

**0808455 [2009] RRTA 214 (13 March 2009)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0808455

**COUNTRY OF REFERENCE:** Bangladesh

**TRIBUNAL MEMBER:** Giles Short

**DATE:** 13 March 2009

**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 a review of a decision made by a delegate of the Minister for Immigration and Citizenship refusing an application by the applicant for a Protection (Class XA) visa. The applicant was notified of the decision under cover of a letter and the application for review was lodged with the Tribunal. I am satisfied that the Tribunal has jurisdiction to review the decision.
2. The applicant is a citizen of Bangladesh. He arrived in Australia and he applied for a Protection (Class XA) visa.

### RELEVANT LAW

3. In accordance with section 65 of the *Migration Act 1958* (the Act), the Minister may only grant a visa if the Minister is satisfied that the criteria prescribed for that visa by the Act and the Migration Regulations 1994 (the Regulations) have been satisfied. The criteria for the grant of a Protection (Class XA) visa are set out in section 36 of the Act and Part 866 of Schedule 2 to the Regulations. Subsection 36(2) of the Act provides that:

‘(2) A criterion for a protection visa is that the applicant for the visa is:

- (a) a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; or
- (b) a non-citizen in Australia who is the spouse or a dependant of a non-citizen who:
  - (i) is mentioned in paragraph (a); and
  - (ii) holds a protection visa.’

4. Subsection 5(1) of the Act defines the ‘Refugees Convention’ for the purposes of the Act as ‘the Convention relating to the Status of Refugees done at Geneva on 28 July 1951’ and the ‘Refugees Protocol’ as ‘the Protocol relating to the Status of Refugees done at New York on 31 January 1967’. Australia is a party to the Convention and the Protocol and therefore generally speaking has protection obligations to persons defined as refugees for the purposes of those international instruments.

5. Article 1A(2) of the Convention as amended by the Protocol relevantly defines a ‘refugee’ as a 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.’

6. The time at which this definition must be satisfied is the date of the decision on the application: *Minister for Immigration and Ethnic Affairs v Singh* (1997) 72 FCR 288.

7. The definition contains four key elements. First, the applicant must be outside his or her country of nationality. Secondly, the applicant must fear ‘persecution’. Subsection 91R(1) of the Act states that, in order to come within the definition in Article 1A(2), the persecution which a person fears must involve ‘serious harm’ to the person and ‘systematic and discriminatory conduct’. Subsection 91R(2) states that ‘serious harm’ includes a reference to any of the following:
  - (a) a threat to the person’s life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person’s capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person’s capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person’s capacity to subsist.
8. In requiring that ‘persecution’ must involve ‘systematic and discriminatory conduct’ subsection 91R(1) reflects observations made by the Australian courts to the effect that the notion of persecution involves selective harassment of a person as an individual or as a member of a group subjected to such harassment (*Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at 388, McHugh J at 429). Justice McHugh went on to observe in *Chan*, at 430, that it was not a necessary element of the concept of ‘persecution’ that an individual be the victim of a series of acts:

‘A single act of oppression may suffice. As long as the person is threatened with harm and that harm can be seen as part of a course of systematic conduct directed for a Convention reason against that person as an individual or as a member of a class, he or she is “being persecuted” for the purposes of the Convention.’
9. ‘Systematic conduct’ is used in this context not in the sense of methodical or organised conduct but rather in the sense of conduct that is not random but deliberate, premeditated or intentional, such that it can be described as selective harassment which discriminates against the person concerned for a Convention reason: see *Minister for Immigration and Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1 at [89] - [100] per McHugh J (dissenting on other grounds). The Australian courts have also observed that, in order to constitute ‘persecution’ for the purposes of the Convention, the threat of harm to a person:

‘need not be the product of any policy of the government of the person’s country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution’ (per McHugh J in *Chan* at 430; see also *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 per Brennan CJ at 233, McHugh J at 258)
10. Thirdly, the applicant must fear persecution ‘for reasons of race, religion, nationality, membership of a particular social group or political opinion’ Subsection 91R(1) of the Act provides that Article 1A(2) does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless ‘that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution’. It should be remembered, however, that, as the Australian courts have observed, persons may be persecuted for attributes they are perceived to have or opinions or beliefs they are perceived to hold, irrespective of whether they actually possess those attributes or hold those opinions

or beliefs: see *Chan* per Mason CJ at 390, Gaudron J at 416, McHugh J at 433; *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 570-571 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ.

11. Fourthly, the applicant must have a 'well-founded' fear of persecution for one of the Convention reasons. Dawson J said in *Chan* at 396 that this element contains both a subjective and an objective requirement:

'There must be a state of mind - fear of being persecuted - and a basis - well-founded - for that fear. Whilst there must be fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear.'
12. A fear will be 'well-founded' if there is a 'real chance' that the person will be persecuted for one of the Convention reasons if he or she returns to his or her country of nationality: *Chan* per Mason CJ at 389, Dawson J at 398, Toohey J at 407, McHugh J at 429. A fear will be 'well-founded' in this sense even though the possibility of the persecution occurring is well below 50 per cent but:

'no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.' (see *Guo*, referred to above, at 572 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)

## **CLAIMS AND EVIDENCE**

13. The Tribunal has before it the Department's file relating to the applicant. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal was assisted by an interpreter in the Bangla language. The applicant was unrepresented.

### **The applicant's original application**

14. The applicant stated his age. According to the details in his original application and in a statement accompanying that application he is a Christian by religion. He said that Relative A was a very strict and religious person. The applicant said that he had attended school in his local area from Year 1 until Year 4, that he had attended college (the last two years of school in Bangladesh) in City A from Year 4 to Year 5, and that he had then studied at College A in City A from mid Year 6 until mid Year 9. He gave no details of any qualification he had obtained. He said that he had worked in a shop in City A from mid Year 5 until late Year 8.
15. The applicant said that Relative A had lived and worked in City B and as a result had arranged for a distant relative named Person A to stay with his family for security. The applicant claimed that Person A had sexually abused him and that when Relative B had found out she had thrown Person B (sic) out of the house. The applicant said that in Year 2 when he had been in school he had become close to a boy named Person C who had studied at a different school. He said that they had had sexual intercourse together, using an abandoned old house near his house for the purpose. He said that in late Year 3 they had been caught by one of their friends named Person D who had come with 'other elders brothers from our village' and had beaten them and injured them very badly. He said that they had called a *shalish* (which he said meant a 'judgement') and that in this meeting they had decided 'they will beat us with a stick and not to do this type of sin anymore'.

16. The applicant said that after this he had been teased at his school. He said that his family's home had been surrounded by Muslim families who had treated him as a religious enemy and a great sinner. The applicant initially said that he had not even been able to go to church but he said subsequently that 'our Church and community people' had forgiven him although he said that they had warned him that 'if they see me again doing the same they will kill me and evict our family and all relatives from our village and community'
17. The applicant said that after he had completed his Senior Secondary Certificate (Year 10) in Year 4 he had been given the opportunity to attend Programme A organised by the church which ran for a week in City B. He said that he had had the chance to stay in a separate room with a boy named Person E, that Person E 'also knew about homosexuality and habituate of it', that when they had found that they were the same they had become sexually aroused at night and had 'passed very sweet night' and that the next day they had also done the same. He said that on the day before Programme A had concluded there had been a cultural evening but he and Person E had pretended that they were not feeling well so that they could stay in their room. He said that the supervisor had come to check on them and had found them engaged in sexual intercourse. He said that they had been beaten and the course organiser had contacted his parish and 'advised not to give us any opportunity to enter to the church and not to allow our family for any religious programs'.
18. The applicant said that he had gone to City A where he had attended College B. He said that while boarding at the college he had had sexual intercourse with his roommate named Person F and they had once again been discovered and beaten. The applicant said in his original application that he had lived in a hostel in Suburb A in City A from mid Year 5 until late Year 6. In his statement he said that at the beginning of Year 7 he had moved to Suburb B in City A and had become friendly with a next door neighbour named Person G. He said that one day just before Christmas of Year 8 they had started kissing and had become aroused sexually but unfortunately Person G's sibling had caught them that day and had beaten Person G. The applicant said that he had been beaten by other people in the area with their sandals but had escaped.
19. The applicant said in his statement that he had moved to the Suburb C area where he had used another name (although he said in his original application that he had continued living at the same address in Suburb B until mid Year 9). He said that in early Year 8 he had found out about Event A and he said that he and Person G had decided to leave Bangladesh. He said that they had both obtained visas although they had travelled with different groups.
20. Under cover of a letter the applicant's representative submitted a letter dated that same day from Person G (also an applicant for a protection visa) in which he said that the applicant was his partner, that they had first met each other in early Year 7, that they had first had sexual relations in mid Year 7 and that the applicant's sibling had caught them together 'doing sex' around late Year 8. Person G said that the applicant had moved to live in Suburb C and that he himself had left his house in January of Year 9. He said that they had continued their relationship and had 'tried to live together without any harassment and killing fear'. He said that they had had the opportunity to come to Australia to attend Event A although they had come to Australia on different dates. The applicant's representative also submitted some independent evidence in relation to the situation of homosexuals in Bangladesh.

## **The Departmental interview**

21. The applicant was interviewed by the primary decision-maker in relation to his application. He said that there were corrections he wished to make to his original application. He said that he had lived at the hostel at College B until late Year 5 (not mid Year 5 as stated in his original application) and that he had lived at the address in Suburb B until late Year 8 (not mid Year 9 as stated in his original application). He said that he had lived at an address in Suburb C in City A from late Year 8 until mid Year 9.
22. The applicant said that several people lived in the house where he was living in City C. He said that the statement accompanying his original application had been read back to him in his own language. He corrected one date (this correction is marked on the original of the statement at folio 28 of the Department's file) and he said that the reference to 'Person B' referred to above should have been a reference to 'Person A'.
23. The applicant said that Bangladesh was a very risky place and that the authorities in Bangladesh would not protect him. He confirmed that he claimed that he feared persecution for reasons of his sexual orientation. He said that he had discovered that he was homosexual while at school. The applicant said that Person A had been a 'caretaker' who had looked after the house. He confirmed that Person A was a relative. Asked why he and Person A had shared a room the applicant said that there had only been three rooms in his family's house, that one room had been used by Relatives B and C and that the other room had been the lounge. He confirmed that he claimed that Person A had sexually abused him. He said that his first sexual experience had been with Person C when he had been at school.
24. The applicant said that when Relative B had surprised him and Person A doing 'some activities' she had not taken any action immediately but had waited until he had come home from school the next day to question him about it. He said that Relative A had given Person A a few slaps and had sent him away and had also told Person A's family about it. The primary decision-maker put to the applicant that it was difficult to accept that Relative B would not have intervened immediately if she had witnessed Person A sexually abusing the applicant. The applicant said that they had been engaged with an activity but when Relative B had seen them they had withdrawn themselves from that activity. He said that Relative B had told him the next day that she had not intervened immediately because she had not wanted to make a row in the middle of the night. He suggested that Relative B had been a bit cautious because if she had alerted him he might not have gone to school the next day or he might have done something else.
25. The primary decision-maker put to the applicant that, whether or not it would have caused a row, what had been happening had been very serious and Relative B would surely have said something. The applicant said that when something serious happened it could not be sorted out on the spot: it needed to be explored and researched to determine what was true or false. The primary decision-maker put to the applicant that if Relative B had witnessed what had been happening there would not have been any need for further research. The applicant said that the light had been turned off so Relative B had been speculating as to what was happening.
26. The applicant said that he had had three partners in total, then he said that there had been four including Person G. He said that he and Person G had become involved at the beginning of Year 7. He said that before Person G there had been Person F with whom he had been involved from Year 4 to Year 5, and that before that there had been Person E. He said that he

did not know Person E's second name because their relationship had lasted only several days. He said that before that there had been Person C. He said that they had been involved in Year 8 (sic) when Person C had been transferred to his school. He said that he had purchased a pornographic photograph of two women having sex from one of his Muslim friends. He said that he had shown this photograph to Person C and he had realised that Person C was interested in this photograph. He said that he had 'realised we are of same category' and had suggested that they should have sexual relations with each other. He said that since then the relationship had developed.

27. The applicant repeated his account of how he and Person C had been found out in Year 3. He said that as this was a Muslim area and his family were Christian the community had called a meeting so that they could humiliate them. The applicant said that in the meeting they had lashed them. He said that they had insulted Relative B as well. He said that Relative A had come the next day from City B and had beaten him up. He said that one of the Muslims had told Relative A that if the applicant did not change his behaviour Relative A would lose the applicant and it would be difficult for his family to stay in the village. The applicant said that he had been teased and insulted on the street. He confirmed that he had nevertheless been able to complete his Secondary School Certificate.
28. The applicant said that a number of boys and girls from his district had taken part in the Programme A organised by the Church but in total there had been many more boys and girls involved. He said he and Person E had not in fact been in a separate room: there had been a few other boys in the room. He said that from the very beginning he had found Person E's behaviour was the same as his. He said that two days before the end of the programme there had been a class about sex. He said that after that class he and Person E had discussed a lot about sex and on that day they had become close to each other. He repeated his account of how the supervisor had found him and Person E 'in that situation'. He said that some of the other boys had beaten them with their shoes and had thrown their luggage on the veranda. The applicant said that he had returned to his home the following day. He said that the supervisor had telephoned Relative A and that the other boys and girls from his district had also talked about what had happened. He said that the people from around his house had come to beat him. He said that Relative A had declared that he would not remain in the house. He said that he had left for City A in mid Year 4. He said that the people in his village had said that he was contaminating their culture.
29. The applicant said that he had lived in City A from Year 4 until he had left Bangladesh to come to Australia. He said that he had met Person F when he had been residing in a hostel while attending college. He said that once again they had shared the room with a few other boys but he said that they had shared a double bed. The applicant said that he had not been able to refrain from having sex. He said that it was very difficult to find a rental unit as a bachelor in City A.
30. The applicant said that he had not explored the gay scene in Bangladesh. He said that to share these things with anyone was to invite death. He said that he had not used the Internet to explore the gay scene. He said that he had found out that 'doing gay activities' was punishable under the law in Bangladesh by ten years imprisonment. He said, however, that the country did not stand on the law. He said that he was not accepted by the community and the police would not protect him 24 hours a day, seven days a week. He said that when he was caught he would be killed.

31. The applicant said that after he had moved from Suburb B to Suburb C he had met Person G seldom, once every few weeks, in the Suburb C area. He said that they had been unable to engage in any sexual activities. He said that most of the time they had communicated through mobile phones.
32. The primary decision-maker put to the applicant that it appeared remarkable that everywhere he had gone he had found himself in close proximity to a gay partner. The applicant said he was homosexual but the people he had met with had not been homosexual. He said that he was not sure if Persons C, E and F could be termed as homosexual. He said that they had just had sex together. He said that he had 'used them' and had had enjoyment 'the way I wanted'. He said that he did not know if they were homosexual or not.
33. The applicant said that Person G was an expert on exploring networks and Person G had told him that Australia and the Country A were the countries where there was 'free sex' He said that it was easy to understand the culture by observing the people walking on the street. He said that on Saturday nights he went to the 'main central point' which he said was Hotel A on Street A. He said that he had obtained a membership card there which he said he thought entitled him to discounts on drinks. He said that he paid cash for his drinks and that he had not in fact used the card. He said that besides Hotel A he and his partner had found Café A but they had not gone there. He said that they had not explored other places.
34. The applicant said that he and his partner had first gone to Hotel A in Year 9 and that they had probably been there a few times since then. He said that they had been there the previous Saturday. He said that he and his partner had not been to other venues because they had been happy with Hotel A. He referred to the fact that he and his partner lived very far away from the city. He said that there was no Internet café in their area and they could only access the Internet at the local public library. The applicant said that he and his partner held each other's hands when they went shopping in their suburb, for example, or when returning from work, and no one had said anything to them at all. He said that he did not know if the other people who lived at the same house knew that he and his partner were gay. He said that he and his partner occupied a separate room. He said that he was not sure if any of the other people at the house were gay.

#### **The applicant's further statement and clarification submitted to the Tribunal**

35. The applicant submitted to the Tribunal a further statement which in substance repeats what was in the statement accompanying his original application although with changes in the language. In a separate document headed 'Clarification to the misunderstanding of the DIAC officer' the applicant said (with regard to his claim that he and his partner held each other's hands when they went out and that no one had said anything to them at all) that people might have made derogatory comments which he and his partner had not been able to understand. He also said that his understanding was that:

'Australia is a country where majority of the population is of European background. In other words White dominated country - There is a sort of unseen barrier that works between a white man and a darker skinned person and because of this perception people do think twice and thrice to take any significant action against a man or a group of man from different ethnic background.'
36. He also said that he and his partner had only walked on the street holding each other's hands on a few occasions, not all the time.



37. With regard to his relative lack of exposure to the gay community in City C the applicant said that he had needed time to make the transition to a new place, that he had been stressed about his case, that he had needed to find accommodation and work and that he had needed to get help with his case. He said that it had been a 'natural social process' for him to go to Hotel A. He suggested that 'knowledge about gay life in [City C]' was the only measurement used by the Department to assess and examine gay cases. The applicant also referred to the fact that there were no gay clubs in Bangladesh. He said that he had not prepared or planned for his arrival in City C. He also said (somewhat curiously, given that it had never been suggested that he had made such a claim) that he did not claim that he had converted to Christianity.

### **The applicant's evidence at the hearing before me**

38. At the hearing before me the applicant said that he had had some help from an agent when he had prepared his original application. He said that the application had been filled out in a hurry and that he had not had the chance to check it. I noted that some corrections had been made to the answers on the form at the Departmental interview. The applicant said that apart from those corrections the answers on the form were correct. He said that he had prepared his own statement but the agent had helped him to translate it into English. He said that he did not have enough English to read the statement over himself. He said that, later on, after it had been submitted, the agent had read the statement back to him in Bangla.
39. The applicant said that the further statement which had been submitted to the Tribunal had been translated in Bangladesh with the help of his partner's relative, Person H. He said that he and his partner had written the document headed 'Clarification to the misunderstanding of the DIAC officer' in English together with the help of a dictionary. I put to the applicant that his partner had told me at the hearing in relation to his application that morning that the document had been written in Bangla and that his relative, Person H had arranged for it to be translated into English. The applicant said that this was correct. I noted that this was different from what he had just told me. The applicant said that he had meant that he and his partner had ascertained the meaning of the decision under review with the assistance of a dictionary.
40. I noted that in the document headed 'Clarification to the misunderstanding of the DIAC officer' the applicant had said that he did not claim that he had converted to Christianity. I noted that no one had ever suggested that he had converted to Christianity. The applicant said that he had used this as an example because of the way they had been asked questions at the Departmental interview: they had had to establish that they were gay. He said that this was the fact and they should not be asked to establish this. He said that if someone converted to a new religion he could be asked questions about the new religion. I indicated to the applicant that if someone came to the Tribunal claiming to fear persecution because they were Christian the Tribunal would ask them questions about Christianity, regardless of whether the person was a convert. The applicant said that he had been asked to prove that he was gay by going to clubs and mixing with gay people here. I noted that the officer who had interviewed the applicant had spent very little time asking him what he had done in Australia. He had spent most of the time asking the applicant about what he had claimed had happened to him in Bangladesh.
41. The applicant confirmed that, as he had said in his original application, he was a Christian. I noted that I understood that he had come to Australia as part of a group of pilgrims for Event A. The applicant said that he had had to come and this had been why he had come. He

confirmed that he came from a Catholic family and that he had gone to church regularly as a child. He said that he had not continued to go to church after he had moved to City A because it had not been possible. He said that he had had problems at various times and he had been frightened of going to church. He confirmed that he had continued his education in City A and he had had a job in City A. I asked him why in that case he had been afraid of going to church. The applicant said that at his college and at his workplace there had been no one from Suburb D but if he went to church there would be people from Suburb D there. He said that Suburb D was not a specifically Christian area: the majority of people were Muslim.

42. I asked him why he said that there would be people from Suburb D in every Catholic church in City A. The applicant said that he was only talking about the church nearby, near Suburb E. I noted that he had lived in different localities in City A. The applicant said that there had been no churches in those areas. He said that he had attended church in City A once or twice. The applicant said that he had attended Event A in City C. He said that he was attending the Catholic church in Suburb F. Asked its name he said that it was just called the '[Suburb F] Catholic Church', then that he had not 'explored' its name. He said that it was a small church and it did not have its own priest. He said that it was located close to School A. He said that to get there he walked through the school playground which took a few minutes. He said that he went there every Sunday.
43. I noted that the applicant's application for refugee status was based on his sexual orientation. I asked him if he feared being persecuted for any other reason if he returned to Bangladesh. He said that he did not. I asked him when he had first realised that he was homosexual. The applicant said that he had realised in school when he had been '[teenage] plus'. I noted that the applicant had said in his statement that he had become close to a boy named Person C in Year 2. The applicant said that he had been in Year [number] at school in Year 3. He said that his friendship with Person C had moved beyond the sort of friendship he had had with any other schoolboy when he had been in Year [number] at school but it had been when he had been promoted to the next year that he had realised that he had no attraction to girls.
44. I noted that the applicant had said at the Departmental interview that his first sexual experience with Person C had been when he had been at school. The applicant agreed. I put to him that this appeared to be different from what he had just told me. The applicant said that in Year [number] at school he had realised that he had no attraction to girls and there had been a physical change in him. He said that his relationship with Person C had become deeper. He said that the primary decision-maker had asked him about his first sexual experience and this had been earlier, with Person C. I asked if he was saying that at the time of that experience, he had not necessarily regarded himself as homosexual. The applicant said that at that time he had not thought along those lines. He said that they had had sex together and they had enjoyed that. He said that when he had become more mature and had realised that he was not attracted to girls he had realised about his own situation.
45. I noted that the applicant had talked in his statement and at the Departmental interview about what had led up to that first sexual experience. He had talked about having bought a pornographic picture from a Muslim boy and he had said that he had showed that picture to Person C and that as a result of having shown that picture to Person C he had realised that their sexual orientation was the same. The applicant said that at that time he had asked Person C, Person C had agreed and they had had sex together. I noted that what the applicant had said at the Departmental interview was that he had showed the pornographic picture to Person C and that then he had 'realised we are of same category'. The applicant responded: 'Not same but I said that we can do the same like this.' He confirmed that when he had said

at the Departmental interview that he had 'realised we are of same category' he had been referring to himself and Person C I put to him that this suggested that he had been identifying as homosexual. The applicant said that when he had been mature and later in school he had known '100 per cent'.

46. I asked the applicant what he had been told at that time by his family, his teachers or his church about homosexuality. The applicant said that no one had told him anything. I asked him what conception he had had at the time of homosexuality. The applicant said that the concept was that he was not attracted to girls, he had a good time with Person C and when he had sex with Person C he felt good. He said that he had always wanted to get one boy as his partner and to lead his life with him. He said that he had believed that it was perfectly normal to feel the way he had. I noted that he had appeared to suggest that he had recognised that he was different from the other boys. The applicant said that this was correct.
47. The applicant said that after he had moved to Suburb B he had shared accommodation with a husband and wife and their child. He said that he had occupied one room and they had occupied another. He confirmed that his partner Person G had lived next door. He said that he had realised that Person G was homosexual when he had met him and gradually he had talked with him after that. He confirmed that they had struck up a friendship first. He said that they had gone to tea stalls in the locality where they had sat and talked together. He said that it had been several months before he had realised that Person G was homosexual. He said that he could not recall when they had first had sex together. He said that he had not noted this in his diary. I asked him if it had not been a significant occasion for him. The applicant said that he had not thought that he would have to remember that. He said that they had had sex at Person G's house. He said that they had only had sex at his house on a few occasions because there had not been much opportunity. He said that most of the time they had had sex at Person G's house. I noted that he had also referred to going to the park in front of Place A The applicant said that this had been to talk and roam. The applicant said that Person G's brother had discovered them having sex together in late Year 8. He said that he remembered this date but not even roughly when he and Person C had first had sex because men remembered their sad times better than their happy times.
48. The applicant confirmed that after this he had moved to a house in the Suburb C area where he had lived by himself. I asked him why he and Person C had not simply moved in together as they had in Australia. The applicant said that if someone had suddenly seen that they were staying together such a person might have become suspicious from their attitude and behaviour. I noted that from what he had said his relationship with Person C had been going on for a few years. They had been going out together to tea stalls and to the park in front of Place A He had not suggested that they had ever had any problems. The applicant said that they had not done such attitudes in front of the public. He added that they had not done what they had done 'during the sex time' I noted that heterosexual couples did not have sex in public either. I put to the applicant that I was not clear why he said that people might have seen him and his partner together and concluded that they were homosexual. The applicant said that after late Year 8 there had been some sort of thinking that he was a thief and there had always been police behind him: he had been frightened in his mind. I noted that the applicant had not suggested that he had ever had any problems with the police. The applicant said that he had meant that he did not rely on the Bangladeshi police but he added that he had said 'if they handed me to the police'.
49. I noted again that by the applicant's account he and Person G had been going out together for [number] years: they had gone to the tea stalls and they had gone to the park in front of Place

A. No one had ever suggested that they were homosexual. I noted that, as he had said, they had carried on their sexual activities behind closed doors but so did everyone. The only problem they had had was when Person G's sibling had found them having sex together and had thrown him out of the house. I noted that the applicant had moved to Suburb C and what I was asking was why Person G could not have moved there too. I noted that the applicant had said that he had had his own room: he had not been sharing with anyone else. The applicant said that he had suspected that Person G's sibling had been following him and later on Person G had confirmed that this was correct. I noted that the applicant had never mentioned this before. The applicant said that he had not felt the need to mention this. I put to the applicant that I might not believe him because he had never suggested this before. The applicant said that City A was not very big and this had been how Person G's sibling had been able to find him.

50. The applicant said that several people lived at the house in Suburb F and that they knew that he and his partner were homosexual. He said that he had not thought of obtaining evidence from the people sharing the house. He said that although he had been in Australia for several months he had not made any friends. He said that he did not know English so when he wanted to communicate there was a problem. I note that the applicant had some English. The applicant said that he found it hard to understand Australian English.
51. I indicated to the applicant that I was going to give him some information which I considered would be the reason, or a part of the reason, for affirming the decision under review. I indicated that I would explain the information to him so that he understood why it was relevant to the review and that I would also explain the consequences of the information being relied upon in affirming the decision under review. I indicated that I would ask him to comment on or to respond to the information. I indicated that if he wanted additional time to comment on or to respond to the information he could tell me and I would then consider whether to adjourn the review to give him additional time.
52. I noted that the applicant claimed that he had been sexually abused by a relative named Person A when he had been a child. I noted that he claimed that when Relative B had surprised him and Person A doing what he had referred to as 'some activities' she had not taken any action immediately but had waited until the applicant had come home from school the following day to question him. I noted that when the primary decision-maker had questioned the applicant about this he had given various explanations. The applicant commented that he had been 'stricken by too many questions'. I noted that the applicant had said that Relative B had told him the next day that she had not intervened immediately because she had not wanted to make a row in the middle of the night. The applicant referred to the alternative explanation which he had given that it was not possible to solve a serious problem on the spot. I noted that this had been another of the explanations he had given: he had said that when something serious happened it needed to be explored and researched to determine what was true or false.
53. I noted that the applicant had also said that Relative B had been cautious because he might not have gone to school the next day. I noted that, after the primary decision-maker had pointed out that the applicant claimed that Relative B had caught him and Person A while doing 'some activities', the applicant had said that the light had been off so his mother had been speculating as to what was happening. I put to the applicant that it was very difficult to accept that Relative B would have done nothing immediately in these circumstances. It was difficult to accept that she would have allowed him and Person A to spend the rest of the night together. The applicant said that if a person murdered someone this was the most

serious crime but he was not executed on the spot. I put to the applicant that he claimed that on each occasion on which he himself had been discovered having sex with his various partners he had been severely punished whereas he had said at the Departmental interview that Relative A had just given Person A a few slaps. The applicant said that this was correct. I put to the applicant that this did not make a great deal of sense. The applicant said that he had been beaten by third parties. He said that Relative A had hit Person A. He said that he did not know why Relative A had kicked Person A out of the house after merely giving him a few slaps.

54. I put to the applicant that if I were to believe his account Person A had committed a very serious criminal offence: he had been sexually abusing a child. I put to the applicant that by his account Relative B had done nothing until the following day and Relative A had just sent Person A away with a few slaps. I put to the applicant that it was very difficult to accept that he was telling the truth about this. The applicant said that he understood but that in Bangladesh people did not respect law and order and Relative B was 'a village lady' I noted that this had been why I had referred to the fact that the applicant claimed that every time he had been discovered having consensual sex with partners he had been beaten up. The applicant said that homosexuals were not accepted in Bangladesh. I put to the applicant again that Person A had been sexually abusing a child. The applicant said that Relative B had not realised this at the time because the lights had been switched off. I put to the applicant again that it was difficult to accept that when all the facts had been established all that had happened to Person A was that he had been given a few slaps and sent home. The applicant said that I should ask Relative A why he had not taken stronger action.
55. I referred to the applicant's evidence that he had met a boy named Person E when he had been given the opportunity to attend Programme A organised by the Catholic Church. I noted that when the applicant had been interviewed by the primary decision-maker he had said that two days before the end of the programme there had been a class about sex. He had said that after that class he and Person E had discussed a lot about sex and on that day they had become close to each other. The applicant said that they had had sex the day after and they had been caught. I noted that at the Departmental interview the applicant had repeated the account he had given in the statement accompanying his original application with regard to how the supervisor had found him and Person E having sex on the cultural evening the day before the programme had concluded.
56. I put to the applicant that in the statement which he had submitted to the Tribunal he had said that he and Person E had had 'fun filled sex' over several nights. The applicant said that what he had meant to say in Bangla was that before that they had had sex on two days. He suggested that this was a mistranslation. He confirmed, however, that he claimed that he and Person E had had sex on an occasion other than the cultural evening. I put to him that he had said at the Departmental interview that he and Person E had been sharing a room with a few other boys. The applicant confirmed that this was correct. He said that he and Person E had been able to have sex by waking up at midnight and going to another room which had been empty.
57. I put to the applicant that I found it difficult to accept his account of his relationship with Person F when they had been at college. I noted that he had told the primary decision-maker at the Departmental interview that once again he and Person F had shared a room with a few other boys. The applicant said that this was true. I put to the applicant that it was difficult to accept that he would have been able to carry on a relationship with Person F in these circumstances. The applicant said that they had been involved in sex when there had been no

one in the hostel. He said that this had been on a special government holiday or when the college had been closed.

58. I referred to the applicant's evidence at the Departmental interview that he and his partner held each other's hands when they went shopping, for example, or when returning from work. I noted the applicant's partner had said that wherever they went together in City C they held each other's hands. I put to the applicant, however, that both he and his partner had said in the documents headed 'Clarification to the misunderstanding of the DIAC officer' that they had only walked on the street holding each other's hands on a few occasions. The applicant said that they had walked on the street holding each other's hands on a few occasions in Suburb F but they had never said that they had done this near Station A or in Suburb G. He asked how many times one went shopping in a day.
59. I put to the applicant that in late Year 9 an anonymous informant in Bangladesh had sent a message to the Department identifying the applicant's partner Person G by his name, date of birth and passport number, and had stated that his claim to be gay was 'totally bogus'. I noted that the message said that Person G had a close relationship with his parents, that his parents had blessed him before he had left for Australia and that he had a girlfriend. I explained to the applicant that I would not ordinarily place much weight on a message from an anonymous informant but that I considered it significant that this person was clearly close to the applicant's partner in that this person knew the applicant's partner's passport number and the nature of the claims he had made in support of his application for a protection visa. I put to the applicant that if I did not accept that his partner Person G was homosexual then I would give no weight to the corroboration which the applicant's partner had provided for the applicant's claims. I explained to the applicant that this was also relevant to whether I accepted that the applicant himself was homosexual since he claimed to be in a homosexual relationship with his partner Person G. The applicant said that he understood.
60. I put to the applicant that all the information we had discussed was relevant to the review because it cast doubt on whether he was telling the truth in relation to his homosexuality and his claimed experiences in Bangladesh. I explained to the applicant with regard to his conduct in Australia that I was required to disregard any conduct engaged in by an applicant for refugee status in Australia unless I was satisfied that the person had engaged in the conduct otherwise than for the purpose of strengthening the person's application for refugee status (see subsection 91R(3) of the Act). I put to the applicant that if I did not accept that he was homosexual I might conclude that his actions in Australia had been intended to strengthen his application for refugee status. I put to the applicant that if I relied on the information we had discussed it might form part of the reason for my concluding that he was not a person to whom Australia had protection obligations under the Refugees Convention and that he was therefore not entitled to be granted a protection visa. The applicant said that he understood. He said that he wanted additional time to comment on or to respond to the information I had given him in the course of the hearing. I gave him a period of time to comment on or to respond to the information. I asked him if there was anything further he wished to say. The applicant said that he had stated everything based on what had happened to him in his life.

#### **Evidence submitted after the hearing**

61. Under cover of a letter the applicant submitted comments in relation to the information which I had given him at the hearing. With regard to his claim that he had been sexually abused by Person A the applicant said that 'what ever [Relatives A and B] did with me or [Person A]

and why [Relative B] didn't show immediate reaction this is totally based on what worked in their brain or mind' He said that he was not a mind-reader and he could not tell me why Relative B had reacted slowly or why Relative A had just slapped Person A. He argued that homosexuality was not acceptable in Bangladesh and that it was a great sin in the Muslim religion but that there were incidents where three year old children had been raped by the Imam of the mosque.

62. With regard to his claimed relationship with Person E the applicant conceded that in the statement which he had submitted to the Tribunal he had said that 'when I knew that [Person E] is like me then I have spent few sex nights with him'. He said that the statement accompanying his original application had been translated by a different person and this might account for any apparent differences in the two statements. He claimed that at the Departmental interview he had only been asked three questions about his relationship with Person E but this is not correct as reflected above.
63. With regard to his claimed relationship with Person F the applicant said that they had only had sex when the hostel room had been empty. He said that 'usually during weekend when all are away for outing then we used the opportunity'.
64. With regard to why he and Person G had not lived together in Suburb C the applicant said that when he had told me that there had been some sort of thinking that he was a thief and that there had always been police behind him or that he had been frightened in his mind he had meant that he had always been frightened that someone might think that he and Person G were gay. He said that he had always been in fear that he was about to die in City A. He said that he had been concerned that if someone saw him and Person G together it would mean certain death. He said that he had left his study and his job and had hardly gone out of his room. With regard to why he had not mentioned his claim that he had suspected that Person G's brother was following him he said that he had not thought that this was important. He suggested that because of the population density in City A 'in one place a man sees another man in several times'.
65. With regard to why he had not gone to church in City A the applicant repeated that he had feared that he might find people from Suburb D there. He said that when he had been living in Suburb B the closest church had been that at Suburb E or Suburb H He said that there was a church at Suburb I but this was 30 minutes by bus from where he had been living. He said that when he had been living in Suburb J or Suburb K the closest church had been Church A or Church B but this was in the old city which was full of traffic jams. He added that 'this is not the fact that the GOD won't listen to me if I don't go to church'.
66. With regard to the anonymous fax message about his partner Person G the applicant asked how the anonymous informant had known that his partner's case had been refused by the Department and was with the Tribunal. However, as I put to him and his partner, the fax message was sent to the Department, not to the Tribunal. The applicant said that he blamed his original representative for the faxed message because he and his partner were no longer using her services and she had lost a lot of money as a result.
67. The applicant attached a statement signed by the other people sharing the house with him and his partner in Suburb F stating that they were aware that the applicant and Person G were living there as partners, that they 'have their own life style and they are very close to each other and we all respect their life affair'. He also attached copies of the Human Rights Watch *World Report 2009* in relation to Bangladesh (relating to events in 2008), highlighting a

reference to the fact that consensual homosexual conduct is a criminal offence under section 377 of Bangladesh's criminal code, an article by an apparently anonymous author critical of the Tribunal's decision-making in cases involving claims of homosexuality and a two page article about the situation of homosexuals in Bangladesh.

## FINDINGS AND REASONS

68. I accept that, 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'. As the Full Court of the Federal Court (von Doussa, Moore and Sackville JJ) observed in *Chand v Minister for Immigration and Ethnic Affairs* (unreported, 7 November 1997):

'Where there is conflicting evidence from different sources, questions of credit of witnesses may have to be resolved. The RRT is also entitled to attribute greater weight to one piece of evidence as against another, and to act on its opinion that one version of the facts is more probable than another' (citing *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 281-282)

69. As the Full Court noted in that case, this statement of principle is subject to the qualification explained by the High Court in *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 576 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ where they observed that:

'in determining whether there is a real chance that an event will occur, or will occur for a particular reason, the degree of probability that similar events have or have not occurred for particular reasons in the past is relevant in determining the chance that the event or the reason will occur in the future.'

70. If, however, 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 concerned to evaluate the testimony of a person who claims to be a refugee in Australia may not reject an applicant's testimony on credibility grounds unless there are no possible explanations for any delay in the making of claims or 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.

71. In the present case, as I indicated to the applicant in the course of the hearing before me, I consider that there are good reasons not to accept the applicant's claim that he is homosexual. The applicant confirmed at the hearing before me that this was the only basis on which he claimed to be a refugee and that he did not claim to fear persecution for any other reason if he returned to Bangladesh. It is well-established that the homosexual members of a particular society may form a 'particular social group' for the purposes of the Convention: see *Applicant A*, referred to above, per McHugh J at 265. In *Applicant S v Minister for Immigration and Multicultural Affairs* (2004) 217 CLR 387 at [36] Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of a 'particular social group':



‘First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a “social group” and not a “particular social group”.’

72. I accept that homosexuals in Bangladesh are identifiable by a characteristic or attribute common to all members of the group, namely their sexual orientation, and that this characteristic or attribute distinguishes the group from society at large in Bangladesh. I accept, therefore, that homosexuals form a particular social group in Bangladesh for the purposes of the Convention. However the question remains whether the applicant is a member of this particular social group, as he claims.
73. As I put to the applicant in the course of the hearing before me, I find it very difficult to accept that he is telling the truth about what happened when he claims Relative B surprised him and Person A doing what he referred to at the Departmental interview as ‘some activities’. I find it difficult to accept that Relative B would have done nothing immediately in these circumstances and that she would have allowed the applicant and Person A to spend the rest of the night together. As I put to the applicant, he gave various explanations for this at the Departmental interview. He said initially that Relative B had told him the next day that she had not intervened immediately because she had not wanted to make a row in the middle of the night. He then said that when something serious happened it needed to be explored and researched to determine what was true or false but he also said that that the light had been off so his mother had been speculating as to what was happening. He also said that Relative B had been cautious because he might not have gone to school the next day. I do not find any of the explanations credible in the circumstances.
74. I also find it difficult to accept the applicant’s claim that all that happened after this incident was that Relative A gave Person A a few slaps and sent him home. As I put to the applicant, by his account Person A had been sexually abusing a child. The applicant said that in Bangladesh people did not respect law and order but, as I put to him, he claims that on each occasion on which he himself was discovered having consensual sex with his various partners he was severely punished. The applicant said that I should ask Relative A why he had not taken stronger action.
75. In the comments which he provided after the hearing the applicant said that ‘what ever [Relatives A and B] did with me or [Person A] and why [Relative B] didn’t show immediate reaction this is totally based on what worked in their brain or mind’. He said that he was not a mind-reader and he could not tell me why Relative B had reacted slowly or why Relative A had just slapped Person A. He argued that homosexuality was not acceptable in Bangladesh and that it was a great sin in the Muslim religion but that there were incidents where three year old children had been raped by the Imam of the mosque. The applicant’s claim appears to be that a man sexually abusing a male child is perfectly acceptable behaviour in Bangladesh but that homosexuality is completely unacceptable. I do not accept that this makes sense and I remain of the view that the applicant’s account of what happened after his mother surprised him and Person A doing ‘some activities’ is not credible.
76. As I likewise put to the applicant in the course of the hearing before me, I also find it difficult to accept his account of his relationship with Person E when he was given the opportunity to

attend Programme A. In the statement accompanying his original application he said that he had had the chance to stay in a separate room with Person E, that Person E 'also knew about homosexuality and habituate of it', that when they had found that they were the same they had become sexually aroused at night and had 'passed very sweet night' and that the next day they had also done the same. He said that on the day before Programme A had concluded there had been a cultural evening but he and Person E had pretended that they were not feeling well so that they could stay in their room. He said that the supervisor had come to check on them and had found them engaged in sexual intercourse. He said that they had been beaten and the course organiser had contacted his parish and 'advised not to give us any opportunity to enter to the church and not to allow our family for any religious programs'.

77. As I put to the applicant, at the Departmental interview he said that he and Person E had not in fact had a separate room. He said that there had been a few other boys in the room. He said that two days before the end of Programme A there had been a class about sex. He said that after that class he and Person E had discussed a lot about sex and on that day they had become close to each other. He repeated the account he had given in the statement accompanying his original application with regard to how they had been caught having sex on the cultural evening.
78. In the statement which he submitted to the Tribunal, however, the applicant said that he and Person E had had 'fun filled sex' over several nights. At the hearing before me the applicant said that what he had meant to say in Bangla was that before that they had had sex on two days. He suggested that this was a mistranslation. He confirmed, however, that he claimed that he and Person E had had sex on an occasion other than the cultural evening. When I put to him that he had said at the Departmental interview that he and Person E had been sharing a room with a few other boys he said that he and Person E had been able to have sex by waking up at midnight and going to another room which had been empty.
79. In the comments which he provided after the hearing the applicant conceded that in the statement which he had submitted to the Tribunal he had said that 'when I knew that [Person E] is like me then I have spent few sex nights with him'. He said that the statement accompanying his original application had been translated by a different person and this might account for any apparent differences in the two statements. He claimed that at the Departmental interview he had only been asked three questions about his relationship with Person E.
80. The problem with the applicant's evidence in relation to his relationship with Person E does not arise from any inconsistency between his two statements but rather from the inconsistency between what he said in those statements and what he said at the Departmental interview. If he and Person E had had a separate room then they could presumably have had sex whenever they wanted but if they were sharing a room with a few other boys it would make sense that they would have had to wait for the opportunity offered by the cultural evening when they could have had the room to themselves. When I raised this with the applicant at the hearing before me he said that he and Person E had been able to have sex by waking up at midnight and going to another room which had been empty. He did not make this claim at the Departmental interview and I do not accept that, as he said in the comments which he provided after the hearing, he was only asked three questions about his relationship with Person E at the Departmental interview. I remain of the view that the inconsistency in the applicant's evidence casts doubt on whether he is telling the truth about his relationship with Person E.

81. As I also put to the applicant, I likewise find it difficult to accept his account of his relationship with Person F when they were at college. As I noted, at the Departmental interview he said that once again he and Person F had shared a room with a few other boys. As I put to the applicant, it is difficult to accept that he would have been able to carry on a relationship with Person F in these circumstances. The applicant said that they had been involved in sex when there had been no one in the hostel. He said that this had been on a special government holiday or when the college had been closed. In the comments which he provided after the hearing he said that they had only had sex when the hostel room had been empty. He said that 'usually during weekend when all are away for outing then we used the opportunity'. I remain of the view that it is difficult to accept that the applicant would have been able to carry on a relationship in these circumstances without being detected until, as he claimed in the statement accompanying his original application, someone heard a noise on one occasion when he and Person F were having sex and called the other hostel students including the person in charge of the hostel.
82. As I further put to the applicant, in late Year 9 an anonymous informant in Bangladesh sent a message to the Department identifying the applicant's partner Person G by his name, date of birth and passport number, and stating that his claim to be gay was 'totally bogus'. The message said that Person G had a close relationship with his parents, that his parents had blessed him before he had left for Australia and that he had a girlfriend. In the comments which the applicant provided after the hearing he said that he blamed his original representative for the faxed message because he and his partner were no longer using her services and she had lost a lot of money as a result.
83. However I believe that there are considerations which argue against the theory that the applicant's original representative is responsible for the fax message. First, if the message were to be traced to her she would be admitting that she had put forward claims in the applicant's original application which she apparently knew to be false. This would place her registration as a migration agent in jeopardy. Secondly, the applicant has said that both he and his partner fell out with his original representative but an anonymous fax message has only been received in relation to the applicant's partner. This suggests that the person responsible is someone who has specific knowledge of Person G but not of the applicant.
84. As I put to the applicant, the anonymous message is relevant to whether I accept that he himself is homosexual since he claims to be in a homosexual relationship with his partner Person G and the message casts doubt on whether Person G is homosexual. As I explained to the applicant, I would not ordinarily place much weight on a message from an anonymous informant but I consider it significant that this person is clearly close to the applicant's partner in that this person knew the applicant's partner's passport number and the nature of the claims he had made in support of his application for a protection visa. Accordingly I give what is said in the message some weight along with the other evidence before me which, for the reasons given above, leads me to find that the applicant is not telling the truth and that he is not homosexual as he claims.
85. The applicant and his partner have given mutually corroborating evidence regarding their relationship. However I have found in a separate decision on the applicant's partner's application that I do not accept that the applicant's partner is homosexual. As I warned the applicant, this means that I give no weight to the corroboration which the applicant's partner has provided for the applicant's claims.

86. For the reasons given above I do not accept that the applicant is telling the truth in the claims he made in support of his application for a protection visa. I do not accept that he is a homosexual as he claims. I do not accept that the applicant is telling the truth about his past experiences in Bangladesh. I do not accept, in particular, that the applicant was sexually abused as a child by a relative named Person A, as he claims. I do not accept that in Year 2 when he was in school he became close to a boy named Person C with whom he had sexual intercourse on a regular basis until they were caught in late Year 3. I do not accept that after this the applicant was beaten and teased at school. I do not accept the applicant's account of his relationships with Persons E, F and G, nor that he was discovered having sex with each of them in the circumstances he has claimed, nor that he was beaten on each occasion. I do not accept that before the applicant left Bangladesh he was being followed by Person G's sibling, as he claimed at the hearing before me.
87. I accept that since the applicant and Person G have come to Australia they have held themselves out to the other people in the house where they live and to people at the applicant's place of work as homosexual partners as reflected in the evidence which the applicant and his partner submitted from the other people sharing the house and from a fellow employee at the bakery where the applicant's partner works. I also accept that the applicant and Person G have held hands in the street in Australia and have visited homosexual venues like Hotel A. Since I do not accept that the applicant is a homosexual as he claims, I am not satisfied that he has engaged in all of this conduct otherwise than for the purpose of strengthening his claim to be a refugee. I consider that I am therefore required to disregard this conduct in accordance with subsection 91R(3) of the Act.

## CONCLUSIONS

88. Since I do not accept that the applicant is a homosexual, as he claims, and since I consider that I am required to disregard his conduct in Australia in accordance with subsection 91R(3) of the Act, I do not accept that, if he returns to Bangladesh now or in the reasonably foreseeable future, there is a real chance that he will be persecuted for reasons of his real or perceived membership of the particular social group of homosexuals in Bangladesh. This being the only basis upon which the applicant claimed to fear persecution in Bangladesh, I do not accept that he has a well-founded fear of being persecuted for one or more of the five Convention reasons if he returns to Bangladesh now or in the reasonably foreseeable future. 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 paragraph 36(2)(a) of the Act for a protection visa.

## DECISION

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

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act</i> 1958. Sealing Officers ID: PRRTIR</p>
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