife was a social group; that the applicant was the victim of domestic violence from her "husband" and his first wife; that it was a very tense

situation at the time the applicant departed Cambodia; and that even her “husband” wanted to get her out of the dangerous situation. For that reason he applied for both visas; however, he then decided he wouldn’t travel with the applicant and in the circumstances the applicant took the opportunity to come to Australia. It was the representative’s submission that the applicant’s “husband” in Cambodia was trying to get her out and away from the first wife who was going to hurt her. It was for that reason he executed the plan for her to travel to Australia.

57. The representative referred to his submission and to the circumstances of [name deleted: s.431(2)] and his second wife. He explained that in Cambodia society sees [powerful men] as being unable to side with second wives because of the political situation. He said it is very difficult for mistresses to do anything to protect themselves or have any rights. He referred to issues in relation to women in the legal system in Cambodia. He referred to the United Nations reports and Human Rights reports in his submission, noting that they were as recent as 2009. He submitted that the legal system in Cambodia cannot be trusted because of corruption. He said it was reasonable to assume in the applicant’s case that she was still at risk if she returned and that the authorities would not be able to protect her safety. He submitted that as she was now pregnant with a new Australian partner she would face discrimination if she returned as a single mother; her partner couldn’t stay permanently which would make it difficult for their Australian child and the child’s mother. He submitted it would be hard for her to obtain any form of employment. She would suffer great financial hardship. She has no assets, no savings, no property and no parents. The applicant reiterated that he would be pleased if the Tribunal would also consider the compelling and compassionate circumstances of the case as well.

Country information

58. In assessing the applicant’s claims against the Convention grounds, the Tribunal considered information from a range of external sources regarding the situation for women in Cambodia in general, and second wives and victims of domestic violence in particular.

59. Rape

With regards to rape in Cambodia the 2009 US Department of State report on human rights practices in Cambodia indicates that:

The law prohibits rape and assault; nevertheless, local and international NGOs reported that violence against women, including domestic violence and rape, was common. Rape is a criminal offence and punishable by a prison sentence of between five and 10 years, according to the UNTAC law. A case of spousal rape could be prosecuted as "rape," "causing injury," or "indecent assault" under the UNTAC law. Under the 2005 domestic violence law, spousal rape may fall within the definition of domestic violence that includes "sexual aggression." Charges for spousal rape cases under the UNTAC law and the domestic violence law were rare. The domestic violence law criminalizes domestic violence but does not specifically set out penalties. However, the UNTAC law on battery and injury can be used to penalize domestic violence offences, with penalties ranging from two months' to five years' imprisonment.

According to one NGO, there were 431 cases of rape and 497 cases of domestic violence reported as of November; courts tried 71 of these cases. A different NGO

documented 127 cases of domestic violence affecting 131 victims in 14 provinces as of September. During the year the MOI's anti trafficking department investigated 355 cases of violence against women and children, resulting in the arrest of 394 perpetrators and rescue of 469 victims. Of the 355 cases, 249 were for rape and attempted rape. The MOI reported that three cases of rape resulted in the death of four victims. The number of cases likely underreported the scope of the problem, due to ineffective enforcement, inadequate crime statistics reporting, and the fact that women were afraid to make complaints against perpetrators. NGOs reported that enforcement of the domestic violence law was weak, authorities continued to avoid involvement in domestic disputes, and victims frequently were reluctant to pursue formal complaints.

A 19-year-old woman reportedly was raped in November by one police officer while another held her down. Police officials insisted that the perpetrators were sent to court for prosecution and that the court granted bail; court officials insisted that they received a file on the case, but not custody of the perpetrators, and that police released the perpetrators. The victim vanished after allegedly being paid one million riels (approximately \$250) in compensation. Prosecution stalled and the perpetrators remained free at year's end. The MOI did not respond to requests for clarification by members of the National Assembly.

In February the Council of Ministers approved a three-year plan to prevent violence against women. There was a launch event organized by the MOWA, the main entity charged with implementing the plan. Approximately 2,000 books containing the three-year plan were published and distributed to all 24 MOWA provincial offices, all other ministries, and some NGOs.

The constitution prohibits prostitution; however, there is no specific legislation against working in prostitution. Trafficking in women for the purpose of prostitution was a serious problem, despite laws against procuring and kidnapping for purposes of sexual exploitation.

There were reports that police sexually abused detained women suspected of prostitution and allowed newspapers to take photographs of them even though they were not charged with a crime. Despite increased crackdowns on brothel operators in Phnom Penh, prostitution and related trafficking persisted.

The National Centre for HIV/AIDS, Dermatology, and STDs reported there were approximately 3,000 women working as direct prostitutes and nearly 31,200 as indirect prostitutes through entertainment work. Some NGOs and club owners reported an increase in the number of women seeking employment in both direct prostitution and indirect sex services such as massage parlours and karaoke bars. Sex tourism was a problem, fuelled by pervasive poverty and the perception of impunity.

The labour law has provisions against sexual harassment in the workplace but does not specify penalties.

60. Violence against women: Acid attacks

A report published in May 2010 by the Cambodian Acid Survivors Charity (CASC) defines acid violence as "an attack against an individual in which [a corrosive substance] is employed as a weapon to cause severe burns" The report explains that over the last few years, the number of acid attacks in Cambodia has been increasing, particularly in 2010, although documentation of the precise number of attacks is difficult as many cases are unreported due to the victim's fear of reprisal. A BBC

News article dated 22 March 2010 similarly explains that acid attacks in Cambodia have increased in recent months, with the 11 acid attacks reported in January and February 2010 alone almost equalling the total number of attacks reported in 2009.

The CASC report indicates that the prevalence of acid attacks in Cambodia can be attributed in part to the high availability, low cost and unregulated use of acid, which is not categorised as a weapon under Cambodian law. Statistics provided in the report indicate that the overwhelming majority of acid attacks committed between 1985 and 2009 occurred in Kampong Cham province (located in the south-east of Cambodia), in which 96 out of 236 survivors reside, followed by Phnom Penh in which 38 survivors of attacks are identified (the report identifies 236 survivors from 216 acid attacks, with the location of the attacks displayed according to the number of survivors).

Although acid attacks are committed by both men and women, who are also in equal shares the victims of such attacks, women are more likely to be the perpetrators. Such attacks are often a result of personal and family disputes, and are sometimes motivated by jealousy or revenge for sexual infidelity. For example, where wives attack their husbands, their husband's mistresses or second wives; and mistresses attack the wives of their lovers. As a result, female victims of acid attacks are often viewed in their communities as being at fault for unfaithfulness.

The Cambodian government is currently drafting a new law regarding the use and management of acid, under which perpetrators of acid violence could receive 30 year to life sentences if the attack results in the victim being permanently disabled or killed; and two to five year jail terms and a fine of up to 10 million riel (US\$2,500) if a victim sustains minor injuries from an acid attack. Regulations on the use of acid include requirements on importers and distributors to carry identification showing that they are at least 20 years old, hold a licence for any transaction involving acid and keep detailed records of acid purchases. Failure to comply could result in distributors receiving fines and/or a loss of their licence to sell the chemical. The law also makes provisions for improved medical assistance and social integration for acid attack survivors. In addition, drafting committee deputy chairman Ouk Kimlek reportedly publicised the committee's plans to establish "an acid foundation to generate money from all sources and NGOs to help provide skills and capital for [survivors of acid attacks]" Although the committee responsible for drafting the law were due to meet at the end of May, they have not revealed a projected completion date

Human rights and victim support groups such as CASC are encouraged by the proposal, although stress the need for effective implementation and police enforcement once the law (comes in).

61. The Tribunal was referred to website information in relation to acid attacks on "second wives" by the applicant's representative. The Tribunal acknowledges there is much information available on this subject on the internet. Ka-set is an independent news website, updated daily with general information about Cambodia and Cambodians abroad. Ms Stephanie Gee writing about acid attacks for the website on 13 March 2009 presents the following information:

"Cambodia is amongst the countries where the highest numbers of acid attacks have been numbered. These aggressions, characterised by their unusual barbarity, mainly target young women, who are most of the time the victims of domestic violence or the vengeful anger of wives who will try to oust forever their youthful rival because they got themselves into a relationship with their husband. Generally speaking, the

authors of such attacks are identified but most of them manage to dodge justice. The issue was brought out in the open in December 1999 with the story of Tat Marina, a rising star in the Cambodian showbiz discovered in karaoke films, who was in turn doused with acid by the wife of a member of the government. Her tragic story was internationally acknowledged and is still heard today as shown by the preview screening of a documentary about her story, presented on Wednesday March 11th at the International Festival and Forum on Human Rights in Geneva.

“Finding Face”

As they were leading their own enquiry about acid attacks in Cambodia, the Americans Skye Fitzgerald and Patti Duncan took a particular interest in the case of Tat Marina, who now lives in exile in the United States where she obtained political asylum 2 months after having been reduced to a ghostly being. She is now living a life torn between fear and the exhausting healing of her scars. The authors of the documentary aimed at giving back a human face and dignity to the young woman, now unable to show any facial expression with her features despite the countless operations she went through. This explains the title of the documentary: “Finding Face” . For ten years, Marina has been silenced and justice has not been given to her.

Yesterday, the young and spruce teenager was featured in video-clips, all sweetness and light. Today, she says with certain sadness in her voice, that she “is not like others” and explains she wants to see the way forward and cling onto life for her son, born in America. To start with, the authors simply show a shadow, her outline, and eventually openly expose Marina’s disfigured face in front of the camera.

Tat Marina: from the nymphet to the ghost

Her story is unfortunately an ordinary one among many others. Born in a modest background, she sells shakes to help her family. All eyes are set on the pretty girl until that day when a man came to offer her a job in a karaoke bar intended for local jet-setters. She hesitates and finally accepts, convinced that she was going to be able to improve her family’s standard of living. It is in that same place that she got to know a Cambodian man who was a lot older than her and introduced himself as single and as a businessman from the States. Then aged 15 years-old, Marina believed him and was won over by his caring attentions and generous presents. But it was not long until she found out that her ever-so-perfect lover was but an under-secretary of State at the Cambodian government. On top of that, he was married, Marina’s sister recounts. She got scared and tried to escape from that relationship which had turned into a highly risky situation. But it was too late for her to back down. The man threatened to kill her or attack her family if she left him and showed her, by brute force, that she had no other choice but to remain his servile mistress.

In December 1999, as she was offering her nephew some lunch at the Olympic market in Phnom Penh, a mature woman suddenly grabbed her hair and pulled her. In a matter of seconds, Marina understood she was dealing with the wife of the lover she could not get rid of. The woman was furious and beat her up with the help of her nephews, until the final blow was struck: she doused a full bottle of acid on Marina’s head and chest. More than 43% of Marina’s body was burnt: her skin, her muscles and bones were ravaged. Miraculously, she survived her wounds and her brother, who lives in the United States, decided to take her with him and place her in a secure environment, for her to receive free quality treatment on American soil. Without any surprise, the under-secretary of State deterred Marina’s family from filing a complaint and indicated that such a decision might have terrible consequences, Marina’s brother says. The young woman’s family still lives in Cambodia.

Discredited victims

Marina openly shows her face but does not tell her story – or only by bits. Relatives, those who healed her and took care of her tell her story together with newspapers articles. Other Cambodian victims of acid attacks who stayed in the little Southeast Asian Kingdom tell their story in the documentary. “There is no rule of law here!”, one of them says. “Justice closed my case, why?”, another one says with anger.

Jason Barber, from the Cambodian NGO for the defence of Human rights LICADHO, explains that these girls, whose lives are forever shattered, do not get any sympathy from their fellow Cambodian citizens. This is why they prefer becoming invisible. “They do not think any good of us, even though we are victims. They think we necessarily did something wrong...”, an acid attack victim says. Another one urges victims to stand up for themselves and dare appearing in public “so that more people are aware of that... Then, the government might do something to put an end to these attacks”, she says.

Deputy and former Minister of Women’s Affairs Mu Sochua, from the opposition Sam Rainsy Party, raises in front of the camera the issue of archaic mindsets in the Cambodian society where women are traditionally considered as inferior to men, even in Cambodian sayings. “Women and men are not treated equally in Cambodia”.

The documentary “Finding Face” ends with an image of Marina looking at the mirror reflection of the stranger she has become to herself.

62. Unprecedented media coverage of acid attacks:

After the media covered the case, Marina’s uncle Kong Bin Chhoeun wrote her story in a book called “Marina’s Story”, published in July 2000 in Cambodia. A month later, the famous writer, then in his sixties, preferred fleeing Cambodia and obtained asylum in Norway in 2005 where he has been living since.

In December 2003, LICADHO denounced such violent acts in a report entitled "Living in the Shadows - Acid Attacks in Cambodia ". The organisation deems acid attacks “one of the worst crimes that a person can commit” The NGO gave a voice to survivors and expressed their fear that without any prevention or repression, the phenomenon might develop even more. The authors of the report denounce the fact that too often, those who commit such crimes benefit from full impunity. They advocate stricter regulation regarding the sale of acid. The authorities did take a measure concerning that, but consequences remained unseen.

Fifteen teenagers and two teachers, for their part, created in the space of six weeks a remarkable graphic novel entitled "Shake Girl ", which is largely inspired by Tat Marina’s story and can be downloaded for free on the Internet. The book was elaborated in 2008 as part of the Graphic Novel Project initiated by the prestigious Stanford University (California). Consisting of 199 black and white pages, the piece surprises with its sensibility and the modesty of its young authors. Indeed, instead of drawing the devastated face of Marina following the acid attack, pages are covered with black colour, until an Apsara dancer appears, her face and chest blurred and veiled. The idea of illustrating this poignant story taken from a culture they knew nothing or very little about was suggested by Eric Pape, a journalist who interviewed Tat Marina and her brother in the United States back in 2001.

However, the media coverage of Marina’s case did not contribute to reversing the tendency, on the contrary. According to the authors of “Finding Face”, after her case, “we estimate that between 25 and 60 acid attacks are perpetrated every year in

Cambodia”, when to this date, less than 15 persons have been prosecuted for such crimes in the country”.

63. Human rights Watch January 2010 reports on “Arbitrary Detention, Torture, and Detention Conditions” in Cambodia and states:

Violence against women goes largely unpunished. Trafficking of women and girls for sexual exploitation, as well as arbitrary arrest and abuse of sex workers, is rampant. Regular police crackdowns on sex workers are fuelled in part by a 2008 anti-trafficking law that criminalizes prostitution, spurring authorities to focus on closing brothels and arbitrarily detaining sex workers, rather than prosecuting traffickers. In 2009 Phnom Penh police arrested more than 60 sex workers during July alone, beating some of them in custody before sending them to NGO shelters, where those with HIV/AIDS were unable to access their medication.

Over 2,000 people who use drugs were arbitrarily detained in 11 government-run drug detention centres, where arduous physical exercises and forced labour are the mainstays of their “treatment,” and torture is common. The centres hold people regardless of assessments that they are not dependent on drugs.

Police and military police routinely used torture to extract confessions from detainees in police stations, jails, and prisons. The bodies of several detainees who died in police custody during 2009 showed marks of torture, such as Neak Neam, who died on May 27 while in the custody of the Pailin district police.

64. State Protection

In relation to police corruption, the US Department of State report indicates that:

Cambodia has introduced various measures in an attempt to lessen the impact of corruption. Bureau of Democracy, Human Rights, and Labour 2009 Country Reports on Human Rights Practices in Cambodia March 11, 2010 reports:

“The constitution prohibits discrimination based on race, gender, disability, language, or social status; however, the government did not generally protect these rights...”

FINDINGS AND REASONS

65. According to her visa application the applicant was born in Cambodia in [year deleted: s.431(2)]. She travelled to Australia on a passport in her own name. Based on a copy of her passport on file, the Tribunal finds that the applicant is a Cambodian citizen and has assessed her claims against that country as her country of nationality.
66. The applicant claims she left Cambodia to avoid persecution and domestic violence. She was discriminated against and subjected to domestic violence from her partner, [Mr B], (her “husband”) and his first wife. Her husband is a powerful man who lured her into a relationship; he imprisoned her and used her as a sex slave. She received threats from his first wife and she was fearful of having acid thrown in her face or being killed so she travelled to Australia to escape danger. She is fearful that she would be harmed or possibly killed should she return to Cambodia. Her first partner is a powerful man in Cambodia; therefore the Cambodian authorities are unwilling and/or unable to protect her.

67. The mere fact that a person claims to fear persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is 'well-founded' or that it is for the reason claimed. A fear of persecution is not 'well-founded' if it is merely assumed or if it is mere speculation. A decision maker is not required to make the applicant's case for him or her. Nor is a decision maker required to accept uncritically any or all the allegations made by an applicant. In *MIEA v Guo* (1997) 191 CLR 559 at 572 and also in *MIEA v Wu* (1996) 185 CLR 259 at 293, the court found that conjecture or surmise had no part to play in determining whether a fear was 'well-founded'.
68. In determining whether an applicant is entitled to protection in Australia the Tribunal has to make findings of fact in regard to the applicant's claims. This frequently involves assessing the credibility of the applicant. In doing this, the Tribunal acknowledges the difficulties that an asylum seeker may face. The benefit of the doubt should be given to an asylum seeker who is generally credible but unable to substantiate all of his or her claims.
69. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been established. Nor is the Tribunal obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality (See *Randhawa v MILGEO* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547). If the Tribunal makes an adverse finding in relation to a material claim made by an applicant but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true (See *MIMA v Rajalingam* (1999) 93 FCR 220).
70. The Tribunal has carefully considered the applicant's claims. The applicant is a female [age deleted: s.431(2)] in a de facto relationship with an Australian citizen. The Tribunal accepts that the applicant arrived in Australia (from Cambodia) [in] January 2003.
71. The Tribunal accepts that the applicant has two siblings, both sisters and both married, living in Cambodia and that she no longer knows their whereabouts as they moved out of fear of her "husband" and his first wife. Her parents are deceased.
72. The Tribunal accepts that the applicant had little formal education; two years at most. Her work history is vague, however, the Tribunal accepts that she worked for a period as a cleaner in a [Business A] and that she lived with her sisters and helped out with housework and some sales from a [Business B] operated by them from home.
73. The Tribunal found that though at times the applicant's evidence was vague, for example in relation to her life between school and becoming a second wife, nevertheless generally she was a credible witness in relation to the harm she fears. The Tribunal accepts that the applicant had little education. The Tribunal acknowledges the applicant's apology for false information indicating that she was a teacher which had been included in her visa application for Australia in 2003.

74. For the reasons that follow the Tribunal accepts the applicant's evidence that her previous boyfriend, who she says is known in Cambodia as her "husband" (though they were not married), had organized her trip to Australia for her. The Tribunal accepts the applicant's evidence that her "husband" did this out of concern for her safety from danger at the hands of his first wife, who had threatened to throw acid at her and to otherwise harm her, because she did not wish to share her husband with the applicant.
75. The Tribunal accepts the evidence that in 2002 the applicant became the "second wife" of [Mr B], a [details deleted: s.431(2)] who is [position deleted: s.431(2)]. The Tribunal accepts that [Mr B] is [position deleted: s.431(2)]. The Tribunal accepts that the applicant having become the partner of [Mr B] ceased working to stay at home.
76. The Tribunal has examined the applicant's evidence in relation to her specific claims. The Tribunal accepts, based on her credible and reasonably consistent oral and written evidence, which is supported by independent country information, that the events outlined below happened as claimed by the applicant.
77. The Tribunal finds that the applicant is a "second wife" to [Mr B]. The Tribunal finds that he abused the applicant on a number of occasions from 2002 to 2003. The Tribunal accepts that the applicant was the victim of domestic violence at the hands of her "husband" and that the abuse she endured included sexual abuse (sexual intercourse against her will). The Tribunal accepts that on one such occasion this happened at gunpoint. The Tribunal accepts the evidence of physical violence; slaps, hits and beatings and that they were inflicted upon her by her "husband". The Tribunal accepts that in the relationship she entered into as a second wife she was deprived of freedom and liberty.
78. The Tribunal accepts the applicant's explanation for not reporting the abuse at the hands of her "husband" to the police. The Tribunal accepts her reasons for not doing so. Those reasons were because she was a "second wife" and because her husband was a powerful man. The Tribunal accepts her evidence that due to her status she believed the police would not assist her. The Tribunal accepts that the applicant did not contact any women's refuge because she feared what might happen to her if her "husband" found out.
79. The Tribunal accepts the applicant's evidence that she was told by her "husband" that he loved her and his first wife at the same time and that at first she did not think of sending him away.
80. The Tribunal accepts that the applicant was threatened by her "husband's" first wife. The Tribunal accepts that she was warned to cease her relationship with her "husband" or she would be killed.
81. The Tribunal accepts that as the violence continued and as she was threatened by the jealous first wife, the applicant asked her "husband" to stay away from her. The Tribunal accepts that he would not do this.
82. The Tribunal accepts the evidence that the applicant's "husband" then became concerned for her safety because of threats to her from his first wife and that for this reason he organised her trip to Australia.

83. The Tribunal finds it plausible that the first wife did not approve of the applicant's relationship with her husband. The Tribunal finds that a triangular relationship would be likely to provoke an emotional reaction which would lead to the applicant fearing harm. The Tribunal accepts country information that "second wives" are a social norm in Cambodia. Based on country information the Tribunal accepts that second wives are at risk from jealous first wives and that a form of harm which occurs not infrequently is acid throwing.
84. The Tribunal accepts that the applicant has suffered discrimination, threats and abuse from [Mr B]'s first wife because of her relationship as "second wife" to [Mr B]. The Tribunal accepts that the applicant was threatened by the first wife with the prospect of having acid thrown at her, before she came to Australia. The Tribunal records that in its opinion, the applicant has an exceptionally beautiful appearance
85. The Tribunal accepts that the applicant fears that if she returns to Cambodia her "husband" will want her back as she has been his. She fears his first wife will again be jealous and that her life will be at risk.
86. The Tribunal accepts that the applicant's sisters in Cambodia were threatened by her "husband" for not telling him her whereabouts in Australia and that for this reason they moved away and have kept their whereabouts from her.
87. The Tribunal discussed the possibility of relocation with the applicant. The applicant said she would not feel safe anywhere in Cambodia. If her "husband" is determined to find her, he will and he has already abused her sisters trying to locate her. Furthermore she said she has no male protection there; her Australian de facto partner, [Mr A] could not stay or work in Cambodia, he does not speak the language. She has little if any support as her parents are deceased and she is about to give birth.
88. The Tribunal has considered the applicant's evidence as to why she overstayed her visa in Australia and remained an illegal person. The Tribunal accepts her explanation for not seeking protection until such time as she was put in contact with her representative and sought to legitimise her status.
89. The Tribunal has considered the evidence of the two witnesses.
90. The Tribunal has considered the submission from the applicant's representative which addressed specific country information. In his submission he argued that the applicant has encountered discrimination and suffered harm for reasons of her membership of a particular social group "Cambodian women who are second wives" (as outlined in her various statements and at the review hearing).
91. Country information suggests that there is inaction and discrimination against women in Cambodia including second wives which is often not visible; and corruption (particularly within the police force) remains part of daily life in Cambodia despite reform efforts. The representative included a number of articles and reports to support his arguments.
92. The existence of abuse, such as the Tribunal has found may not however necessarily mean that the applicant is a refugee as defined under the Convention. This is dependent on the Tribunal's assessment of the applicant's claims to determine if the

harm she fears is for a Convention reason, and is well-founded, as well as an assessment of the efficacy of state protection in Cambodia for Cambodian women who are second wives.

93. In making its findings the Tribunal has considered the applicant's claims regarding her fear of harm from firstly her "husband" and secondly from his first wife, to whom he is still married.
94. The applicant claims that the harm she fears from her "husband" is because of domestic violence and her membership of a particular social group "Cambodian woman who are second wives."
95. The applicant has provided a reasonably comprehensive account of her existence in an abusive, oppressive and sometimes violent relationship with her "husband" [Mr B]. The applicant claims that her relationship with him became violent and oppressive and that he started to demand that she have non-consensual sex with him. He also threatened her not to end their relationship. She was exploited by him because he was a powerful man. He was aware of, and accepted, that she was at risk of harm from his first wife.
96. The definition of 'particular social group' has been the subject of much judicial consideration. The meaning of the expression 'for reasons of...membership of a particular social group' was considered by the High Court in *Applicant A's* case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

...First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in Applicant A, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group"...
97. In *Applicant S* the High Court emphasized the relevance of cultural, social, religious and legal factors or norms in a particular society in determining whether a posited group is a particular social group in the society. In *Khawar (MIMA v Khawar (2002) 210 CLR)*, for example, McHugh & Gummow JJ stated:

The membership of the potential social groups which have been mentioned earlier in these reasons would reflect the operation of cultural, social, religious and legal factors bearing upon the position of women in Pakistani society and upon their particular situation in family and other domestic relationships. The alleged systemic failure of enforcement of the criminal law in certain situations does not dictate the finding of membership of a particular social group.
98. Therefore whether a supposed group is a 'particular social group' in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However, it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group.

99. The Tribunal has had regard to independent country information on the treatment of women in Cambodia. It notes that violence against women, including domestic violence, remains a problem. The report of the Bureau of Democracy, Country Reports on Human Rights Practices in Cambodia (11 March 2010) set out above, states:

“The Constitution prohibits discrimination based on race, gender, disability, language or social status; however, the government did not generally protect these rights... The domestic violence law criminalizes domestic violence but does not specifically set out penalties”.

100. The report further states:

The law prohibits rape and assault; nevertheless, local and international NGOs reported that violence against women, including domestic violence and rape, was common.

101. The report refers to the role of the police and security apparatus and states:

“The General Commissariat of the National Police, which is under the supervision of the MOI, manages all civilian police units. The police forces are divided into those who have the authority to make arrests, those without such authority, and the judicial police. Military police are permitted to arrest civilians if the officers meet the training and experience requirements to serve as judicial police, if civilians are on military property, or when authorized by local governments”.

Police officials killed citizens and committed other abuses with impunity, and in most cases the government took little or no action. There were reports that police, prosecutors, investigating judges, and presiding judges received bribes from owners of illegal businesses.

The law requires police, prosecutors, and judges to investigate all complaints, including those of police abuses; however, in practice judges and prosecutors rarely conducted an independent investigation as part of a public trial. Presiding judges usually passed down verdicts based only on written reports from police and witness testimonies. In general police received little professional training. Police who failed to prevent or respond to societal violence were rarely disciplined.

102. The Tribunal finds that country information indicates that although Cambodia criminalized domestic violence, enforcement remains weak due to deeply entrenched beliefs that women can be controlled and disciplined by the men in their lives.
103. The New York Times article dated 22 July 2001 states “In Cambodia, power belongs almost exclusively to men. The philandering husbands are almost never the targets of attack” The Tribunal is of the view that whilst there are major shortcomings with the implementation of domestic violence laws in Cambodia, the legal protection for unmarried women in abusive relationships (such as the applicant) is even more limited.
104. Taking into account this country information, as well as the evidence before it, the Tribunal finds that “Cambodian women who are second wives” can be considered to be a group set apart from the rest of society because of factors related to deep-seated societal attitudes about women’s roles and status in Cambodia. The Tribunal is satisfied that such a characteristic is not and does not constitute a shared fear of persecution. The Tribunal finds that the applicant is a member of this particular

social group and that the applicant's membership of this particular social group is the essential and significant reason for the harm feared from her "husband" and from his first wife.

105. Based on country information about the status of women in Cambodia and the evidence the Tribunal finds the applicant has suffered serious harm in the past due to her membership of a particular social group being "Cambodian women who are second wives".
106. The Tribunal finds that should the applicant return to Cambodia now or in the reasonably foreseeable future there is a real chance which is not remote that she would suffer serious harm because of her membership of a particular social group being "Cambodian women who are second wives".
107. The Tribunal finds that threats by the "husband" and by his first wife to the applicant to harm her or throw acid at her have occurred in the past. Country information (set out above) indicates that: "Such attacks are often a result of personal and family disputes, and are sometimes motivated by jealousy or revenge for sexual infidelity".
108. The Tribunal finds that there is a real chance which is not remote that the applicant is at risk of serious harm from her "husband" and his first wife should she return to Cambodia now or in the reasonably foreseeable future for the essential and significant reason of her membership of a particular social group namely "Cambodian women who are second wives".
109. In the *Khawar* decision, the High Court held that the 'serious harm' involved in persecution could be inflicted by persons who were not state agents (at 576-583 per Gleeson CJ). The Court found that failure to offer protection from harm, itself satisfies the Refugees Convention. Therefore, once a claim meets the threshold of serious harm (as the Tribunal has found in this case) the relevant consideration is whether effective state protection is available for the violence suffered by the applicant. As demonstrated in *Khawar*, it is not necessary that the harm is inflicted by the state; rather the emphasis is on the nexus between the harm suffered and the state's ability or inability to protect the applicant, as discussed below.
110. The Tribunal finds that the enforcement of the law in Cambodia is selective and often the government fails to protect women including second wives. Country information supports the view that there is corruption in the police force. The Tribunal finds it plausible that the applicant did not go to the police because she had no confidence that the police would assist her, given her status.
111. The Tribunal acknowledges country information indicates that some new policies seek to make improvements such as the Council of Ministers approved three-year plan to prevent violence against women. Never-the-less based on country information, in particular, as set out above, that acid being thrown is not categorised as a weapon under Cambodian law. Further, country information set out above indicates that female victims of acid attacks are often viewed in their communities as being at fault. Country information set out above refers to Cambodian society where women are traditionally considered as inferior to men, "Women and men are not treated equally in Cambodia" The Tribunal accepts that women in Cambodia, including second wives, experience some discrimination in Cambodia.

112. The Tribunal also acknowledges country information contained in the report of the Bureau of Democracy, Country Reports on Human Rights Practices in Cambodia (11 March 2010) set out above that indicates that although the Constitution prohibits discrimination based on race, gender, disability, language or social status *the government did not generally protect these rights*.
113. The Tribunal accepts that the applicant's status of being a woman, who is a second wife, (particularly of a high ranking man) may place her in a more vulnerable position in terms of accessing state protection. Whilst there is limited specific information indicating that women who are second wives are targeted for discriminatory state practice, the Tribunal notes country information contained in the report of the Human Rights Watch January 2010 reports that "Violence against women goes largely unpunished".
114. The Tribunal notes that steps are being implemented particularly in the area of acid throwing to prevent and punish. However, given the status of women in Cambodia, the Tribunal doubts whether the state would take reasonable measures to protect the applicant as a woman who is a second wife if she were to lodge a complaint against her "husband" and/ or his first wife. The Tribunal therefore finds that there is a real chance that the applicant would be denied adequate state protection to the expected international standard, from her "husband" and/ or his first wife if she were to return to Cambodia, now or in the reasonably foreseeable future.
115. The Tribunal has considered whether the applicant would be reasonably able to relocate to another part of Cambodia where she would be safe from harm from her "husband" and his first wife. In this regard, the applicant gave evidence that she believed that her "husband" and or his first wife would have the motivation and means to locate her if she returned to Cambodia, as he had tried to find out her whereabouts from her sisters in the past. Additionally, in view of the applicant's pregnancy, her lack of financial capital and support from family, it would not be reasonable, in the Tribunal's view, for the applicant to relocate.
116. The Tribunal has considered the applicant's claims singularly and cumulatively. The Tribunal finds that there is a real chance that the applicant would be at risk of serious harm at the hands of her "husband" and his first wife, for reasons of her membership of a particular social group of "Cambodian women who are second wives", if she returns to Cambodia now or in the reasonably foreseeable future.

CONCLUSIONS

117. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

118. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.