

1101872 [2011] RRTA 470 (15 June 2011)

DECISION RECORD

RRT CASE NUMBER: 1101872

DIAC REFERENCE(S): CLF2010/66604 clf2011/17685

COUNTRY OF REFERENCE: Somalia

TRIBUNAL MEMBER: R Mathlin

DATE: 15 June 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 a citizen of Somalia, arrived in Australia [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] May 2010 and applied to the Department of Immigration and Citizenship (the Department) for a Protection (Class XA) visa [in] May 2010. The delegate decided to refuse to grant the visa [in] February 2011 and notified the applicant of the decision and her review rights by letter of the same date.
3. The applicant applied to the Tribunal [in] February 2011 for review of the delegate's decision.
4. I find that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act, and that the applicant has made a valid application for review under s.412 of the Act. Accordingly, the Tribunal has jurisdiction to consider the application for review.

RELEVANT LAW

5. 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.
6. 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).
7. 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'

8. 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.

9. 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.
10. 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.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. 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.
13. 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.
14. 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.
15. 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.

16. 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.
17. 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

18. The Tribunal has before it the Department's files CLF2011/17685 and CLF2010/66604, and the Tribunal file relating to the applicant.
19. Information on the Department's files indicates that the applicant arrived at Brisbane airport [in] May 2010. She had travelled on [flight deleted: s.431(2)] from Auckland to Nairobi via Dubai. While in transit in Brisbane she sought to engage Australia's protection obligations. The Department's investigations showed that the applicant used a Kenyan passport in the name [Alias A] to board the flight in Auckland. She apparently disposed of this passport on arrival in Brisbane. She was taken from the airport to hospital complaining of abdominal pain.
20. The applicant provided the following information in her protection visa application, which was lodged [in] May 2010. She was assisted in its preparation by a solicitor and registered migration agent from [agency deleted: s.431(2)].
21. The applicant claimed to be a Somali national, born in Mogadishu in [year deleted: s.431(2)]. She stated that she had only attended Islamic school and is illiterate. She stated that she had never held a Somali passport or any other form of Somalian identification. She stated that she was the youngest of six children.
22. She stated that her family belonged to a minority caste known as *boon*. This caste faces discrimination of various kinds - they find it hard to get work, they may be thrown out of their houses and they may be raped or killed. Her father did not have work and begged for a living. Her family was very poor.
23. In 2009 (about a year before the application) the applicant's grandfather died and her father inherited his farm located in [town deleted: s.431(2)], a small city south of Mogadishu. The applicant's father sold the farm for USD3000. He wanted to start a tea trading business with the money but found that it was not enough, so he gave it to a shopkeeper (from whom the family sometimes bought food and who belonged to the Hawiye majority clan) for safekeeping. The applicant claimed that as a woman she was not involved in such matters, but as far as she knew this was the safest way to keep the money.
24. Not long after the sale of the land, five men broke into the applicant's family home. They were carrying guns. She believes that they were Hawiye men. They yelled abuse at the applicant's family (all of whom were at home) and called them derogatory names associated with their caste. They shot the applicant's mother and brother dead. The applicant was raped. Her sisters were beaten. The applicant's surviving family members ran away and she has not seen them since.

25. The applicant screamed and screamed. Eventually a woman who lived nearby, but who the applicant did not know, came to help. She took the applicant to her house and to hospital. The applicant stayed with her for four to six weeks. When she left her house the applicant slept at the mosque or with other people she knew for about five months. Then, a woman that she met on the street arranged for the applicant to obtain a job as a live in maid, where she worked in very bad conditions. One day she was approached by an old man who said he knew her father. He knew about the money the applicant's father had. He said that the money was still held at the shop. The applicant asked him to help her get it. He took her to the shop on the same day, but the applicant did not speak to the shopkeeper. Later she returned alone and told the shopkeeper what had happened to her family. She pleaded with him to give her the money. At first he refused, even though she visited him every day for a week, asking for it. In the end, her father's friend persuaded the shopkeeper to give the money to the applicant. A neighbour of the family for whom she worked introduced the applicant to a man called [Mr B] who said that he could help the applicant get to another country. He said that this would cost USD10,000, but when the applicant told him that she did not have that much money he made the arrangements for the price of USD3,000.
26. He took her by truck to Ethiopia, where they stayed in the capital in a big house where many people rented a room. After about six weeks they left by plane. [Mr B] had the necessary documents, which the applicant did not see. They landed in an Asian country where they stayed for about two weeks. Then they flew to Australia, where [Mr B] disappeared on landing.
27. The applicant claims that if she returns to Somalia she will face further persecution as a *boon* woman.
28. The applicant was interviewed in relation to her application by an officer of the Department [in] June 2010. A CD Rom recording of the interview is held on the Department's file and I have listened to the recording. The following is a summary of the interview.
29. The applicant confirmed that she entered Australia without an identity document and said that this was because she was brought here by somebody.
30. She said that she attended Islamic school six days a week from the age of about five, until about three years ago. She said that she walked to school and it took about an hour. She said that mostly she went by herself but sometimes she went with her sisters and brothers. It was put to her that this information was different to her claim in her protection visa application that she could not go far from her home because it was too dangerous for her as a *boon* girl. She then said that she went with her brothers and sisters. It was put to her that this was inconsistent with the information she had just given that she went mostly on her own. She said that she always went to school with her brothers and that she had misunderstood the earlier question.
31. She was asked how her grandfather could own land if they were from the *boon* caste. She said that he inherited the farm from his father. He lived there by himself. Her father had three half brothers but he inherited the land. Asked why her father did not keep the land, the applicant said that he wanted to start a business selling tea. The applicant said that he was paid in Somali shillings that have no value; she did not know how much he received from the sale of the farm. It was put to her that she had claimed in her

protection visa application that her father sold the farm for USD3000. She said that this was the amount of money that she used to come to Australia. The money was in Somali shillings but it was exchanged just before she left.

32. She said that her father told the family what he planned to do with the money. Asked why he would have left the money with the shopkeeper, she said that he was a powerful and trustworthy man from the Hawiye clan.
33. She said that after the attack on her home she stayed with her neighbour [name deleted: s.431(2)] for about two weeks, not for four to six weeks. Asked to explain the inconsistency she said that she does not remember how long she stayed with [name deleted: s.431(2)], but it was only a short time. She was asked why, at the interview, she was not able to state with any certainty over what periods of time things happened, while in her written statement, made two weeks earlier, she had given definite periods. She said that she was upset and confused. She said that she has problems with time.
34. She was asked why she did not get access to the money from the sale of the farm. She said that she knew her father had sold the farm but she did not know where he kept the money. She only found this out from the old man she met later. She was asked to explain how she met the old man. She said that she asked the old man for help and he said that he could not help her but he knew that her father had some money. He knew this because they were good friends. She said that the family for whom she worked lived a long way from where she lived with her family. She had to go to the shop where the money was kept by transport; the old man organised all this. She was asked why her father would not have gone to the shop to get the money after the attack on their home. She said that maybe he was too afraid to return or maybe he was dead. She does not know anything about the circumstances of her family so she could not say why they did not go back to get the money.
35. She said that after leaving Somalia she travelled to Ethiopia by truck. She was taken to a house. From there she went to another country by plane. She spent about three weeks there.
36. It was put to the applicant that she had come to Australia from New Zealand after living there for four months. She said that she did not know anything about this.
37. It was put to her that she arrived in Australia on a Kenyan passport in the name [Alias A] which showed that she was born in Kenya. She said that was not true. She said that she is Somali and had no other passport. She denied having given the passport on which she travelled to Australia to another passenger.
38. It was put to her that she is a Kenyan citizen of Somali origin. She asked what proof the Department had of this. It was put to her that she had left NZ and boarded the plane using a Kenyan passport which had contained a photograph that appeared to be that of the applicant. The applicant denied that it was her photo. She remained adamant that she was a Somali citizen, born in Mogadishu. She said that she was willing to permit the Department to conduct inquiries of the Kenyan authorities to establish her identity.
39. She was asked who was looking after her in New Zealand for the four months that she lived there. She denied having been to New Zealand.

40. [In] June 2010 a report was prepared by a “Facial specialist”, [Ms C], who examined two images of the applicant, one a photograph of the applicant taken in Sydney and the other a photograph provided on a transit visa application form lodged in New Zealand under the name of [Alias A]. [Ms C] listed ten similarities between the two images, including shape, size and angle of the eyes; asymmetrical alignment of the eyes; anatomic left eye larger than the right; shape and size of the nose’ shape of the nostril wing and tip; size and angel of nostrils; and the distance between the upper lip/nose and the lower lip/chin. Based on these observations, [Ms C] was of the opinion that the photographs represent the same person.
41. The Department sent the applicant’s fingerprints to Kenya to ascertain whether they matched the records held in relation to the passport of [Alias A]. The initial response was that the prints were of poor quality and a comparison could not be carried out.
42. [In] July 2010 the delegate wrote to the applicant inviting her to comment on certain adverse information. This included the information
- That a Kenyan passport, in the name of [Alias A], on which the Department believes the applicant travelled to Australia, was confirmed by the Kenyan authorities to have been validly issued. The Kenyan authorities indicated that the passport photograph resembled that of the applicant taken in Villawood Detention Centre which had been provided to them. This information indicated that the applicant was, in fact, a citizen of Kenya, born in [Town 1], Kenya and not a Somali citizen, born in Mogadishu, as the applicant claimed in her protection visa application.
 - That the Department had been advised that the applicant arrived in New Zealand [in] January 2011 using the Kenyan passport in the name of [Alias A].
 - Information in the transit visa application was that [Alias A] was a Kenyan citizen born in [Town 1], Kenya in 1987 and was married. A person named [Mr D], who the Department suspected was the applicant’s husband, had helped to complete the form.
 - The facial specialist report indicated that the applicant is in fact the same person as [Alias A], whose photo appeared in the transit visa application, and who is a Kenyan citizen and the holder of a Kenyan passport.
43. [In] August 2010 the applicant provided her response to the Department’s letter, which comprised a statutory declaration made by the applicant [in] August 2010. In her statutory declaration she stated as follows:
- She acknowledged that she travelled to Australia from New Zealand on a Kenyan passport issued in the name [Alias A], and that she had applied for a transit visa in the name [Alias A]. However, she stated that she is not [Alias A], the passport is not her passport and she is not a Kenyan citizen.
 - She believes that she went to New Zealand in about January 2010 and arrived in Australia [in] May 2010.

- She acknowledged that she married [Mr D] by proxy in about March 2009; he was in the UAE and she was in Kenya. He may be a New Zealand citizen. They are now divorced.
- [Mr D] filled out the transit visa application. The applicant did not see or sign it and she does not know what information he provided in it.
- The information in her protection visa application about her departure from Somalia via Ethiopia and an Asian country was not correct.
- She left Somalia in 2005. She paid USD\$3000 to a smuggler who took her by truck to Kenya.
- She lived in Kenya from 2005 until 2009. She had no lawful status there and has no right to return or live there.
- She left Somalia as a result of the events described in her protection visa application. That account is true except for the dates: the events happened earlier.
- She worked as a maid in Nairobi.
- She obtained the passport to enable her to travel out of Kenya as [Mr D]'s wife. She paid USD\$500 to an agent for the passport. It might be genuine but it was not genuinely issued to her. She did not provide fingerprints or a Kenyan identity card, which you normally have to in order to obtain a Kenyan passport.
- She is not sure whether the photograph in the passport was of her. It looked a bit like her but was scrutinised carefully by people at the airport. She used this passport to travel to the UAE with [Mr D]. Normally you need to show a Kenyan identity card as well as a passport when you depart Kenya, but as she did not have an identity card she paid a bribe to be allowed through.
- The applicant lived in the UAE with [Mr D] for six months. She had a temporary residence visa which would have ceased six months after her departure.
- She and [Mr D] travelled to New Zealand together. She travelled on the Kenyan passport. She had a visa which enabled her to work. She believes it may have been granted on the basis of her marriage to [Mr D].
- [Mr D] was violent and abusive. The applicant asked for a divorce and he gave her an Islamic divorce and arranged to get her out of New Zealand after about four months. She was scared and just wanted to get away from [Mr D]. He took her to the airport to make sure she left. When she got to Australia she discarded the passport in a rubbish bin.
- When she was interviewed at the airport she said that she had come straight to Australia from Somalia via Ethiopia and an Asian country because she thought it would improve her chances of being granted refugee status. She then

thought that she should repeat the same information in her protection visa application.

- She registered with UNHCR in Kenya and was issued with an identity card given to Somalis in Kenya. The card was in the [applicant's name]. When she left Kenya she left the card behind in the house where she had been living. She is trying to obtain that card or documents from UNHCR.

44. [In] August 2010 the applicant's representative advised the Department that UNHCR had found no records for the applicant. The applicant had then instructed her representative that she had understood that she was registering with the UN and had provided further information about the appearance of the card with which she was issued, how she was registered, and the information that the card could be renewed at Nyayo House. The representative advised that Nyayo House is the location of the Kenyan Department of Immigration and the representative surmised that the applicant may have been issued with an alien registration certificate by the Kenyan government, rather than UNHCR registration.
45. [In] February 2011 the Department was advised by the Australian High Commission in Nairobi, Kenya, that the Kenyan National Registration Bureau, which stores fingerprints and which had conducted the initial fingerprint check on the applicant, was under investigation for fraudulently issuing Kenyan identity cards to Somali nationals. The integrity of the NRB officer who had initially advised the DFAT that the applicant's fingerprints were not readable was now in question, as was this advice. It was then decided by the Department that further attempts to identify the applicant on the basis of her fingerprints would be futile.
46. The delegate decided to refuse to grant the applicant a protection visa. The delegate was of the view that the applicant had been untruthful in relation to the information provided in her protection visa application, including as to her nationality and identity, the manner of her travel to Australia, her marital status and a number of other matters of significance. The delegate was not satisfied that the applicant is, in fact, [the applicant], a Somali national. She found that the applicant's real identity is [Alias A], a Kenyan national. She noted that the applicant had made no protection claims against Kenya, and that she has the right to enter and reside in Kenya. She therefore found that the applicant has effective protection in Kenya and is not owed protection obligations by Australia.
47. Shortly before the hearing the Tribunal received from the applicant a statutory declaration made by [Ms E] [in] March 2011, a psychological assessment prepared by [Ms F] of [agency deleted: s.431(2)], and a submission from her adviser.
48. In her statutory declaration, [Ms E] stated that she is a Somali citizen by birth who came to Australia in 1997. She knew the applicant's parents in Somalia. They lived near her sister in a suburb of Mogadishu. [Ms E] often visited her sister. She last saw the applicant's parents shortly before the civil war started when the applicant would have been very young. She learned that the applicant was in Villawood IDC from a cousin on her father's side who had met the applicant when she was in New Zealand. The applicant called the cousin from detention. He contacted [Ms E] and explained that the daughter of a friend of [Ms E] and her sister was in Villawood IDC. [Ms E] said

that she had then visited the applicant in Villawood IDC and spoken to her on the phone.

49. The psychological assessment was dated [in] September 2010 and was prepared after two interviews with the applicant [in] June and [in] September 2010. It was undertaken at the request of the Department. [Ms F] stated that she was provided with only basic written information about the applicant. The report concludes that the applicant's presentation demonstrated severe, chronic features of post-traumatic stress disorder, congruent with diagnostic testing. The applicant was stated to be suffering from cognitive features typical of survivors of severe trauma, including blocking of trauma memories spreading into generalised blocking of thinking. [Ms F] noted that the applicant was "barely able to describe her history or symptomatology at all", despite the fact that it would have been in her interest to do so. She could hardly mention details of her traumatic past or organise the details into a chronology. However she experienced flashbacks and intrusive memories during the interview that, in [Ms F's] opinion, would have been difficult to fabricate. The traumatic incidents mentioned included the violent rape of the applicant and the murder of her mother and brother by five gunmen in 2004, and the subsequent disappearance of her family with whom she has had no contact since; and violent abuse by her husband.
50. The applicant appeared before the Tribunal at a hearing held [in] April 2011 to give evidence and present arguments. Evidence was also received by telephone from [Ms E]. The Tribunal hearing was conducted with the assistance of an interpreter in the Somali and English languages. The applicant continued to be represented in relation to the review by her solicitor and registered migration agent, who attended the hearing.
51. The applicant said that she is a national of Somalia, having been born in Mogadishu. She left Somalia at the end of 2004 when she was [age deleted: s.431(2)]. She said that she is now [age deleted: s.431(2)].
52. I asked the applicant about the circumstances in which she left Somalia. She said that she caught a truck from Mogadishu to [town deleted: s.431(2)] in Kenya; she went to Hagardel refugee camp.
53. She could tell me nothing about the journey from Somalia to Kenya – she could not say how long it took, what time of day she travelled, or whether she travelled during the day or at night. She said that she was young so she can't remember. She was able to say that the plane trip from New Zealand to Brisbane was three hours. She explained this apparent discrepancy – in being able to state the length of this journey but not the trip from Somalia to Kenya - by saying that now she is grown up.
54. She said that she paid USD1000 for the journey by truck to Kenya. She asked about registering as a refugee but they were not registering refugees at that time. She stayed with a family that she met there as she knew no one in the camp. One week later she paid USD2000 to travel by car from the refugee camp to Nairobi; this included crossing the border into Kenya. She had no documents but the man she paid talked to the police.
55. In Nairobi she was taken to [suburb deleted: s.431(2)] where all the Somalis live. She knew no one there but talked to some people at the shops and they found her a job as a maid. She was paid 2000 Kenyan shillings per month.

56. The applicant said that the money she used to leave Somalia came from the sale of her grandfather's farm, which her father had inherited. She said that she had never been to the farm but her father used to go there. She said that corn and mangoes were grown on the farm.
57. She said that her father did not live or work on the farm because he did not get on with his father. She said that her father did not work; sometimes he went to the shops and asked for help to support his family. She said that the family never received food from the farm. I asked why her father would beg for money to support his family when his father had a farm that produced food. She said that they did not get along and everyone just looked after themselves. Her father inherited the farm according to Islamic law.
58. I asked whether it was usual for people from the Midgan or *boon* clan to own land and she said that sometimes they can buy land or a house; this farm came from her great-grandfather.
59. When her father inherited the money he gave it to a shopkeeper to look after. She found out about the money when her father's best friend told her about it. She said that she had never seen this man before she met him one day when she was collecting water for the family she worked for. She said that he was coming in the opposite direction and he greeted her. She said that this is normal in her culture. He told her his name and asked her name. When she told him, he said that he was her father's best friend. He asked about her family and she told him what had happened and asked him for help. He said that he could not help her but told her about her father's money. She said that they went together to the shop but she did not get the money that day. She said that they walked to the shop but she could not say how long it took to get there. In response to questions asked by her representative she subsequently said that the shop was in the same suburb as the place where she collected water, and the house where she worked; she said that it was a big suburb.
60. She said that she went back to the shop a number of times over a week but she could not get the money. After a week she returned with her father's friend who persuaded the shopkeeper to give her the money. I asked the applicant a number of questions to establish how she arranged to meet her father's friend in order to return to the shop with him after the week had passed. She did not respond to the questions. Eventually she said that she only went to the shop once with her father's friend, at the end of the week. She said that they had made an appointment to meet. The first time she went to the shop on her own.
61. She said that the money was given to her in Somali shillings; there were more than one million shillings and she had to carry the money in a shopping bag. She changed the money at the shops before she left. She left Mogadishu the next day. She said that nobody helped her to arrange her travel; Somalis were leaving Mogadishu all the time because of the war and the trucks left from near where she worked.
62. She said that in Kenya she registered with the authorities as an alien refugee; lots of Somalis did that because otherwise they might be arrested.
63. She said that she had no relatives in Nairobi and knew nobody there from Mogadishu. I asked how she met her husband. She said that he knew a man who was staying with the family she worked for. They met in 2006 when he was visiting from New Zealand.

After he left they kept in contact by telephone. They were married by proxy in March 2009. He was in the UAE then and a relative stood in for him. She does not know why he did not return to Kenya to marry her. The applicant paid USD500 for a false Kenyan passport. She said that it is easy for Somalis to obtain such passports and it was easy to find someone to organise this. I noted that she had said that the passport was in a different name, not hers. She said that the picture in the passport was not hers. I asked how she knew this and she said that she gave the man her photograph; this was the only documentation she gave him, but normally you need an identity card and fingerprints. I noted that she had just said that the photo in the passport was not of her. She said that she did not know whether it was her or not. I asked whether the photograph in the passport was the one she had given the man. She did not directly answer the question which I repeated a number of times. Eventually she said that when she got the passport she did not think the photo looked like her; but it was very dark. She said that she was challenged about her identity by immigration officers in New Zealand.

64. She said that she left Kenya in June 2009. She spent six months in the UAE and left there in January 2010. She travelled to New Zealand with her husband, [Mr D]. They lived together in Wellington. She said that she had no relatives in New Zealand but she met a man who knew her family; this was [Mr G]. She met him at the butcher's. She told him her name, and the names of her family members and he said that he knew her.
65. She said that her husband was violent and abusive. She said that she told him to divorce her and she would "go back". I asked where she was planning to go back to and she said that she wanted to come here and ask for protection. I asked why her husband would pay for her ticket to Nairobi when he could have just told the New Zealand immigration authorities that she was no longer his wife and she would be deported. She said that he was responsible for her and thought he might get into trouble from the authorities so he just sent her away.
66. I asked when the applicant first thought about getting refugee status in Australia. She said that it was when she was leaving New Zealand; she had no other place to go. She said that she did not know that the plane stopped in Australia; she did not know that she was here until they landed in Brisbane. There were other Somalis on the plane and she asked them about the toilet and they told her they were in Brisbane. I asked whether she was prepared to return to Kenya. She said that they would put her in gaol because of her false passport. She did not know what to do, she was not thinking at all; she just could not go back to Somalia because her life was at risk.
67. I asked whether she had considered applying for refugee status in New Zealand. She said that she was scared that her husband would follow her everywhere she went; he had threatened to kill her. She was so scared and wanted to escape from where he was. I noted that, in doing so, she risked being returned to Kenya or Somalia. She said that her plan was to come here and get a better life, she just wanted to go somewhere she would be safe I asked when she made that plan. She replied that it was when she was leaving New Zealand, when she was in the plane. I put to her that she had said that she did not know until they landed that the plane would stop in Australia. She said that in her heart she asked God to take her to a safe place.
68. I asked whether she could have asked [Mr G] for help. She said that she only saw him once. In any case, her husband never let her out. She acknowledged that she had [Mr G]'s phone number, and that she had called him from Villawood IDC. However, she

said that in New Zealand she did not have a phone in the house and she was never allowed out. She said that her husband gave her a mobile phone when she was leaving New Zealand so that she could call her family when she got back.

69. I asked the applicant why she had provided untruthful information in her protection visa application and at interview with the Department about when she left Somalia, the countries she had been to, and about her marriage. She said that she had heard that providing false information would help, and she was scared. Later she heard that telling the truth would help her. She is telling the truth now. I asked who had told her that she should not tell the truth. She said that before she came here they told her that when you go overseas you should give false information. I asked who told her that; she said that Somalis said that. I asked a number of questions about the source of this information and she kept repeating that Somalis said it. Eventually she said that she had overheard conversations when she was working as a maid; Somalis who had gone overseas had said that they told lies in order to get what they wanted. I put to her that, according to her claims, she had no idea at that time that she would ever be able to leave Somalia and travel overseas. She said that it was not wrong to overhear conversations. I put to her that she was only [age deleted: s.431(2)] at the time and she was unable to remember much about what had happened at that time. She said that she is only human and she had overheard these conversations. I asked why she had thought that she should lie about certain things - such as when she left Somalia and where she had been on the way to Australia - but not other things, such as her clan and what had happened to her before she left Somalia. She said that I could check her tribe on the internet. She said that she was told to lie so that she could get what she wants, but now she is telling the truth. I asked whether she thought it would help her to lie about her clan and what happened before she left. She said that she is telling the truth about those things; she thought that would help her because her story is true. I asked what made her think she should lie about the other matters such as the dates and countries she had lived in. She said that she was scared and confused and she did not know what to say; she did not know what she was talking about.
70. The applicant's representative requested the Tribunal to take evidence from the witness at that point, as she said that she had just spoken to her and it was a convenient time for her to talk.

Evidence of [Ms E]

71. At the beginning of the conversation [Ms E] said that she did not want to speak for long as she was with her daughter who was going to have a baby at any moment.
72. She said that the applicant's parents were next door neighbours of her younger sister in Mogadishu. She said that her cousin in New Zealand had called her and told her that [the applicant] was in Villawood and asked her to help. Her cousin's name is [Mr H]; she stated that he has the same surname as her.
73. I asked how her cousin knew the applicant and she said that he had seen the applicant in New Zealand. I asked whether she knew any more than that and she said that she does not know the applicant, maybe she was born after [Ms E] left Somalia. She said that her cousin had called her and asked for her to support the applicant; she repeated a number of times that she was telling the truth.

74. [Ms E] said that she had never seen the applicant in Somalia, not even as a baby. However, she repeated that her sister was best friends with the applicant's mother and they lived next door to each other. I asked whether the applicant's father had a job and [Ms E] said that her grandfather had a farm at [town deleted: s.431(2)]; she heard this from the family. She said that she did not know what the applicant's father did for money. She said that he used to work but she does not know where; she said that everyone used to work, they did not sit at home.
75. [Ms E] said that she is from the [clan deleted: s.431(2)]. I asked whether it was unusual for someone from the [clan deleted: s.431(2)] to be friends with a Midgan family. She said that it is not, it depends on the individuals.
76. I asked [Ms E] how she knew the girl in Villawood was [the applicant] if she had never seen her. She said that she speaks Somali and looks like a Somali. She said who her parents and grandfather were and all of it is true.
77. [Ms E] said that she does not know why the applicant left Somalia, nor does she know when she left. I asked whether she knows the current whereabouts of the applicant's family and she said that they are in a refugee camp. I asked whether she was talking about the applicant's father and mother and she said that the applicant told her that her family was in a refugee camp. When I sought to elicit further information about this she said that she did not have time to ask the applicant about her family. I asked what made her think that the applicant's family was in a refugee camp and she said that is what the applicant told her.
78. At that point the line was cut off. I called [Ms E] back. She then said that she had not asked the applicant about her family. She said that the day she visited her, there were two men coming out of where she was; [Ms E] asked the men where the applicant was and they told her. She said that the applicant was very confused and frightened; she is not sure whether the applicant was scared of her or of the guys who had just left. She and the applicant talked for half an hour. They talked about how the applicant got here, how long she had been here and what she needed. The main thing she needed was to get her mobile phone recharged. That is the only time [Ms E] has seen the applicant but they have spoken on the phone.
79. I asked what the applicant had told her about how she got here and [Ms E] said that they had not talked about that. I put to her that she had just said that they did talk about that. She said that she is not from Immigration, the applicant did not tell her when she left Somalia or about any other countries she had been in. She did not ask about her parents because she seemed deeply in trouble; she only asked about herself. I asked [Ms E] why she had said that the applicant's parents were in a refugee camp and she said that all Somalis are in refugee camps. [Ms E] then said that she needed to go.
80. The applicant's representative asked [Ms E] to recount a conversation they had in which she had described conversations typically held between Somalis who meet outside Somalia by which they establish their identities. [Ms E] did not respond directly to the questions for quite some time; eventually she said that they asked where they are from, where they are going, and which tribe they are from. She said that she does not know what the applicant told [Mr H], her cousin, but he knew where she came from.

81. I then asked the applicant whether she had told [Ms E] that her family is in a refugee camp. She said that she did not; she said that [Ms E] asked about her family and she said that she did not know where they are and maybe they are in a refugee camp. I asked the applicant why she would not have told [Ms E] the information about her family that was contained in her protection visa application. She said that she did tell her what is in the protection visa application but she did not tell her that they are in a refugee camp. I put to her that it did not sound like she had told [Ms E] the information about her family as set out in her protection visa application, that is, that her mother and brother were dead and she did not know where the others were. She said that she would not tell her that; she would not tell her about her family, only about her own life, but nor would she tell [Ms E] that she had been raped because this is so shameful. I asked why she would not tell the truth about her parents, given that [Ms E] knew them. The applicant said that they did not have much time together; she was confused and had a lot of problems.
82. [In] April 2011 the Tribunal wrote to the applicant pursuant to s. 424A of the *Act*, inviting her to provide comments or a response to certain information that would, subject to her comments or response, be the reason or part of the reason for affirming the decision under review.
83. The information comprised, firstly, inconsistencies between the applicant's evidence and that of the witness, [Ms E], as to the name of the Somali man the applicant claimed to have met in New Zealand – the applicant said that he was called [Mr G] whereas [Ms E] said that he was called [Mr H]; the current whereabouts of the applicant's family; and what [Ms E] and the applicant had talked about during their meeting at Villawood IDC. The applicant was advised that these inconsistencies might lead the Presiding Member to conclude that either the applicant and the witness, or both, were not telling the truth. Secondly, the applicant was advised that as [Ms E] stated that she had never met the applicant prior to their meeting in Villawood Immigration Detention Centre, and that she had never seen the applicant in Somalia although she knew her parents, the Tribunal might consider that in these circumstances, [Ms E]'s ability to give reliable or credible evidence as to the applicant's identity was extremely limited.
84. The applicant was also invited to comment on information on the Department's file indicating that she had travelled to Australia on a Kenyan passport in the name of [Alias A], with a transit visa issued in New Zealand in the name [Alias A]; that she had entered New Zealand with this passport and using this identity, with which she had applied for permission to work. However, she had claimed in her protection visa application and at interview with an officer of the Department that she was a national of Somalia and of no other country; she claimed to have travelled to Australia via Ethiopia and an Asian country, and did not mention ever having been in Kenya. In a statutory declaration made [in] August 2010 the applicant acknowledged that the information in her protection visa application was untrue, and stated that she had resided in Kenya from 2005 until 2009, that she then spent six months in the UAE in 2009, and four months in New Zealand. At the hearing the applicant provided details of the months and years in which she travelled to the UAE and New Zealand. The applicant was informed that the information might lead the Tribunal to conclude that the applicant is a national of Kenya, and not of Somalia, and that she has the right to enter and reside in Kenya. Moreover, as the applicant had admitted providing false information about central aspects of her claims to refugee status – her identity, the countries that she had

resided in prior to coming to Australia and when she left Somalia – this might lead the Tribunal to conclude that none of her claims should be believed.

85. Several matters about which the applicant's oral evidence appeared to be implausible or internally inconsistent were also put to her for comment. These were:
- The claim in the protection visa application that she came from a poor family from a minority caste and that her father had no work and had to beg for a living appeared inconsistent with the oral evidence at the hearing that her grandfather owned a farm which produced corn and mangoes and that the sale of the farm provided the sum of USD3000 which was put aside by her father to establish a business.
 - The applicant's account of meeting her father's best friend by chance after the disappearance of her family, and that he told the applicant of the existence of her father's money and helped her to reclaim it from the shopkeeper appeared to be implausible.
 - The evidence about the circumstances of the applicant's departure from New Zealand and her arrival in Australia appeared inconsistent; in particular, the applicant's conduct in not seeking refuge in a safe country, New Zealand, and then leaving that country on a flight to an unknown destination might be considered inconsistent with the actions of a person who feared returning to a country where she faced persecution.
 - The applicant stated at the hearing that her husband gave her a mobile phone when she left New Zealand so that she could contact her family, which appeared inconsistent with her earlier evidence that she does not know the whereabouts of her surviving family members and that she has had no contact with them since 2004.
 - The applicant had not adequately explained on what basis she decided to lie about some matters in her protection visa application – for example, when she left Somalia and the countries she went to before arriving in Australia – but not others, such as the events which led to her departure from Somalia and her clan membership.
86. The applicant's response was due [in] May 2011, but due to certain events in Villawood IDC and a shortage of Somali language interpreters which made obtaining her instructions difficult, the Tribunal agreed to her adviser's request for an extension of time. The applicant's comments and response to the s.424A letter was received [in] June 2011. The response comprised a submission by the applicant's adviser; a further statutory declaration made by the applicant [in] June 2011; a letter from [Ms I] of the [Agency 1]; a document entitled East Africa Bribery Index 2010; and email and transcribed file notes of telephone correspondence with the Department.

Applicant's statutory declaration [in] June 2011

87. In her statutory declaration the applicant addressed the issues raised by the various pieces of information identified in the s.424A letter.
88. As to the inconsistent evidence about the name of the Somali man she met in NZ, the applicant stated that she and the witness were referring to the same man, the witness's cousin. The applicant said that it is possible that he introduced himself to her using a name different to the one [Ms E] knows him by. She said that she had spoken to him once from Australia, but that she was unable to contact him in NZ because of her husband's controlling ways.

89. As to the fate and current whereabouts of her family members, the applicant said that she had never discussed this with [Ms E]. [Ms E] may have assumed that they were in a refugee camp. The applicant stated that [Ms E] did not give evidence that they talked about how the applicant left Somalia and came to Australia, and stated that they did not discuss this information, although they may have talked about how she ended up in Villawood. The applicant said that the main thing they talked about was items the applicant needed; their meeting did not last for long and she was not in a good mood. The applicant suggested that [Ms E] may have felt obliged to provide answers to the Tribunal's questions (about the whereabouts of the applicant's parents) even if she did not know the answer. As to [Ms E]'s limited knowledge of her, the applicant stated that [Ms E] is the only person who has any knowledge of her identity, which is based on the information given by the applicant to the man she met in NZ.
90. As to her identity and travel documents, the applicant reiterated that she had obtained her Kenyan passport by paying money to a man who obtained a fraudulent passport in the name of [Alias A]. She stated that the man told her, when he gave her the passport, that she should from then on use that name for everything she did.
91. The applicant stated that the Tribunal should not rely on information from the Kenyan Immigration Office that the photograph in the passport bore some resemblance to the photograph of the applicant provided to that office by the Department. She stated that the passport photograph was very dark and showed an African woman wearing *hejab*. She stated that every time she passed through an airport the photograph was scrutinised carefully, apparently because the officers did not think the photograph was of the applicant.
92. The applicant stated that she initially said that she came to Australia via Ethiopia and not Kenya because she did not want the Australian authorities to think that she was a Kenyan citizen and that the passport she had was hers. The applicant conceded that she had provided false information about the countries she had travelled to on the way to Australia, but stated that she had not provided false information about her identity or her country of nationality.
93. As to her grandfather's farm, the applicant reiterated that she does not know how her ancestor came to own land, although it is not usual for members of her clan to own land. She stated that it was not her grandfather's responsibility to support his son's family; her father and grandfather did not get on and her grandfather was not generous to her family. She stated that [Ms E] may have given evidence that the applicant's father worked (contrary to the applicant's evidence that he begged for a living) because it was impolite to mention this, or because she assumed he had a job because he was not always at home.
94. The applicant reasserted her account of having met her father's friend by chance, and having obtained her father's money with his friend's help.
95. As to her failure to seek protection in NZ, the applicant stated that her husband had been extremely violent towards her after she miscarried in the UAE. He beat her, repeatedly tried to suffocate her and threatened to kill her. When he went out he would lock her in the apartment. The applicant was completely isolated in NZ. She knew no one and spoke no English. She could not contact [Mr H] because they did not have a phone in the apartment and she did not have a mobile. She said that her husband did not

want to be responsible for her so she said that she would leave NZ if he would divorce her. The applicant had no idea that she could obtain protection from her husband's violence or apply for refugee status in NZ; if she had known, she would have done so. She said that her husband took her to the airport because she would not have known how to get there otherwise; she was afraid to ask for help at the airport and she did not see any other Somalis until she was on the plane. She said that her husband booked her flight and she did not know where she was going because she cannot read English. She thought that the plane was probably going to Kenya; she had no plan to seek protection in Australia, but planned to seek help wherever the plane stopped in a safe place. She did not have a plan to seek protection in Australia prior to her arrival, and was confused about the Tribunal's questioning around this issue. She left NZ because she thought that there was a chance that she would reach a safe place, whereas she felt that she would never be safe in NZ.

96. She reiterated that she has no family members in Kenya and does not know the whereabouts of her surviving family members; she stated that her husband told her that he was giving her the mobile so that she could contact her family, and did so out of a sense of responsibility, however, she does not know why he said that because he had not met her family and she had not told him that she had family in Kenya.
97. The applicant stated that she had lied about some things because she was afraid and confused. She did not know what would happen to her in Australia and she lied to protect herself and to improve her chances of being allowed to stay here. She told the truth about her clan. It never occurred to her to say that she was from another clan because she can say nothing about other clans and she would not be able to answer questions about other clans if she was asked. She stated that her subclan is [subclan and branch deleted: s.431(2)]. She knows the name of her family members three generations back. Being a member of the *boon* clan is not something to be proud of; no one would say they were a member of this clan if they were not. The applicant mentioned some stories that her father told her about famous people from the *boon*. There were two singers, Maryam Mursai and Cumar Dhuule, but although there are many honourable people from the *boon* clan, they are disrespected or ignored by the majority of Somalis.
98. The applicant stated that she is afraid to return to Kenya because she will be punished for using a fraudulent Kenyan passport. She will be arrested and put in prison where she will be raped and beaten. In any case, people who are not Kenyan citizens are vulnerable in Kenya. The applicant would be targeted by the police or military. It is not safe for Somalis to walk the streets as they are targeted by the police and military and if they don't have documents they will be put in prison and beaten or raped. They might be beaten or raped on the streets. It is impossible for her to return to Kenya.

Letter from [Agency I]

99. [Ms I] was the [official deleted: s.431(2)] of the Association until May 2011. In that capacity the Department informed her that the applicant was in Villawood IDC and she visited her a few times, as did her colleague [name deleted: s.431(2)]. She stated that the applicant was shy, scared, spoke very little and "barely trusted our visits". [Ms I] tried to establish the applicant's tribe in order to link her with other members of her tribe, but "she never gave me a hint". All [Ms I] knows about the applicant is from her own observation, which tells her that the applicant is Somali and speaks with a southern

accent. She stated that her accent is “pure southern Somali, and does not have any understanding of Kenyan born Somali accent who have been influenced by English and Swahili language. Kenyan born Somali have their own language terminology which is totally different from the Somalis. If [the applicant] is from Kenya I would say she never lived there for a long period.” [Ms I] stated that it is possible that the applicant is from the *boon* tribe, but they can’t find anyone from that tribe in Sydney. Not many people are *boon*, and will not say loudly that they are.

Submission of applicant’s adviser

100. The applicant’s adviser submitted that in circumstances where the limited options available to the applicant to prove her identity have been exhausted, partly by circumstances beyond her control, the Tribunal should accept her claim to be [the applicant], a Somali citizen with no right to reside in Kenya.
101. The adviser argued that the delegate should not have relied on DFAT advice to conclude that Kenyan passports are documents of high integrity and that the possibility of a non-Kenyan citizen obtaining one was remote. It was argued that this information was out of date and inconsistent with current information, including the information from Transparency International which was provided with the submission, which indicates that Kenyan immigration authorities are extremely corrupt. This is further indicated by the fact that the Department had discontinued its own efforts to have the applicant’s identity verified by the Kenyan authorities because of possible corruption within the relevant department. The applicant’s adviser submitted that if fingerprint checks had been conducted in Kenya they would have borne out the applicant’s claim that her fingerprints were not on a database of Kenyan citizens who have been issued with a Kenyan identity card – so that she therefore could not have been issued with a valid Kenyan passport; and that her fingerprints may be held as a result of her registration as a refugee in 2005 or 2006, when the Kenyan authorities were arresting Somali citizens who had no identity documents. The adviser noted that the applicant had agreed to the fingerprint checks being conducted despite being aware that this would prolong her detention. She felt that she had been misled about the reasons why the investigation was abandoned.
102. She argued that the applicant had lied about certain matters in her protection visa application and that she had provided credible reasons for having done so, including her living situation prior to her arrival in Australia, and the fact that she had never dealt with any government that was free of corruption and discrimination.
103. In relation to the provision of further psychological evidence, which had been discussed at the hearing, the adviser stated that the applicant had been referred by the Department to a psychologist who, to the best of the adviser’s knowledge, had little experience of dealing with asylum seekers; who had failed to return the adviser’s calls; and who had declined to provide a report for the Tribunal on the basis that her role was to assist the applicant to develop coping strategies to manage her reported psychological issues.

FINDINGS AND REASONS

104. The applicant claims to be [applicant name deleted: s.431(2)], a national of Somalia. Information obtained by the Department, which the applicant now acknowledges to be true, indicates that she entered Australia on a Kenyan passport in the name of [Alias A].

The Kenyan Office of the Director of Immigration Services has confirmed that the passport was issued in accordance with the personal details it contains – that [Alias A] was born in [Town 1], Kenya in [year deleted: s.431(2)]- and that the photograph in the passport “shows some resemble” to the photograph of the applicant that was provided to it by the Department . The applicant claims that she put the passport in a rubbish bin at Brisbane Airport on arrival and she has no other form of identification. The applicant claims that the passport was fraudulently obtained in March 2009, and that once she had it, she always used that identity. She now confirms that, as information obtained by the Department revealed, she was married in the name [Alias A], travelled to the UAE and NZ in that name, and lived in both countries for several months under that name.

105. There are major problems with the applicant’s evidence, and her overall credibility in relation to key issues, including that of her identity and her nationality. An assessment of the credibility of her claims is therefore the starting point in determining this application.
106. As Beaumont J observed in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 451, “in the proof of refugeehood, a liberal attitude on the part of the decision-maker is called for”. However this should not lead to “an uncritical acceptance of any and all allegations made by suppliants”.
107. If the Tribunal has “no real doubt” that the claimed events did not occur, it will not be necessary for it to consider the possibility that its findings might be wrong: *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220 per Sackville J (with whom North J agreed) at 241. Furthermore, as the Full Court of the Federal Court (O’Connor, Branson and Marshall JJ) observed in *Kopalapillai v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 at 558-9, there is no rule that a decision-maker may not reject an applicant’s testimony on credibility grounds unless there are no possible explanations for any evidentiary inconsistencies. Nor is there a rule that a decision-maker must hold a ‘positive state of disbelief’ before making an adverse credibility assessment in a refugee case.
108. The UNHCR Handbook reminds decisionmakers that applicants for refugee status may face particular problems of proof, and suggests that if an applicant's account appears coherent and plausible and does not run counter to generally known facts, s/he should be given the benefit of the doubt, unless there are good reasons to the contrary and provided that the decision maker is satisfied as to his or her general credibility: see United Nations High Commissioner for Refugees *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para. 196.
109. The Tribunal’s own Guidelines on Assessment of Credibility address some of the matters that may impact on the ability of an applicant to provide a “credible” account of their claims. Bearing those in mind, I have had regard to the personal circumstances of the applicant, many of which may have adversely affected her capacity to give evidence about her circumstances. She is a young woman who claims to be illiterate. She claims to have experienced traumatic events, including rape, separation from family members and domestic violence. There is medical evidence on file which supports her claim to have been sexually assaulted, although there is a significant issue as to the timing of the event. The psychological report prepared by [Ms F] sets out particular difficulties that she observed were experienced by the applicant in presenting her account, which include an inability to express concepts of time, the blocking of memories and almost

complete inability to speak about some aspects of her experience without extreme distress. The applicant has been in immigration detention for a considerable period of time, and appears to have had little support from members of her community. The applicant's claims concern sensitive matters, including sexual and domestic violence, and all her claims have been made through interpreters.

110. Having carefully considered all the matters discussed above, and all of the claims and evidence provided by the applicant, I conclude that the applicant's evidence is highly unreliable. I accept, on the basis of the psychological report, that the applicant has been subjected to trauma. However, I consider that the applicant's testimony and the different claims presented at various times are so unreliable that I cannot be satisfied of the truth of her claims and evidence, including when, where, or in what circumstances the traumatic events took place. She admits having initially lied about matters such as when she left Somalia, how she travelled to Australia, that she was married, and that prior to coming to Australia she travelled to and lived in the UAE and NZ using the identity of a Kenyan national, and that she held a Kenyan passport in this identity. She only admitted to having provided this false information when confronted by the Department. In my view, this cannot be explained by her medical condition. Having regard to the applicant's difficult circumstances including the medical evidence, and even taking a liberal and generous approach to her testimony, I am not satisfied that she is telling the truth in relation to key aspects of her claims, including her identity. I am not satisfied on the available, credible evidence, that the circumstances in which the applicant was traumatised establish claims to refugee status.
111. First, the applicant has admitted having provided untruthful information in her protection visa application and at interview with the delegate. This information included the details of her departure from Somalia and the manner of her travel to Australia. While she initially stated that she left Somalia in 2009, soon after the events which she claim give rise to her fear of persecution in Somalia, she subsequently stated that she left Somalia in 2005, and that the rape and attack on her family was in 2004. She stated initially that she went to Ethiopia and an Asian country before coming to Australia. She subsequently stated that in fact she spent four years in Kenya, six months in the UAE and four months in New Zealand before coming to Australia. She initially provided no details of the passport on which she travelled to Australia, saying that she was brought here by a smuggler who kept the passport, which she had never seen; she subsequently admitted, when details of the passport were put to her by the Department, that she had obtained a Kenyan passport herself, in Kenya, through an agent and that she had used it to travel to two countries prior to coming to Australia.
112. I am aware that applicants for refugee status may feel that it is in their best interests to lie about details of their travel to Australia. Such information may in some circumstances be regarded as peripheral to establishing claims to refugee status. However, in this case, details about the applicant's travel to Australia go to central issues - her identity, her nationality, when the events that she claims led her to leave her claimed country of nationality took place, and whether she has the right to enter and reside in a country where she does not have a well founded fear of persecution.
113. When questioned at the hearing about the reasons for which she had provided untruthful information, the applicant said that she had heard that other Somalis had told lies and got what they wanted – presumably residence in an overseas country. When questioned further about the source of this information, the applicant appeared to be

evasive, repeating just that she had heard “Somalis” say this. Eventually she explained that she had overheard these conversations while working as a maid. She was not able to explain on what basis she decided to lie about when she left Somalia, which countries she had been to, and what had happened to her passport, in order to advance her case; but to tell the truth about other matters, such as the events which led to her departure from Somalia, when they happened, and her clan membership.

114. She was again invited to respond to this information in writing after the hearing, but the further comments on this issue which were provided in her response to the Tribunal's s.424A letter provide no further basis on which I can interpret the applicant's inconsistent evidence in a favourable way. She reiterated her claim that she provided false information about certain matters because she was afraid that she would be sent back to Kenya if she told the truth about having travelled to Australia on a Kenyan passport, and she stated that she had never before dealt with a government that was free of corruption. While the applicant claims to have been naïve and helpless in her dealings with migration authorities, in my view her decision to lie not only about her possession of a Kenyan passport and to destroy that passport, but also about her travel to other countries and about when she left Somalia, indicate that she was well aware of what she should and should not say to immigration officials. I do not believe that the applicant can be accepted as a person who lied only about where she had been and whether or not she held a Kenyan passport, out of fear and simply to ensure that she would not be returned to Kenya. I consider that the applicant was well aware of the particular nature of the untruths she admits to having told in order to best present her claims to protection; in these circumstances, I am not satisfied that she has been truthful about other matters which are equally crucial to her claims, such as the circumstances in which she claims to have left Somalia, and the events which led to her departure. I consider that the applicant's credibility has been so seriously undermined by her admitted untruthfulness, that her evidence as a whole cannot be believed.
115. There are other areas where I have substantial difficulty accepting the applicant's claims because her evidence was either inconsistent or implausible.
116. Her account of having met by chance, in Mogadishu, a man who turned out to be her father's best friend, who told her about and assisted her to obtain her father's money which enabled her to leave Somalia is, in my view, extremely implausible. This is also my view of her claim that her father, who had no means of supporting his family except begging, inherited a farm worth a considerable amount of money from his father, yet gave the money to a shopkeeper for safekeeping and subsequently disappeared without taking the money for himself.
117. The applicant's accounts of her various visits to the shop where the money was held were inconsistent. In her protection visa application she said that her father's friend took her to the shop on the day they met. At the hearing she initially repeated this claim; when asked how she arranged to meet with the friend in order to return to the shop with him later that week, she then said that they only went to the shop together once, at the end of the week.
118. The applicant was able to provide very few details of her claimed journey from Somalia to Kenya – she could not say how long it took, what time of day she travelled, or whether she travelled during the day or at night. While I accept that the applicant has difficulty with concepts of time and chronology, I find it difficult to accept that if she

had left Somalia for Kenya as she claims, she would have been able to provide so few details of this journey.

119. The applicant's claim that in a butcher's shop in New Zealand she met a man who turned out to be the cousin of a family friend from Mogadishu, [Ms E], who would subsequently emerge, in Australia, as a witness to the applicant's identity is highly implausible. This is compounded by the inconsistent evidence as to the name of this man – the applicant said that he was [Mr G], while [Ms E] said that he was [Mr H]. I have considered the applicant's explanation for this - that he may have been known by a different name in NZ and introduced himself to the applicant by this name - but do not accept it. Given their claimed connection, I would expect that if it were the case, as suggested by the applicant, that the man is now using a different name to the one he used in Somalia, he would have mentioned this and told the applicant his former name so that she could identify him. In these circumstances, I do not accept that the applicant has been truthful about meeting [Ms E]'s cousin in NZ. I find that this undermines the credibility of [Ms E]'s evidence about the identity of the applicant.
120. I found the applicant's evidence about the circumstances of her departure from New Zealand and her arrival in Australia to be inconsistent and implausible. She states that she did not apply for protection in New Zealand because she was afraid of her violent and abusive husband and just wanted to get away from him. She stated that she was afraid of returning to Kenya or Somalia, that she did not know where her plane was going, and that she did not know that it was going to land in Australia until her arrival here. However, she also clearly stated at the hearing that she did intend to come to Australia to seek protection; for example, she stated that she told her husband that if he divorced her she would "go back", and when asked where she would go back to, she said that she wanted to "come here" and seek protection. Asked to explain the apparent inconsistencies about whether or not she knew where she was going when she left NZ, and whether she knew or did not know that she would be going to a country where she could claim protection, she now states that she was confused by the questions about whether she had a plan to come to Australia; she says that she felt that it was better to take a chance on leaving NZ and finding herself in a safe country, rather than staying in NZ with her husband where she could never be safe. However, in my view, the totality of the applicant's evidence as given at the hearing is clearly inconsistent as to whether she did or did not intend to seek protection in Australia prior to landing here; the questions which she says caused her to be confused only arose because she herself initially said that she decided at an earlier point to seek protection in Australia. I consider that the most likely explanation for these inconsistencies is that the applicant is not being truthful about her intentions and the degree of her knowledge about her departure arrangements. I consider that this is a matter which is highly significant to her overall claims, as it is the key to her failure to seek protection in NZ, a safe third country. This, in turn, casts doubt, in my mind, on her claim to have a well founded fear of persecution in Somalia or Kenya. I therefore consider that the applicant's lack of honesty about this issue further undermines her credibility on critical aspects of her claims.
121. Moreover, I find the applicant's evidence about the actions of her husband to be highly implausible and I do not accept that she is telling the truth about this. I do not accept that the applicant's husband would have spent thousands of dollars on airline tickets to get the applicant out of NZ, if their relationship was of the nature claimed by the

applicant. On her own account, the applicant was completely vulnerable. Her husband did not need to fear any consequences from her family, or anyone else, if he mistreated her. There was absolutely no need for him to spend money on her. He could have thrown her out of the home or reported to the NZ immigration authorities that their relationship had broken down and she would have been deported. If it is suggested that he did not do so because he was afraid that the applicant would report that he had been mistreating her, and he simply wanted to get rid of her, this would be, in my view, inconsistent with her own claims about her helplessness and vulnerability. Her claim that he gave her a mobile phone on departure out of a sense of responsibility, stating that it was so that she could contact her family, appears to me to be equally inconsistent with her other evidence about the nature of their relationship and the type of person he is. Moreover, this remark appears to be inconsistent with the applicant's evidence that she does not know where any members of her family are. When asked to comment on this apparent inconsistency, she stated that she does not know why her husband would have said this, and it is true that she cannot be expected to explain his remarks. However, if her own evidence about her total lack of family contact or support networks anywhere is accepted, it is difficult to see why he would have given her a phone at all, regardless of what he may have said about his reason for doing so. I consider that the most likely explanation is that, as she first stated in her evidence, her husband did give her the phone so that she could contact members of her family. This then undermines her evidence to have no knowledge of the whereabouts of any members of her family.

122. On the whole, I find the applicant's account of her circumstances in NZ and the circumstances of her departure from that country to be internally contradictory and implausible. I do not accept that the applicant was forced to leave NZ because of her violent and abusive relationship with her husband, or that she left not knowing where she was going. I consider that the applicant knew that she was coming to Australia and that she intended to apply for asylum here. I consider that the applicant's evidence about this issue has been untruthful. I consider that the applicant's conduct – in not seeking refuge in a safe country, New Zealand, while leaving that country on a flight bound for Kenya, where she claims to have no legal right to reside and where she now claims to face persecution - is inconsistent with that of a person who fears returning to a country where she faces persecution – either Kenya or Somalia.
123. The evidence overall as to the whereabouts of the applicant's family is highly unsatisfactory. The applicant claims that her mother and a brother were shot in front of her in the incident when she was raped. She claims that the remaining members of her family ran away and she has not seen or heard from them since and does not know their whereabouts. However, as discussed above, the applicant stated at the hearing that her husband had given her a mobile phone when she left New Zealand so that she could contact her family. Further, [Ms E] gave evidence that the applicant had told her that her family was in a refugee camp, although she subsequently sought to resile from this evidence, saying that she and the applicant had not discussed the whereabouts of her family. The applicant stated at the hearing, when asked to comment on the discrepancy, that she and [Ms E] had discussed the situation of her family, but that she had not told [Ms E] that they were in a refugee camp. She subsequently claimed, in her s.424A response, that in fact they had not discussed her family at all. Based on these inconsistencies in the applicant's own evidence, and between her evidence and that of

[Ms E], I do not accept that the applicant is telling the truth about the situation of her family.

124. In the light of the deficiencies in the applicant's evidence, I have difficulty accepting any of her claims, including her evidence as to her identity and nationality. Even though her claims about the manner in which she obtained a fraudulent Kenyan passport are plausible, as her adviser submits, this is not a sufficient basis, of itself and in view of all the other manifest problems with her evidence, to support a finding that she is not a national of Kenya, but a national of Somalia. There is medical evidence supporting the applicant's claim that she was raped and subjected to traumatic events, however she initially claimed that these events took place in Somalia 2009 and precipitated her departure. She now claims that they took place in 2004. As discussed above, I consider the applicant's account of her circumstances between the rape and the claimed attack on her household in which her family disappeared, and the manner in which she was able to arrange and pay for her departure from Somalia, to be highly inconsistent and implausible. Having originally denied ever having been in Kenya, she now claims to have lived there for some four years, but as noted above, her account of how she got there was vague and implausible. In these circumstances, I am not even able to accept the most fundamental of the applicant's claims that might establish a real chance of persecution – that she is a Somali national from the *boon* clan. The applicant's apparent ability to name, in her s.424A response, three generations of her family and her claimed subclan and branch, as well as to provide information about famous singers who are members of the *boon* clan, is not sufficient to overcome the major deficiencies in the applicant's other evidence about her background and her circumstances, and to satisfy me that she is a member of this clan who has faced in the past, and would face in the reasonably foreseeable future, a real chance of persecution in her country of nationality for this reason.
125. The evidence provided by the two witnesses, [Ms E] and [Ms I], while the best that the applicant can provide, is not sufficient in my view to establish that her identity is as she claims.
126. I did not find [Ms E] to be a credible or persuasive witness. Her evidence was inconsistent with that of the applicant in important respects – as to the name of her cousin in New Zealand who put her in touch with the applicant, and as to the whereabouts of the applicant's family. For the reasons discussed above, I do not accept the explanations put forward by the applicant for these discrepancies. I conclude that either the applicant or [Ms E], or both, are not telling the truth.
127. [Ms E] stated that she had never seen the applicant in Somalia, and that they met for the first time in Villawood IDC. Her evidence about the applicant's identity is based on what the applicant told her was her name and the names of her parents, which they claim is also what the applicant told [Ms E]'s cousin. For reasons set out elsewhere, I do not accept the applicant's claim that the only person she met in NZ happened to be the cousin of [Ms E], an old family friend.
128. In all the circumstances, I am not satisfied that [Ms E] is an independent, objective source of information about the applicant's identity. As her own evidence was that she had never seen the applicant prior to their meeting in VIDC, her views as to the applicant's identity were based on what she was told by the applicant herself and her cousin in New Zealand. Moreover, she appeared to be evasive in her evidence and

appeared to be reluctant to provide many details sought by the Tribunal. I find that the evidence of [Ms E] can be given no weight in establishing the applicant's identity.

129. I have considered the letter from [Ms I] of [Agency 1]. The letter states that, in the author's view, the applicant comes from southern Somalia and speaks with a pure accent. Her conclusion that "if [the applicant] is from Kenya I would say she never lived there for a long period" is somewhat ambiguous – it is not clear whether she means that if the applicant has ever lived in Kenya it was for a short time, or that if she had come from Kenya she had left there a long time ago. Either way, I consider that this letter provides little assistance in determining the nationality of the applicant. The applicant herself states that she lived in Kenya from about 2005 until 2009, and it is not clear that [Ms I]'s letter takes account of this. Even if the applicant was not born in Kenya, she may have acquired Kenyan nationality by other means.
130. The letter from [Ms I], which asserts nothing more in the applicant's favour than that she speaks Somali with a pure Somali accent, is not sufficient to overcome my other concerns about the applicant's evidence as to her nationality, her clan membership, or about her circumstances prior to her arrival in Australia. The letter does not support a conclusion that the applicant's account, overall, should be accepted.
131. There is information on the Department's file which was obtained and produced in the course of investigations into the applicant's identity, the circumstances of her arrival in Australia and her previous travel, which suggests that her travel to Australia was arranged by others for the purpose of migration fraud. This information was not put in detail to the applicant (apart from the information discussed in these Reasons for Decision, concerning her passport, her previous travels and prior migration applications made using that passport), nor have I had regard to it in considering this application. In my view, the suggestions about the applicant's involvement in a wider migration fraud are either speculative or unsupported by primary evidence. I have therefore not had regard to them in my consideration of this application.

Conclusions

132. Given the major and numerous deficiencies in the applicant's evidence, and her overall lack of credibility, I am unable to make positive findings as to her country of nationality, her circumstances in the countries in which she claims to have formerly resided, or the likelihood of future persecution in any country to which the applicant may return.
133. I am satisfied that the applicant arrived in Australia on a Kenyan passport in the name of [Alias A]. I am also satisfied that she used this identity while she was in New Zealand and the UAE. These findings would suggest that the applicant is a national of Kenya. The applicant denies that this is the case. She states that she acquired the Kenyan passport by fraud. She now acknowledges that she spent four or five years in Kenya prior to travelling to Australia via the UAE and New Zealand, although initially she did not mention that she had ever been to Kenya.
134. I find that the applicant has been untruthful about central matters – when and how she left Somalia, and where she went afterwards. In particular she has been untruthful about having spent considerable periods of time in other countries – Kenya, the UAE and New Zealand. I find that her explanation for her decision to lie about these matters

was itself, untruthful and evasive. I find that the applicant's credibility is thereby seriously impugned, to the extent that I cannot rely on any of her unsupported evidence. As I am far from satisfied as to her general credibility, and her overall account is neither coherent nor plausible, this is not a case where it is appropriate to extend the benefit of any doubt to the applicant. Although I accept that due to her particular circumstances the applicant may have had difficulty putting forward her claims, I am unable to discern any elements of her account that I am prepared to accept as truthful and reliable, and on which I could make positive findings as to her prospects of future persecution.

135. Even if the applicant's claims to be a national of Somalia were accepted (and they are not), I do not accept that she has been truthful about her claimed circumstances in that country. While I accept that she may have been raped and traumatised, the applicant now claims that this was in 2004 rather than in 2009; this, in my view, is a major and significant discrepancy which, together with the other deficiencies in her evidence, throws into question the applicant's entire account of the circumstances in which the claimed incident occurred. For the reasons set out above I find the applicant's account of her circumstances after the claimed attack on her family home and the disappearance of her family not to be credible. In these circumstances, I am not satisfied that, whatever traumatic events have befallen the applicant, they took place in Somalia, or that the essential and significant reason for them was a Convention reason. Nor am I satisfied that the applicant otherwise faced persecution in Somalia for a Convention reason. As I am unable to make any positive findings about her circumstances in Somalia, including as to her clan membership or her situation as a woman without family support, I cannot be satisfied that she has a well founded fear of persecution for a Convention reason in that country.
136. The applicant initially made no claims to refugee status as against Kenya. As she subsequently did so, in response to information put to her by the Tribunal, the following findings are made for the sake of completeness. At the hearing the applicant claimed that she would go to gaol if she returned to Kenya because she left using a fake passport. However, the Kenyan authorities have informed the Department that the passport on which the applicant travelled to Australia was genuinely issued. In these circumstances, I am satisfied that the applicant would not be treated adversely on return to Kenya in relation to her possession of that passport; in any case, this would not be a matter within the ambit of the Refugees Convention.
137. In her s.424A response, she further claimed that she will be arrested and detained both because of the passport, and because as a non-Kenyan national she risks being raped and beaten on the streets. She claimed that non-Kenyan nationals, including Somalis, are targeted by the police and military and if they do not have documents they can be imprisoned, raped and beaten. However, on her own evidence the applicant lived and worked in Kenya for four years. She did not claim to have experienced any problems such as those described in her s.424A response during that time. Nor am I satisfied, on the basis of her evidence, that she faces a real chance of such harm for a Convention reason.
138. According to the United States Department of State *Kenya Country Report on Human Rights Practices*, 2010 (<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154352.htm>):

Police routinely stopped vehicles throughout the country and often engaged in solicitation of bribes at such checkpoints. Ethnic Somalis are frequently required to provide additional identification. HRW stated during the year that the government continued to illegally deport hundreds of Somali asylum seekers back to Somalia. HRW also stated that the government detained and deported ethnic Somalis and Ethiopians on the assumption they were economic migrants or potential security risks; the NGO believed that some of these deportees were Kenyan citizens and legal residents.

Refugee freedom of movement was severely restricted, and the government tightened its restriction on travel outside of refugee camps unless approved by the government and the UNHCR. There were instances in which refugees outside of the camps were detained despite holding valid travel passes.

139. The *Report* does not refer to routine or frequently occurring abuses of the kind described by the applicant. The applicant submitted a document to the Department (folios 102-3, CLF2010/66604) which referred to difficult conditions, including police harassment, human rights violations and discrimination, faced by unregistered Somali refugees in Kenya, but the report did not go into details of the claimed harassment or discrimination, referring for the most part to poor living conditions. Moreover, the report was referring specifically to the situation of undocumented Somali refugees in Kenya; in the circumstances of this case, I am unable to be satisfied that the applicant was an undocumented refugee in Kenya, or that her circumstances are similar to those discussed in the article. In these circumstances, I am not satisfied that the applicant has faced in the past, or that there is a real chance that she would face, in the reasonably foreseeable future, persecution in Kenya for a Convention reason.
140. For the reasons set out above, I am 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

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