

1010564 [2011] RRTA 202 (8 March 2011)

DECISION RECORD

RRT CASE NUMBER:	1010564
DIAC REFERENCE(S):	CLF2010/115052
COUNTRY OF REFERENCE:	India
TRIBUNAL MEMBER:	Shahyar Roushan
DATE:	8 March 2011
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 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 stateless and formerly resident in China (PRC), arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] May 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] August 2010. The delegate decided to refuse to grant the visa [in] November 2010 and notified the applicant of the decision and his 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] November 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: s91R(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.

Application for a Protection Visa

Application Form

20. According to the information provided in the applicant's protection visa application, he was [in] Dho-Tue Province, Tibet in [month and year deleted]. He has provided no information in relation to his previous addresses, education and employment history other than stating 'refer to attachment'.
21. The applicant arrived in Australia on a Republic of India passport issued in Kolkata [in] May 2007 in the name of [Mr A].

Written Statement

22. In a written statement attached to his application for a protection visa, the applicant made the claims reproduced below.
 1. I am a male Tibetan citizen [age].
 2. I was born in [Dho-Tue Province], in eastern Tibet.
 3. I have never held a legitimate passport as the Chinese authorities do not allow this for Tibetans.
 4. I hold a false Indian passport in the name of [Mr A]. I obtained this passport in 2007 through a friend called [Mr B] who knew people who make false passports. I paid about 45,000 Indian rupees and the process took about 2 to 3 months. The name [name] appears on the Indian passport but I have never had a true family name as that is not the custom in Tibetan culture.

Why I left Tibet/Nepal

5. I left Tibet in 1991 with my parents when I was about [age].
6. My father [Mr C] fled Tibet for Nepal with our family because he feared being tortured, imprisoned and killed by the Chinese authorities. My father opposed the

Chinese occupation of Tibet. The Chinese invaded Tibet in 1959 and Tibetans have no fundamental human rights. My father was harassed, detained and tortured many times by the Chinese military authorities in [Kham].

7. My parents carried my sister and me in their arms, together with our food and luggage, on a very difficult journey that lasted 45 days. We made a life threatening journey on foot across the Himalayan ranges that border Tibet and Nepal. We travelled with a group of 25 other Tibetans.

8. Our family settled in the Tibetan Refugee Camp at Jawalakhel, Lalitpur, Nepal. The camp was established by the International Red Cross and the Swiss Development Corporation (SDC) in 1960. My father is now [an official] of that refugee camp.

9. At present this refugee camp comprises 267 families and 750 people.

10. We have a small temple (gonpa) where we gather and pray every Friday and on special occasions. We are all Tibetan Buddhists.

11. My father is a member of the Chhugang Association which is the main political party opposed to the Chinese government in [Kham]. The Chhugang Association was established only in Dho-Tue Province. The name refers to the four rivers and six mountain ranges in the eastern region of Tibet.

12. Attached to this application is a copy of my Tibetan Green Book as well as copies of letters from the Jawalakhel Samdupling Tibetan Refugee Camp and the Tibetan Refugee Welfare Office.

13. I was not permitted to attend the Nepalese government school so I attended school in the refugee camp. Tibetans in Nepal have no voting rights and are not entitled to a business licence, drivers licence or any government job.

14. The government of Nepal does not issue residential certificates (RC) to younger Tibetans because it is afraid that they will attempt to move to other countries. The only way young people can leave Nepal is to obtain a false passport from another country.

15. In about November 2007 I joined the Tibetan Youth Congress (TYC) which is the most politically active non-government body to organise rallies against the Chinese government.

16. Copies of my TYC membership card and a letter of recommendation from the TYC are attached to this application

17. My activities with the TYC included organising and publicising the venues for protests (such as in front of the Chinese embassy), distributing leaflets and if there was to be a speech at the protests I would help set up a tent for the speakers. I distributed leaflets which carried such slogans as "Free Tibet" and "Stop the genocide in Tibet". Mostly I would distribute the leaflets to other helpers so that they could hand them out to the general public.

18. Spies from the Chinese government are always trying to capture members of the TYC.

19. A Maoist dominated government came to power after elections in Nepal in 2008 and took office in August 2008. The Chinese government began to give huge

financial assistance to Nepal. In order to please the Chinese government the Nepalese government promised to curb anti-Chinese activities by the Tibetans in Nepal. Consequently, even though we are living in Nepal it is as though we are ruled by the Chinese government.

20. Because my father was a member of the Dho-Tue Chhugang Association he also enrolled me as a member of the Chhugang Welfare Association from when I was born.

21. This association includes the Khampa warriors of Tibet which was the army that escorted the Dalai Lama when he fled Tibet in 1959. Even after losing Tibet to China, the American CIA gathered these people together in Mustang, Nepal and gave them training and aid. They prepared them to fight against China and regain freedom for Tibet. But things did not work out. All these people later on came to settle into the Tibetan refugee camp in Nepal. The Chinese government has been keeping a very vigilant eye on the members of this association. If they could get hold of a member of this group, they would torture them for information and persecute them.

22. For this reason the Chinese government is intensely interested in the DhoTue Chhugang Welfare Association and the Tibetan refugee camp in Nepal.

23. A copy of my Dho-tue Chhugang Welfare Association membership card and a letter of recommendation are attached to this application.

24. On 10 March 2008 there was an anti-Chinese government uprising in Tibet. The Tibetans in Nepal were very prominent in the protests against China and this was broadcast on world news services such as the BBC and CNN.

25. I was among a group that was shouting slogans and distributing leaflets around the Boudhanath Stupa. The Boudhanath Stupa is a spiritual place in Kathmandu. The Stupa symbolises Buddhism.

26. We were shouting slogans like "Chinese out of Tibet", "Tibet for Tibetans" "Stop Genocide in Tibet" and "Long Live the Dalai Lama". We intended it to be a peaceful procession. However, the Nepalese police, influenced by the Chinese Government, tried to stop the rally. They then started putting us into police vans. I was among 15 other demonstrators arrested that day and taken in a police van.

27. I was taken to a prison with a Nepalese name which I do not know but it is near the district of [name] in Kathmandu.

28. I was the youngest amongst us, so they put me in a separate room. In the middle of the night, Nepalese policemen came to the cell. They abused me, kicked me, and used batons on my legs and arms. I was kept in custody for 5 days. I was beaten me (sic) every day and given no water and no food at all.

29. Then some members from TYC came and bribed the police to release me and my colleagues. A man called [Mr B] who is one of the main leaders of the TYC - he is also from my home province of Dho Tue and is [an official] of the Chhugang Welfare Association - negotiated our release.

30. I could not walk for two weeks. Throughout the year we organised protests, rallies and public meetings but I always stayed at the back because of my injuries.

31. My then fiancée [Ms D] called me often from Australia where she was studying. She was so worried about me that she came to meet me during her vacation in May 2008. We got married during this period and I applied for a visa to Australia, however it took a long time to be finalised.

32. We members of the TYC planned anti Chinese protests with renewed strength to take place in March 2009.

33. On [date] March 2009 a group of us (about 70 to 80 people, comprising both men and women) formed a rally from our camp Jawalakhel and proceeded to the front of the Chinese Embassy in Kathmandu. We knew the police would come, but our patriotism for a free Tibet kept us going. The Nepalese police prompted by the Chinese government came and used batons to disperse the crowd, but we did not budge.

34. Then the police started dragging us into the police van, one by one. After a long struggle, they put us all into the van and took us to different police stations. My colleagues [names] and I were taken to a police station in [location]. They beat us with batons and thrust their boots into our ribs. There was blood coming out of my nose and mouth. They twisted my wrist, three of them together and fractured it; even today my wrist is crooked. I was given no water or food for many days.

35. After few days we lost count of the days. One day four Nepalese guards came and started kicking me with their heavy boots. I tried to block my face but was kicked on my stomach and chest. I felt excruciating pain and I was screaming in pain and anger. The torture seemed endless.

36. I did not know how long it really lasted. I was semi conscious when I was dragged back to my cell. We were kept in prison for few more days. They kept on interrogating us about our future protests, and asking us the names of other members of the TYC. They said "You are a criminal. You are against our government."

37. Finally the some members of a Human Rights group (Huron) arranged our release after we provided a written condition on which we placed our thumbprint. My friends [names] were also released together with some other TYC members who were not so well known to me. The condition was that none of us would carry out any anti Chinese activities in the future. If I were found to be engaged in any protests, I would be handed directly over to the Chinese authorities in Tibet.

38. After I was released, which to the best of my knowledge was on or about [date] March 2009, I went to hospital with my friend [Mr E]. My hand was injured badly and I did not want my parents to know because they would worry about me. I then went to [Mr E] house in [village], Boudha Kathmandu.

39. Sometime in April my mother called me on the phone at [Mr E]'s house she was crying in tear. She told me that about 5 to 10 members of the Young Communist League (YCL; a branch of the Maoist Party which does all the dirty work for the main stream Maoist Party) had come to our family house in the refugee camp. They threatened my parents and told them that I must report to the YCL detention centre. They said "Your son is a criminal." They gave her a threatening letter to give to me. A copy of the letter is attached to this application. The letter is in Nepalese and I am currently in the process of having it translated.

40. After my hand had healed I was visited by some other members of the TYC and we decided that we had to do something. We made a plan to get inside the boundary

of the Chinese embassy in Kathmandu. Our intention was to protest against the killing of Tibetans in Tibet. There were about 15 of us (all men) and we jumped over the outer fence of the Embassy grounds at about 8.30am. Sometimes the embassy is guarded by military and sometimes only by security guards. On this occasion there were only two security guards. On previous occasions our planned demonstrations were leaked in advance but in this case they were not prepared for us. We travelled to the embassy on motor bikes. Then we left the bikes and 15 of us jumped over the wall and some of us over the gates. The two security guards could not stop us because we were too many. We had spray cans and we sprayed the inside of the boundary walls with coloured paint saying "Stop the killing in Tibet" and "Tibetans want human rights". Then we quickly ran back over the walls and got on our bikes and rode off.

41. After this incident the Nepalese police issued an arrest warrant for me from the Chief District Office (CDO). I think that I may have been captured on CCTV. The arrest warrant was delivered to my father's office at the refugee camp. A copy of the warrant is attached to this application. The warrant is in Nepalese and I am currently in the process of having it translated

42. I ran away from my friend's house and started saying at different places, such as with my cousin [name].

43. My father received many threatening phone calls and members of the YCL cadets came to his office asking for my whereabouts. As I have stated, he is the [official deleted] of the Refugee Camp in Jawalakhel, Nepal. I was very frightened, that my life was in danger. I was aware that the authorities retained the statement that we had signed with our finger prints when they released us in March 2009.

44. By the grace of God my Australian visa was approved in May 2009. I used my false Indian passport to leave Nepal and arrived in Australia on [date] May 2009. Some of my fellow members of the TYC had told me that when I passed through immigration in Kathmandu I may need to bribe the officers. So they furnished me with the equivalent of \$2000 AU in rupees plus \$1000 in US dollars in case the need arose. However, I was able to pass through without bribing the officials.

45. Sometime after I arrived in Australia my relationship with my wife [Ms D] broke down. In June 2010 she travelled to Nepal and obtained a deed of divorce from the District Court in Kathmandu.

46. Now that I am in Australia I am able to be safe, secure and to speak for my country freely for the first time in my life. This was not possible back in Nepal. I want to get a proper and better education and to fight for my country through education in the future. As his holiness the Dalia Lama always mentions in his speeches, Tibetan youth should obtain a proper education so that we can stand up proudly in front of the world and fight for our freedom. I think that is the main way for the Tibetans to achieve freedom.

47. A copy of supporting letter from the Human Rights organization of Nepal (Huron) is also attached. I have the original of this letter.

What I fear will happen if I return to Tibet/Nepal

48. I fear I will be arrested by the Nepalese police. I fear I will be handed over to the Chinese authorities in Tibet. If this happens the Chinese army will torture me to death.

Why I think I will be harmed/mistreated if I return to Tibet/Nepal

49. I am a member of the Tibetan refugee community in Nepal which is held in great suspicion by the Maoists who continue to dominate the government of Nepal and who support the Chinese government. My father was politically opposed to the Chinese occupation of Tibet and is [an official] in the Tibetan refugee camp in Nepal where I grew up.

50. As I have stated above, a Maoist dominated government came to power after elections in Nepal and took office in August 2008. The Maoist party President Mr Prachanda (also known as Pushpa Kumar Dahal) became the Prime Minister. This meant that the Maoist government then had control of the administration.

51. I have been an active member of the Tibetan Youth Congress and was arrested, detained and tortured in both 2008 and 2009. My trouble with the authorities escalated after 10 March 2009. I have been issued with an arrest warrant by the Nepalese police. I had previously signed a written agreement to curb my political activities and the Nepalese authorities have my thumbprint.

52. The Chinese consider us to be traitors, whereas we believe we are fighting for the freedom of the Tibetan people and for Tibet which they invaded in 1959.

53. Since I have been in Australia I have attended a demonstration in front of the Chinese embassy in Canberra in March 2010. The demonstration was held to call for the freedom of Tibet.

Who I think will harm/mistreat me if I return to Tibet/Nepal

54. I will be harmed/mistreated by the Nepalese police, the Maoist cadres and ultimately by the Chinese authorities.

Why the Nepalese/Chinese authorities will not protect me if I return to Tibet/Nepal

55. The Nepalese/Chinese authorities are the ones who seek to harm me so they will not protect me

Supporting Documents

23. In support of his application, the applicant submitted the following documents:
- Copy of a passport issued by the Republic of India [in] May 2007 in the applicant's name. According to information contained on the bio-data page on the applicant's passport, he was born in [Town 1] on [date deleted].
 - Copies and translation of pages from the applicant's Tibetan Green Book. According to the Book, which was issued [in] February 2009, the applicant was born in [Town 2], India on [date deleted]. At the time of issue the applicant resided in Nepal.
 - Untranslated copy of an Identity Card, issued by Dhotoe Chhugang Welfare Association, Kathmandu, Nepal.

- Copy of an undated letter from [Mr B, position deleted], Dhotoe Chhgang Welfare Association, Kathmandu, Nepal, stating that the applicant is a “bonafide Tibetan and an active member of Dhotoe Chhugang Welfare Association” The letter further states that the applicant has taken part in various “processions and activities” organised by the association.
- Copy of a letter dated [in] August 2010 from [name and position deleted], Human Rights Organisation of Nepal (HURON), stating that the applicant is a resident of Jawalakhel Refugee camp and has taken “active part in the peaceful demonstrations organised against the China in front of the Chinese Embassy Kathmandu since March 10 2008. This office has helped him release from police custody several times. He organised a massive rally in 2009 and he was again detained and he got a last warning from the concerned authorities. Through reliable sources we have come to know he was threatened by unknown people with his life unless he stop the anti China activities”.
- Copy of an identity card issued [in] November 2007 by the Tibetan Youth Club as evidence of the applicant’s membership.
- Copy of a letter dated [in] May 2010 from [Mr F], [an official of the] Regional Tibetan Youth Congress, Kathmandu, stating that the applicant is an active member of the Regional Tibetan Youth Congress and participated in “all the political and social activities which we have organized to preserve our Tibetan culture and keep alive our independence movement”. The printed letterhead on the letter reads ‘Tibetan Youth Club’ and ‘Kathmandu, Nepal’ is printed immediately below.
- Copy of an undated letter from [name and position deleted], Tibetan Refugee Welfare Office, stating that the applicant is a son of [Mr C], [an official] of Samdupling Refugee Camp and that “he left for Australia in September 2009” The letter stated that the applicant has been taking part in the protests and rallies against Chinese activities and was taken into custody frequently by the Nepalese police in 2008.
- Copy of an undated letter from [Mr C] (the applicant’s father), [an official of the] Jawalakhel Samdupling Tibetan Refugee Settlement Office, stating that the applicant is Tibetan born and was brought up in the Jawalakhel Samdupling Tibetan Refugee Camp.
- Copy of a letter dated [in] October 2010 from [name and position deleted], Tibetan Community of Australia (NSW), stating that the applicant is a “refugee member of the Tibetan community in Australia”.
- Copy of a letter dated [in] October 2010 from [name deleted], Representative of his Holiness the Dalai Lama for Australia, New Zealand and South East Asia, stating that the applicant is a “bonafide Tibetan refugee. While in Nepal he participated in many of the peaceful movements for the rights of the Tibetan people in Tibet and had to undergo harsh police treatments” (sic).
- Untranslated and undated copy of a newspaper article. According to a translation provided by [club deleted] in an attached letter, the article printed in the Nepali

magazine “[name deleted]” states that the applicant has been organising peaceful movements in favour of Dalai Lama for the last four years and is now “performing demonstrations in Australia”. He was “arrested several times between 2008 and 2009”.

- Copy and translation of an undated handwritten letter from [name and position deleted], Central Committee of the Communist Party of Nepal, ordering the arrest of the applicant for his alleged participation in demonstrations and vandalism. The letter identifies the applicant as [Mr A] “[age], resident of [Town 1], India and current resident of Lalitpur”.
- Copy and translation of an arrest warrant issued by the District Administration Office of Nepal’s Ministry of Home Affairs [in] May 2009. The arrest warrant is in the applicant’s name and states that the warrant has been issued in response to the applicant’s participation in activities against a “friendly nation” The warrant states that the applicant has been previously arrested and detained for participating in demonstrations, including a demonstration held [in] May 2009.

Information from other Sources

Form 80

24. In his Form 80 (Personal Particulars for Character Assessment Form), in relation to his residential addresses, the applicant stated that from 1991 until May 2009 he lived at the Jawalakhel Samdupling Tibetan Refugee Camp in Nepal. He explained that he had also stayed with friends from March to May 2009. In relation to his education, he stated that he attended primary school at [School 1] and high school at [School 2] in Kathmandu.

The Applicant’s Student Visa Application

25. The applicant arrived in Australia on a student dependant visa issued [in] May 2009. According to copies of the applicant’s student dependant application and related documents, the applicant had provided the following documents in support of his student dependant visa application:
- Copy of a letter dated [in] November 2008 from [Mr G, position deleted] Embassy of India, Kathmandu, certifying that the applicant is a national of India and holder of a Certificate of Registration as an Indian national.
 - Copy of Certificate of Registration as Indian National issued to the applicant [in] June 2007 and certifying that the applicant has been registered as an Indian national at the Embassy of India, Kathmandu.
 - Copy of a Certificate of Birth issued in the applicant’s name, certifying that he was born in [Town 1], West Bengal, India on [date deleted].

Evidence Provided by [Ms D]

26. [In] October 2010, the delegate contacted and spoke to the applicant’s former wife, [Ms D]. The couple separated [in] June 2010. According to the delegate’s notes, [Ms D] stated that she had known the applicant since they were young as they had both attended school at [organisation deleted] in Nepal. She stated that they had married

about three years ago, but had separated after coming to Australia. [Ms D] stated that that the applicant is an Indian citizen who was born in India to parents of a Tibetan background. The applicant's parents moved to Nepal when he was young. She stated that the applicant's father works as [vocation deleted] for a Tibetan [company].

27. [In] October 2010, the delegate again contacted and spoke to [Ms D], who confirmed her previous claims that, as far as she knew, the applicant was an Indian national who was born in India. She also stated that she was aware that the applicant was involved in the Free Tibet movement in Nepal due to his Tibetan heritage and had been arrested in the past.

Forensic Document Examination Report

28. [In] October 2010, the applicant's Republic of India Passport was referred by the delegate to the Department's Document Examination Unit.
29. [In] November 2010, the Forensic Document Examiner concluded that the passport is a legitimately manufactured passport issued in the expected manner with no fraudulent alterations.

Interview with the Delegate

30. The applicant was interviewed by a delegate of the Minister [in] October 2010. The Tribunal has listened to the audio recording of the interview and what follows is a summary of the applicant's oral evidence to the delegate.
31. The applicant stated that his Tibetan name is [Mr A]. The name [name deleted] was placed on his Indian passport. He was born in [year deleted] in Tibet but lived in Nepal for a long time. He was asked if, other than Tibet and Nepal, he lived in any other country before coming to Australia. He said no. He was asked if he was the national of any country other than China by virtue of being born in Tibet.
32. The delegate read to the applicant a summary of his claims as contained in the statement attached to his application for a protection visa. The applicant confirmed the accuracy of the claims. He was asked if he had any additional claims he wished to put forward. He said no.
33. The delegate put to the applicant that on the basis of the evidence before him, he had reached the conclusion that the applicant was born in India and held Indian citizenship. The applicant stated that his passport and other documents, including his birth certificate were procured after he paid money to an agent.
34. In relation to his Green Book, he stated that when he left Tibet he had had no proof of identity and he had to obtain identity evidence. When asked why the document states that he was born in India, he stated that the document was made by family friends and at that stage it did not matter what the document said about his place of birth. What was important was that it said he was Tibetan.
35. He was asked why the letter from the Communist Party of Nepal stated that he resided in [Town 1]. He said Maoist people come to houses to search for people. At that time he had no documents to show that he was Nepali. However, at that time he had his Indian documents.

36. The delegate put to the applicant claims made by his former wife in relation to their history and his nationality. He said he did not know his wife that well. She went to a Christian school because she was wealthy and he also attended the same Christian school because there was a special program for Tibetan refugees. He was asked why he had told [Ms D] that he was an Indian national. He said when he and [Ms D] met again in 2007 they were friends and all he had was his documents which were Indian and there was no reason for him to tell her that the documents were fake.
37. The delegate discussed with the applicant its concerns regarding other documents submitted by the applicant in support of his case.
38. It was put to him that the letter from [an official of the] Jawalakhel Samdupling Tibetan Refugee Settlement Office was signed by the applicant's father and the delegate was unable to give it any weight. The applicant did not comment.
39. It was put to the applicant that the letter from the Communist Party of Nepal appears to have been printed by an inkjet printer, and the logos appear to have been cut and pasted. The letter is handwritten and undated. The name of the party is not consistent with the actual name of the party which is 'The Unified Communist Party of Nepal (Maoist)' on the party website. In addition, the logos and style on the website are not consistent with the letterhead of the document he had submitted. The applicant did not comment.
40. It was put to the applicant that the arrest warrant from the Ministry of Home Affairs appears to have been printed using an inkjet printer and is poor quality printing and that this is not what would be expected from an official government document. In addition, there is no address for the office listed and the name, rank and signature of the issuing officer is non-existent. The applicant did not comment.
41. It was put to the applicant that the letter and the identity card provided by him as evidence of his membership of the Tibetan Youth Congress are issued by the Tibetan Youth Club, not Tibetan Youth Congress. In addition, the logo on the membership card and the letter's letterhead are not consistent with the logo of the Tibetan Youth Congress which does not contain the 'watching eyes' which appear on the documents submitted by the applicant. It was further put to him that the format of the membership card is not consistent with genuine Tibetan Youth Congress membership cards sighted by the delegate. He stated that there is no Tibetan Youth Congress office in Kathmandu to produce official documents.
42. The applicant was asked about his activities in Australia. He stated that he has not been involved in many activities, but he had taken part in a fund raising function and a demonstration in Canberra [in] March 2010. He was asked if he was a significant activist in Nepal, why he has not been involved in many activities in Australia. He stated he was a member of the Tibetan Youth Congress in Nepal and since there was no such group in Australia he and his friends are intending to establish one. It was put to him that there are many Free Tibet organisations in Australia. He said the main reason is that he has no money. If he were to participate in these activities he would have missed shifts at work and he could not afford to do so.
43. In relation to the applicant's claim that he was detained in March 2008 and denied food and water for five days, it was put to the applicant that it was highly implausible that he

would have been able to survive five days without food or water. He said he did survive, but he was very sick when he was released.

44. In relation to the applicant's claim that he had participated in a demonstration and detained in March 2009, he was asked if he had marched to the Chinese Embassy and arrested in front of the Embassy. He said yes. The delegate noted that according to media sources the Nepalese Government at the request of the Chinese Government had banned all protests, sit-ins and demonstrations in front of the Chinese Embassy following 25 February 2009. The authorities had set up a 200 meter exclusion zone and 1500 security personnel were deployed. Although a few people were arrested, they were all released. Subsequently, 12 Tibetans were arrested in the Bouda area and sentenced to three months imprisonment. He stated that he was not arrested in front of the Embassy and that he is not from the Bouda area. Rather, he was arrested on his way to the front of the Embassy.
45. The delegate referred to the applicant's claim that in May 2009, he and others had climbed over the Chinese Embassy wall painting slogans inside the Embassy. It was put to him that the Chinese Government had been the target of protests for some time, prompting it to request the Government of Nepal to ban protests. It was put to the applicant that it was not credible that he and his friends had been able to climb a three meter high wall, paint graffiti inside the Embassy, climb over the wall again and escape without being detected and arrested. It further put to him that it appeared highly implausible that in the context of the security issues faced by the Embassy, it was being guarded by two security guards only. He stated that he had participated in this event. He climbed over the wall, quickly painted graffiti and got out.
46. The delegate put to the applicant that while he was prepared to accept that he had participated in some demonstrations in Nepal, he was not prepared to accept that he had participated in demonstrations at the level he had claimed. The applicant did not comment.
47. The applicant was asked if he wished to make any claims against India. He said he did not have residency rights in India. When pressed, he stated that he is not an Indian citizen and does not have a Tibetan Registration Certificate. He has never been to India and he had obtained his documents by paying money.

Application for Review

48. The applicant was represented in relation to the review by his registered migration agent.

Pre-Hearing Submissions

49. [In] March 2010, the applicant's representative provided a detailed submission relating to the facts and the applicable law in the applicant's case.
50. It was stated that the applicant continues to rely on all of the claims that he has advanced to date including his statutory declaration [in] August 2010. A summary of the applicant's claims was included in the submission.

51. The submission encompassed country information in relation to persecution of dissidents in China; Tibetan activists in Tibet; Tibetan Activists in Nepal; and availability of high quality false Indian documents, including passports for Tibetan asylum seekers originating from Nepal; and penalties for those attempting to enter India using a forged passport and visa.
52. It was submitted that the applicant has claimed to be a citizen of Tibet who does not have citizenship of, or a right to reside in, any other country. Since he was [age deleted], he has resided in Nepal as one of the estimated 20,000 Tibetan exiles resident in Nepal. Referring to the applicant's statutory declaration [in] March 2011 (see below), it was submitted that he has provided extensive information relating to the process by which he obtained false Indian documentation, and his account is supported by a substantial body of independent country information regarding the availability of false Indian documentation for Tibetan exiles resident in Nepal.
53. It was submitted that the applicant does not have a right of residence in India and that his country of reference is the People's Republic of China.
54. The following documents were attached to the submissions:
- A detailed statutory declaration signed by the applicant [in] March 2011, providing details of the process by which he obtained false Indian documentation. In his statutory declaration, amongst other assertions, the applicant stated:
 1. On or about January 2007, [Ms D], who was my girlfriend at the time, told me that she was planning on going to Australia to pursue her further studies. She suggested that we get married and both move to Australia. I could not go to Australia because I did not have a passport and I knew that I could not get a passport because the Chinese authorities do not allow this for Tibetans. ***I did not tell [Ms D] that I could not go with her because I couldn't get a passport. I told her to go without me and that I would follow her at a later stage. [Ms D] was upset when I told her this; she thought that I was not serious about our relationship.*** I reassured her that I would follow her to Australia at a later stage
 - A Declaration dated [in] November 2010 signed by the [an official of the] Tibetan Youth Club, stating that the Tibetan Youth Congress is not allowed to function in Nepal and therefore, the organisation carries out its activities under the name Tibetan Youth Club. Members of the club are very active in Nepal and are at great risk of being arrested and detained.
 - Copies of three Tibetan Youth Club ID cards belonging to three separate individuals. All three documents have been issued [in] November 2010.
 - Copy of a letter dated [in] January 2011 from the [an official of the] Tibetan Refugee Reception Centre, Kathmandu, stating that the applicant was registered at the Centre in 1991. He is originally [from] the Kham Province of Tibet.
 - Copy of a letter of support from [Mr H], [position deleted], department of Public Works, QLD, dated [in] January 2011, stating that he is a close acquaintance of the applicant, his father, [Mr C], and his family in Nepal and that he has recently returned from Nepal in December 2010. [Mr H] stated that the applicant was born in Tibet and

he lived there until he was [age deleted]. He left Tibet with his family and settled into the Sam Dabling Refugee Camp at Jawalakhel in Nepal in 1991. He remained in this camp until his recent departure to Australia. He has been closely associated with this refugee camp since 2008 and has visited the refugee camp approximately 25 times. [Mr H] stated that the applicant was an active member of the Tibetan Youth Congress and had taken part in protests. Consequently, he was arrested and detained. [Mr H] provided an account of his impressions of the situation of the camp residents and the political environment for Tibetan refugees in Nepal. He stated that the applicant has received a final police warning and it is not safe for him to return to Nepal.

- Two news reports relating to two persons from Nepal being apprehended with fraudulent Indian passports.

The Hearing

55. The applicant appeared before the Tribunal [in] March 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tibetan and English languages.
56. The applicant was asked about the preparation of his protection visa application. He stated that he was assisted by his representative in preparing his application for a protection visa and the accompanying statement. He confirmed the accuracy of the information contained in both documents and stated that he did not wish to change any of the information contained therein.
57. The applicant stated that he was born in [Kham] Tibet on [date deleted]. He left Tibet with his family in 1991 and fled to Nepal. He remained in Nepal until he came to Australia [in] May 2009. He was asked if he has visited or lived in any other country. He stated that other than a transit stop in Bangkok on his way to Australia he has not visited or lived in any other country.
58. He was asked about his residential addresses in Nepal. He stated that he lived at Jawalakhel Samdupling Tibetan Refugee Camp. He was asked if he lived anywhere else in Nepal. He said he always lived at the camp. However, at times when he was harassed by the authorities he lived with friends in Bouda, Kathmandu. In addition, between [years deleted] he attended [School 3]. He was asked if this was a complete account of his residential addresses and movements before coming to Australia. He said yes.
59. He was asked about his family. He stated that his father, [Mr C], his mother, [name deleted], two younger sisters, [names deleted], and a cousin live at the camp. His father works as [an official] in the camp. He was asked if his father has any other source of income. He said no. He married [Ms D] in June or July 2008 and they separated in July 2010.
60. He was asked about his education. He stated that he attended primary school at [School 3] from [years deleted]. In [year deleted], he attended [School 2] near Kathmandu and graduated from the same school in [year deleted]. He was asked if he had attended any other school. He said he attended a 'program' at a missionary Christian school when he was in year four or five. He was asked if he knew the name of the school. He said no, it

was a Christian missionary school. He was asked if he attended school anywhere else. He said no.

61. He stated that after finishing school in [year deleted] he devoted his time to community service as he could not access college or employment. In this capacity he worked as a volunteer helping the elderly. He was also active in the Tibetan Youth Club. He was asked if he had engaged in this type of work on a full-time basis. He said he worked most days. He carried out this work until he came to Australia.
62. He was asked how he had arranged his travel to Australia. He said he came here on a student dependant visa. He used a fake Indian passport and other documents to procure the visa. He obtained the passport through assistance from a friend called [Mr B]. He stated that the passport is 'real' but he paid money to fraudulently obtain it.
63. He was asked if he has ever lived in India. He said no. He was asked if he is a national of India He said no. He was asked if he has ever visited India. He said no. He added that he has travelled to Nepal's border with India, but never entered India.
64. He was asked if he was a member of any group or organisation. He stated that he was a member of the Tibetan Youth Congress and Chhugang Association in Nepal. He said he joined the Tibetan Youth Congress officially in 2007, but he was involved in the organisation's activities before then. He officially joined Chhugang Association in 2008, but many Tibetans from Kham belong to that organisation by "default".
65. He was asked about his political activities in Nepal. He stated that he participated in demonstrations, organising venues for demonstrations, setting up tents for speakers at demonstrations and distributing pamphlets. He was asked how often he was involved in these activities. He said he helped with the activities of the Tibetan Youth Congress about three times a week.
66. He was asked about his Free Tibet related activities in Australia. He stated that since coming to Australia he has not been very active because he lives far from the Tibetan community. However, he attended a demonstration in Canberra in 2009 and along with other young Tibetans he is thinking of establishing a branch of the Tibetan Youth Congress in Sydney.
67. He was asked about his experiences in Nepal. He stated that he was arrested, detained and mistreated in 2008 and 2009. He was detained for 5 days in 2008 and for one week in 2009. He added that [in] May 2009, he and a few others managed to climb over the wall of the Chinese Embassy in Kathmandu, painted graffiti inside and escaped. He did not suffer any consequences, but he had to spend some time hiding at his friend's place and later at a relative's house before coming to Australia. He did not get a chance to go home and pack his bags. His mother packed his bags and he came to Australia.
68. The applicant was asked when the letter from the Communist Party of Nepal asking for his arrest had been issued. He said, around April 2009, Maoists went to his house and gave the letter to his mother. He did not know if the letter was written on the same day or later.
69. The applicant was asked why he was not arrested at the airport on his way out. He said because he had an Indian passport and he managed to escape detection.

70. The Tribunal explained to the applicant that it wished to discuss with him information that may be a reason for affirming the decision to refuse him a protection visa. The Tribunal explained that it will explain the information and its relevance to the Tribunal's decision. He would be asked to respond to this information and would be entitled to seek additional time to comment on, or to respond to, the information the Tribunal was about to put to him.
71. The Tribunal put to the applicant that he travelled to Australia on a Republic of India passport, stating that he was born in [Town 1] on [date deleted]. [In] October 2010, the applicant's Republic of India passport was referred by the delegate to the Department's Document Examination Unit. [In] November 2010, the Forensic Document Examiner concluded that the passport is a legitimately manufactured passport issued in the expected manner with no fraudulent alterations. The Tribunal explained that this information is relevant because on the basis of the information received from the Department the Tribunal may conclude that the applicant's Republic of India passport is a genuine document and that the applicant is a national of India. The Tribunal may also conclude that he has not been a truthful and credible witness and may disbelieve his claims. He was asked if he wished to comment or respond. He stated that he obtained the Indian passport by paying money. Many Tibetans in Nepal do this. He acknowledged that the passport is genuine, but it was fraudulently obtained. If the Indian Government becomes aware that he has obtained this passport fraudulently through further enquiry he will be in trouble.
72. The Tribunal put to the applicant that he had arrived in Australia on a student dependant visa issued [in] May 2009. In support of the application, the applicant had provided the following documents:
- Copy of a letter dated [in] November 2008 from [Mr G, an official of the] Embassy of India, Kathmandu, certifying that the applicant is a national of India and holder of a Certificate of Registration as an Indian national.
 - Copy of Certificate of Registration as an Indian national issued to the applicant [in] June 2007 and certifying that the applicant has been registered as an Indian national at the Embassy of India, Kathmandu.
 - Copy of a Certificate of Birth issued in the applicant's name, certifying that he was born in [Town 1], West Bengal, India on [date deleted].
73. The Tribunal explained that this information is relevant because on the basis of the information contained in the documents, the Tribunal may conclude that contrary to his claims throughout the process, he was born in and resided in [Town 1], India, he is a national of India and holds a valid Indian passport. The Tribunal may also conclude that he has not been a truthful and credible witness and may disbelieve his claims. He was asked if he wished to comment or respond. He stated that he had paid the agent to procure these documents for him in order to apply for a visa. It took him about 18 months to obtain these documents. He stated that he would have applied to come to Australia earlier if it had not taken that long.
74. The Tribunal put to the applicant that according to his Tibetan Green Book he was born in [Town 2], India. The Tribunal explained that this information is relevant because on the basis of the information contained in the Green Book, the Tribunal may conclude

that the applicant was born in India. The Tribunal may also conclude that he has provided inconsistent evidence in relation to his place of birth throughout the process; that he has not been a truthful and credible witness and that the Tribunal may also disbelieve his claims. He was asked if he wished to comment or respond. He stated that Tibetans in Nepal can no longer apply for Green Books in Nepal. They have to apply in India. The Green Book is just for identification purposes and it does not always contain the correct information.

75. The Tribunal put to the applicant that in a conversation with the delegate, the applicant's former wife had informed the delegate that he was born in and is a national of India. The Tribunal explained that this information is relevant because on the basis of the information provided by [Ms D], the Tribunal may conclude that the applicant was born in and is a national of India. The Tribunal may also conclude that he has not been a truthful and credible witness and may disbelieve his claims. He was asked if he wished to comment or respond. He stated that his wife came to Nepal in 2008 and he already had an Indian passport. He could not tell her that he had a fake passport. She would not have taken him to Australia otherwise. He was asked why he would not tell the truth to his wife. He said because she was a student in Australia and if she would not have allowed him to apply for a visa with a fake passport.
76. The Tribunal put to the applicant that according to his evidence at the interview, when he and [Ms D] met again in 2007 they were friends and all he had was his Indian documents. Therefore, there was no reason for him to tell her that the documents were fake. This information is inconsistent with his evidence in his statutory declaration [in] March 2011 and his oral evidence at the Tribunal that he simply did not tell his wife about his nationality when she asked him to accompany her to Australia. The Tribunal explained that this information is relevant because on the basis of the inconsistencies in his evidence the Tribunal may conclude that he has not been a truthful and credible witness and may disbelieve his claims. He was asked if he wished to comment or respond. He stated that what he said in his statutory declaration about what happened in 2007 was true. When in 2008, she saw his passport, he told her that he was born in India and he felt bad about lying to her.
77. It was put to the applicant that in the course of her conversation with the delegate, she had informed the delegate that the applicant's father was [vocation deleted] at a Tibetan [company]. This information is consistent with information contained in [Mr H]'s letter. However, the information provided by his wife is inconsistent with his evidence regarding his father's employment. The Tribunal explained that this information is relevant because on the basis of the information provided by [Ms D], the Tribunal may conclude that he has not been a truthful and credible witness and may disbelieve his claims. He stated that his father is [an official in the refugee camp]. His office is located in a handicraft centre for Tibetan refugees. In his capacity as [an official], he looks after the Tibetan people. He was asked why his wife would say he was [vocation deleted] for the [company]. He said his father is [an official] now, but before he was [vocation deleted] at the [company]. He was asked why he had not disclosed this information previously. He said he wanted to provide current information.
78. The Tribunal put to the applicant that the undated handwritten letter from [name and position deleted], Central Committee of the Communist Party of Nepal, ordering the arrest of the applicant, stated that he was a resident of [Town 1], India and current resident of Lalitpur. The Tribunal explained that this information is relevant because on

the basis of the information provided in the letter, the Tribunal may conclude that contrary to his claims throughout the process, he was a resident of [Town 1], India. The Tribunal may also conclude that he has not been a truthful and credible witness and may disbelieve his claims. He was asked if he wished to comment or respond. He stated that whenever the authorities want to enquire about a person, identity documents must be produced. When the authorities went to his house in 2009, his mother showed them his Indian documents which formed the basis of the information in the letter.

79. It was put to the applicant that the letter from the Communist Party of Nepal appears to have been printed by an inkjet printer, and the logos appear to have been cut and pasted. The letter is handwritten and undated. The name of the party is not consistent with the actual name of the party which is 'The Unified Communist Party of Nepal (Maoist)' on the party website. In addition, the logos and style on the website are not consistent with the letterhead of the document he had submitted. The Tribunal explained that this information is relevant because it may lead the Tribunal to conclude that the document is forged and manufactured in order to achieve a favourable immigration outcome. The Tribunal may also conclude that he has not been a truthful and credible witness and may disbelieve his claims. He was asked if he wished to comment or respond. He stated that this was how he received the letter. He did not know why the logo was inconsistent. The Party became known as the Unified Communist Party of Nepal (Maoist) recently.
80. It was put to the applicant that the arrest warrant from the Ministry of Home Affairs appears to have been printed using an inkjet printer and is poor quality printing and that this is not what would be expected from an official government document. In addition, there is no address for the office listed and the name, rank and signature of the issuing officer is non-existent. The applicant did not comment. The Tribunal explained that this information is relevant because it may lead the Tribunal to conclude that the document is forged and manufactured in order to achieve a favourable immigration outcome. He was asked if he wished to comment or respond. He stated that he does not know about low quality and high quality. He has given the Tribunal the document he received and in the condition he received it.
81. It was put to the applicant that he had submitted a letter dated [in] May 2010 from [Mr F, an official of the] Regional Tibetan Youth Congress, Kathmandu, stating that the applicant is an active member of the Regional Tibetan Youth Congress. According to the information before the Tribunal, [Mr F] was [an official] of the organisation until 1997 and in 1999 he [details deleted]. The Tribunal explained that this information is relevant because it may lead the Tribunal to conclude that the document is forged and manufactured in order to achieve a favourable immigration outcome. The Tribunal may also conclude that he has not been a truthful and credible witness and may disbelieve his claims. He was asked if he wished to comment or respond. He said that [Mr F] had returned to Nepal at the time. The Tribunal showed the applicant a printout of [Mr F]'s biography from his personal webpage. It was put to him that [Mr F] no longer occupied the [position] and asked him why this person would lie on the document. He stated that this person was in Nepal 'last time', but he did not know why he had signed the letter. He asked for a letter and that is how they provided him with the letter.
82. It was put to the applicant that according to the information provided in his Form 80 (Personal Particulars for Character Assessment Form), in relation to his education, he stated that he attended primary school at [School 1] and high school at [School 2] in

Kathmandu. [In] October 2010, the delegate contacted and spoke to the applicant's former wife, [Ms D]. The couple separated [in] June 2010. According to the delegate's notes, [Ms D] stated that she had known the applicant since they were young as they had both attended school at [organisation deleted] in Nepal. The Tribunal explained that this information is relevant because on the basis of the information provided by [Ms D], the Tribunal may conclude that he has not been a truthful and credible witness and may disbelieve his claims. He was asked if he wished to comment or respond. He stated that he was sent for a program at a missionary Christian school. A lot of people were sent to that school and he was amongst them.

83. The Tribunal asked the applicant if he had a Facebook account. He stated that he did.
84. The Tribunal put to the applicant that it appeared that he had a Facebook account and the information on his Facebook is accessible to Facebook users. It was put to him that according to the information on his Facebook page he has identified his secondary school as [School 4, which] is located in [Town 1], India. It was further put to him that it appeared that he was a member of the [School 4] Group on Facebook. The Tribunal put to him that the information located is inconsistent with his evidence to the Tribunal and the Department, including information provided in his protection visa application, Form 80, and at the interview to the effect that he had attended school in Nepal and had never resided or attended school in India. The Tribunal explained that this information is relevant because it may lead the Tribunal to conclude that contrary to his claims throughout the process, he was a resident of and attended school in [Town 1], India. The Tribunal may also conclude that he has not been a truthful and credible witness and may disbelieve his claims. He was asked if he wished to comment or respond. He stated that he had sent a letter to the High Commission stating that he and his wife had studied in the same school ([School 4]) in order to make it easier to get a visa. This is the reason why he had identified [School 4] as his secondary school on his Facebook page.
85. The Tribunal showed the applicant a photograph posted on his profile page in a different social networking site, hi5, depicting him as a young boy posing with a number of other boys all wearing [School 4] school uniforms. The caption "[School 4]" appears under the photograph. The Tribunal explained that this information is relevant because it may lead the Tribunal to conclude that contrary to his claims throughout the process, he was a resident of and attended school in [Town 1], India. The Tribunal may also conclude that he has not been a truthful and credible witness and may disbelieve his claims. He was asked if he wished to comment or respond. He stated that there is [School 4] in Nepal. It was put to him that there is only one [School 4], which is located in [Town 1]. He stated that there is [School 4] in Nepal. When the Tribunal asked why he had not previously mentioned that he had attended a school by the name of [School 4], he said he only attended for a year.
86. The Tribunal put to the applicant that more recent photographs on the same social networking website depicted him at [park deleted] in [Town 1]. The following caption appears under the photograph: "[caption deleted]" The Tribunal also showed the applicant a photograph of a distinct landmark depicted in another photograph taken at the park and posted on the internet, with the caption "At [park deleted] in [Town 1]". The landmark is identical to the one captured behind the applicant in the photograph "in [park deleted]". The applicant acknowledged that the young girl in the photograph is his sister. He did not dispute the suggestion that "[caption deleted]" appears to stand for [Town 1]. The Tribunal explained that this information is relevant because it may lead

the Tribunal to conclude that contrary to his claims throughout the process, he had spent time in [Town 1], India. The Tribunal may also conclude that he has not been a truthful and credible witness and may disbelieve his claims. He was asked if he wished to comment or respond. He stated that there is a [park deleted] in Nepal. When it was put to him that the [park deleted] captured in the photograph is in [Town 1], he insisted that there is a [park deleted] in Nepal.

87. It was put to the applicant that the evidence put to him strongly suggests that he was born in India, lived in [Town 1], attended school there and he is a holder of a genuine Indian passport. He stated that his passport is fake.
88. The Tribunal put to him that of the 87 photographs on his hi5 profile only two relate to his attendance at Tibetan related functions. It was put to him that if he was involved with Free Tibet activities at the level he has claimed this would have been apparent from the photographs.
89. The applicant was asked why he had waited for more than a year to apply for a protection visa. He stated that he was with his wife and was staying with her.
90. The applicant was asked when he had met [Mr H]. He stated that he has never met [Mr H] and spoke to him on the telephone. He does not know him personally, but [Mr H] knows about him. He first spoke to him on the telephone last year. His father used to know him for a long time.
91. It was put to the applicant that he was entitled to seek additional time to provide further comments on the information put to him.
92. The Tribunal put to the applicant that it had serious concerns regarding his credibility and found it difficult to believe his claims. It was put to him that the evidence before the Tribunal strongly suggested that he had resided in and is a national of India. He said he is not an Indian national.

FINDINGS AND REASONS

93. The applicant's claims are based on the Convention grounds of imputed political opinion and ethnicity. Essentially, he claims that he was born in Tibet but moved to Nepal with his family when he was [age deleted]. In Nepal he was involved in the struggle for freeing Tibet and was associated with the Tibetan Youth Congress and Chhugang Association. His participation in demonstrations and other activities led to his arrest and detention on two separate occasions. He was wanted by the authorities in Nepal and came to Australia on a fraudulently obtained Indian passport.
94. The Tribunal accepts the difficulties of proof faced by applicants for refugee status. In particular there may be statements that are not susceptible of proof. It is rarely appropriate to speak in terms of onus of proof in relation to administrative decision making: see *Nagalingam v MILGEA & Anor* (1992) 38 FCR 191 and *McDonald v Director-General of Social Security* (1984) 1 FCR 354 at 357; 6 ALD 6 at 10. The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992, at paragraph 196-197 and 203-204 recognises the particular problems of proof faced by an applicant for refugee status and states that applicants who are otherwise credible and plausible should, unless

there are good reasons otherwise, be given the benefit of the doubt. Given the particular problems of proof faced by applicants a liberal attitude on the part of the decision maker is called for in assessing refugee status. However, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. Moreover, 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 made out. In addition, the Tribunal is not obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (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.

95. The applicant travelled to Australia on a Republic of India Passport, in the name of [Mr A]. According to the passport, he was born in [Town 1] on [date deleted]. The applicant entered Australia on a student dependant visa which was granted to him on the basis of a number of documents he had submitted to the Department in support of his student dependant visa application, including a letter dated [in] November 2008 from [Mr G, an official in the] Embassy of India, Kathmandu, certifying that the applicant is a national of India and holder of a Certificate of Registration as an Indian national; Certificate of Registration as an Indian National issued to the applicant [in] June 2007 and certifying that the applicant has been registered as an Indian national at the Embassy of India, Kathmandu; and Certificate of Birth issued in the applicant's name, certifying that he was born in [Town 1], West Bengal, India on [date deleted].
96. The applicant has consistently claimed that that the passport and the documents lodged in support of his student dependant visa were fraudulently obtained. In the statement attached to his application for a protection visa, he claimed that he obtained the passport in 2007 through a friend called [Mr B] who knew people who make false passports. He reiterated these claims at the interview with the delegate, claiming that the passport and the documents referred to were fraudulently obtained. He also submitted a detailed statutory declaration signed [in] March 2011, providing details of the process by which he obtained false Indian documentation. At the Tribunal hearing, he stated that he had obtained the passport through assistance from a friend called [Mr B]. He acknowledged for the first time that the passport is "real" but stated that he had paid money to fraudulently obtain it.
97. In his prehearing submission, the applicant referred to extensive country information regarding the availability of high quality false Indian documents, including passports. Whilst the Tribunal accepts that the availability and accessibility of high quality false Indian documents, for the reasons detailed below, the Tribunal finds that the applicant is not a credible and truthful witness and does not accept his evidence regarding his passport or nationality.
98. As it was put to the applicant at the hearing, his Republic of India Passport was referred by the delegate to the Department's Document Examination Unit. [In] November 2010, the Forensic Document Examiner concluded that the passport is a legitimately manufactured passport issued in the expected manner with no fraudulent alterations. In response, he stated that he obtained the Indian passport by paying money. He acknowledged that the passport is genuine, but claimed that the document, along with other documents lodged in support of his student dependant visa, was fraudulently obtained.

99. The applicant's evidence, however, was contradicted by his former wife's claims to the Department that he was born in India and that he is an Indian national. At the interview, when this information was put to him, he stated that when he and [Ms D] met again in 2007 they were friends and all he had was his Indian documents. Therefore, there was no reason for him to tell her that the documents were fake. In his statutory declaration [in] March 2011 and his oral evidence at the Tribunal that he simply did not tell his wife about his nationality when she asked him to accompany her to Australia. At the hearing, the applicant stated that when [Ms D] came to Nepal in 2008, he already had an Indian passport. He could not tell her that he had a fake passport. When asked why he had lied to his wife, he said he had to, otherwise she would not have allowed him to apply for a student dependant visa using a false passport as she did not want to jeopardise her future. The applicant, however, did not explain why he had persisted with this lie and had not told [Ms D] the truth after coming to Australia or when their marriage was unravelling.
100. Evidence uncovered by the Tribunal from a number of other sources strengthened the claims made by his wife and cast further significant doubt on the applicant's evidence.
101. The applicant has consistently claimed that before coming to Australia he did not live anywhere other than in Tibet and Nepal. At the interview, he expressly stated that he has never been to India and at the hearing he claimed that he has never travelled to, visited or resided in India. In relation to his schooling, according to the information provided in his Form 80 (Personal Particulars for Character Assessment Form), the applicant attended primary school at [School 1] and high school at [School 2] in Kathmandu. At the interview he claimed that he had also attended a Christian school in Nepal because there was a special program for Tibetan refugees. At the hearing, he claimed that he attended primary school at [School 3] from [years deleted]. In [year deleted], he attended [School 2] near Kathmandu and graduated from the same school in [year deleted]. When he was asked if he had attended any other school, he said other than attending a 'program' at a missionary Christian school, he had not attended any other school. He was unable to recall the name of the Christian school he had briefly attended.
102. As it was put to the applicant at the hearing, it appeared that he had a Facebook account and the information on his Facebook page is accessible to Facebook users ([link deleted]). According to the information on his Facebook page, the applicant's 'secondary school' is identified as [School 4]. The official website of [School 4] (also known or referred to as '[name]') states that the school is located in [Town 1], West Bengal, India and "[information and website deleted]. The applicant is also a member of the [School 4] Group on Facebook. The information on the Group's page clearly indicates that the school is located in [Town 1] and refers to the school's official website ([website deleted]).
103. The above information was put to the applicant at the hearing. In response, he stated that when he was applying for a student dependant visa, he had sent a letter to the Australian High Commission stating that he and his wife had studied at the same school ([School 4]) in order to make it easier to get a visa. This was the reason why he had identified [School 4] as his secondary school on his Facebook page. However, as it was pointed out to him, a photograph posted on his profile page on a different social networking site, hi5, depicts him as a young boy posing with a number of other boys in [School 4] school uniforms. The caption "[caption deleted]" appears under the

photograph (see folio 66 of the Tribunal file). After confirming that he was in the photograph, wearing [School 4] school uniform and that “[caption]” referred to [School 4], he stated that there is a [School 4] in Nepal. As it was put to the applicant at hearing, the Tribunal has been unable to uncover any evidence on [School 4]’s official website, its Facebook page or anywhere else that there is a [School 4] in Nepal. Moreover, the applicant was questioned in some detail about his schooling in Nepal and at no point did he indicate that he had attended a [School 4] in Nepal. He explained this omission by claiming to have attended [School 4] for only a year. The Tribunal finds the applicant’s evidence and explanations outlandish, deceptive and manifestly untrue. The Tribunal is of the view that he has manufactured evidence to mislead the Tribunal and serve his purpose. The Tribunal finds that, contrary to his claims, the applicant had attended and thereby resided in [Town 1], West Bengal, India.

104. The Tribunal's findings are strengthened by other photographs posted on the same social networking website, including a photograph depicting the applicant posing with a young girl in school uniform at [park deleted] in [Town 1]. The following caption appears under the photograph: “[caption]” (folios 64 and 65 of the Tribunal file). A distinct landmark captured in the background, behind the applicant, is identical to a landmark depicted in another photograph taken at the park and posted on the internet, with the caption "At [park deleted] in [Town 1]" (folio 63 of the Tribunal file). At the hearing, the Tribunal showed the photographs to the applicant. He acknowledged that the young girl in the photograph is his sister. He did not dispute the suggestion that "[caption]" appears to stand for [Town 1]. However, he went on to state that there is a [park deleted] in Nepal. When it was put to him that the [park deleted] captured in the photograph is in [Town 1], he insisted that there is a [park deleted] in Nepal. The Tribunal finds the applicant’s explanation farfetched and patently deceitful. The Tribunal finds that the photographs of the applicant with his sister posted on hi5 were taken at [park deleted] in [Town 1] and that the applicant has been untruthful.
105. The Tribunal's concerns regarding the applicant’s credibility are further exacerbated by the letter purportedly signed [in] May 2010 by [Mr F, an official of the] Regional Tibetan Youth Congress, Kathmandu, stating that the applicant is an active member of the Regional Tibetan Youth Congress, Kathmandu. However, according to information sighted in [Mr F]’s ‘biography’ posted on his personal website, he was [an official] of the Regional Tibetan Youth Congress in Kathmandu from 1995 to 1997. [Details and link to website relating to Mr F deleted]). The Tribunal showed a printout of [Mr F]’s biography, featuring his photograph, to the applicant at the hearing and he acknowledged that the person in the photograph was [Mr F]. When the Tribunal asked, if [Mr F] was not [an official] of the Regional Tibetan Youth Congress in Kathmandu when the letter was issued, why he had signed the letter claiming to hold that position, he said [Mr F] was in Nepal at the time. When pressed, he stated that this person was in Nepal ‘last time’, but he did not know why he had signed the letter. He had asked for a letter and this was the letter they provided him with. On the basis of the evidence before it, the Tribunal finds that [Mr F] was not [an official] of the Regional Tibetan Youth Congress in Kathmandu at the time the letter was issued. The Tribunal finds that he had not in fact signed the letter. The Tribunal further finds that the letter is fraudulent and has been falsely manufactured by the applicant for the purpose of achieving an immigration outcome.

106. Finally, the applicant waited for more than one year after his arrival to apply for a protection visa. At the hearing, he explained that prior to lodging his application for a protection visa he was on a student dependant visa. The Tribunal does not accept this explanation and is of the view that the significant delay in the lodgement of his application casts serious doubt on the veracity of his claims and the genuineness of his fear of persecution.
107. For all the above reasons, the Tribunal did not find the applicant to be a credible, truthful and reliable witness. His evidence shows a propensity to shift and tailor evidence in a manner which achieves his own purpose. The Tribunal has considered the documents submitted by the applicant in support of his case. However, for the reasons outlined above and given the fundamental lack of credibility within his evidence, the Tribunal does not give any weight to any of the documents he has provided in support of his claims (see *Re: Minister for Immigration and Multicultural Affairs Ex parte Applicant S20/2002* (2003) 77 ALJR 1165).
108. Based on the applicant's passport, the result of the Department's document examination and other documents submitted by the applicant to the Department in support of his student dependant visa application, the Tribunal finds that the applicant is Indian born, he is an Indian national and holds a valid Indian passport. The Tribunal does not accept that he does not have a right of residence in India or that his country of reference is the People's Republic of China. On the basis of the information posted by the applicant on various social networking sites, the Tribunal finds that, contrary to his assertions throughout the process, the applicant had resided and completed his secondary schooling in [Town 1], West Bengal; and that he continues to have ties to the city. On the basis of [Ms D]'s claims to the Department, which the Tribunal has no reason to doubt, the Tribunal is prepared to accept that he is of Tibetan ethnicity and that, along with his family, has spent significant periods of time in Nepal. The Tribunal is prepared to accept that in Nepal he had been involved in Free Tibet related activities and may have had encounters with the authorities as a consequence.
109. The Tribunal, however, has already found that the applicant is a national of India. He has made no claims against India and there is no evidence before the Tribunal to suggest that the applicant was involved in activities relating to the struggle for freeing Tibet in India. The Tribunal has found no information in the sources consulted to suggest that Indian nationals of Tibetan ethnicity face harm or harassment by the authorities or members of the general population for the reason of their ethnicity. The Tribunal does not accept that the applicant has been harmed in the past or that, if he were to return to India now or in the reasonably foreseeable future, there is a real chance that he will be harmed for the reason of his race, religion, nationality, political opinion, membership of any particular social group, or any other Convention reason. The Tribunal is not satisfied that the applicant's fear of persecution is well-founded. He is not a refugee.

CONCLUSIONS

110. 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) for a protection visa.

DECISION

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