

0908353 [2010] RRTA 492 (17 May 2010)

DECISION RECORD

RRT CASE NUMBER: 0908353

DIAC REFERENCE: CLF2009/94129

COUNTRY OF REFERENCE: Colombia

TRIBUNAL MEMBER: Dione Dimitriadis

DATE: 17 May 2010

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Colombia, applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The first named applicant (also referred to as the applicant) and fourth named applicant arrived in Australia in 2008. The second named applicant arrived in Australia some months earlier and the third named applicant arrived in Australia in 2009. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
9. 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'

10. 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.
11. 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.
12. 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.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. 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.
15. 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.
16. 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.

17. 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.
18. 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.
19. 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.
20. A relevant issue in this matter is s.36(2) of the Act which provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is a non-citizen *in Australia*. This means that a Protection (Class XA) visa may only be granted if the applicant is in Australia.

CLAIMS AND EVIDENCE

21. The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
22. The applicant and the second named applicant appeared before the Tribunal on two occasions to give evidence and present arguments. The Tribunal hearings were conducted with the assistance of an interpreter in the Spanish and English languages.
23. The Department's records indicate that the applicant arrived in Australia in 2008. Her visa ceased four months later and the applicant was granted a Bridging visa which also ceased. The applicant was granted another substantive visa which also ceased. Some months prior to the expiry of this visa the applicant applied for a protection visa and she was granted a Bridging visa on that day.
24. The Department's records indicate that the second named applicant arrived in Australia in 2008. His visa ceased and on the same day the second named applicant was granted a further substantive visa which also ceased. The second named applicant was granted a Bridging visa which ceased. On that day the second named applicant was granted another substantive visa which also ceased. The second named applicant has since been granted a further Bridging visa.

Claims made to the Department

25. In the application for a protection visa the applicant stated as follows:

26. The applicant stated her name and where and when she was born. She speaks Spanish. She married in Colombia in the mid-2000s. She departed Colombia in 2008. She is a Colombian citizen. The applicant stated her employment history in Colombia and Australia. The applicant lived at a number of addresses in Colombia from the mid-1990s, including a number of different addresses in Location A. She attended primary and high school in Colombia. The applicant also attended an English college in Australia. She had 11 years of education. She arrived in Australia in 2008 on a Colombian passport. She has not travelled outside her home country before her journey to Australia. She left Colombia legally and was granted a dependent visa on her husband's (the second named applicant's) visa. To the question: 'Did you have difficulties obtaining a travel document (such as a passport) in your home country?' the applicant stated: "No" The applicant stated that she has been in contact with relatives in her 'home country or any other country' by telephone and email. She stated that her husband (the second named applicant) and her two children (the third and fourth named applicants) were members of her family unit and were in Australia at time of application.
27. She submitted certified copies of 4 pages of a passport from Colombia. The passport had been issued in the applicant's name and contained a valid visa on which she entered Australia.
28. The applicants submitted certified copies of 4 pages of the second named applicant's passport from Colombia in the second named applicant's name which contained a valid visa on which he entered Australia.
29. The applicants submitted certified copies of 4 pages of the third named applicant's passport from Colombia. The passport had been issued in the third named applicant's name and contained a valid visa on which they entered Australia.
30. The applicants also submitted certified copies of 4 pages of the fourth named applicant's passport from Colombia. The passport had been issued in the fourth named applicant's name and contained a valid visa on which they entered Australia.
31. The applicant stated in the application for a protection visa that she is seeking protection in Australia so that she does not have to go back to Colombia.

The applicant's written statement

32. The applicant, in a written statement received by the Department, stated that, in Australia, she has found tranquility, security and possibilities that do not exist in Colombia. For these reasons she is applying for a protection visa for herself and her family.
33. The applicant is in her early twenties and lived in Colombia until 2008. She has two children. She is married to the second named applicant. She arrived in Australia in 2008 with the fourth named applicant as a dependant on her husband's visa. The second named applicant arrived in Sydney some months earlier.
34. The applicant stated that in 2008 their roles were reversed and the second named applicant is now dependant on her visa. They are now a complete family unit as they were in Colombia. They consider Australia an ideal place to raise a family.

35. The applicant stated that the principal reason for her application for a protection visa comes from her experiences and those of her parents and siblings in Columbia. In 1998 Colombian FARC (Revolutionary Armed Forces of Colombia) guerrillas, whom her family do not support, forcibly removed the applicant's family and others from their village Village B, and threatened her father with death if they returned. The purpose of evictions was to increase their area of influence and exert pressure on the government.
36. The applicant's family was forced to flee to Bogota. The situation deteriorated with further threats being made by FARC against her father and this impacted on family life and his employability. He worked in a succession of jobs and was injured in an industrial accident. This limited his ability to provide for his family.
37. In 2003 the government of District C, of which Village B is a part, transferred to the administration of Bogota. The applicant claimed that the influx of displaced people from the country put strain on the economy and infrastructure of Bogota. The administration lacked the power, ability and the facilities to cope with the crisis. The applicant's father was awarded a certificate from the Bogota administration entitling him to limited assistance on humanitarian grounds in basic health and education. The applicant claimed that the public health and education system is underfunded and struggles to provide basic services. Many people do not have the opportunity to access these facilities. They are insufficient to enable a displaced family under threat a basic standard of living which the applicant stated is a fundamental human right in other countries.
38. The applicant then claimed that her family is forced to live in Location A, a dangerous suburb on the outskirts of Bogota, where the crime rate is high and most inhabitants lead a transient life. The applicant stated that the guerrillas force people off farms and out of the villages and refugees moved to the outskirts of Bogota where they appeal to the government for help. The applicant claimed that the government makes various agreements with the guerrillas to cease the unrest and displacements, but due to corruption, the government reneges on various agreements and the guerrillas resume their campaigns of violence and intimidation.
39. The applicant stated that she is the oldest child in her family and wants to show her siblings that there is a way out of the life of limited opportunities they lead. She made a commitment to complete high school. Her siblings never finished high school due to their displacement, but before she finished, she fell pregnant and this compounded their problems. A single mother has no employment or education opportunities. While pregnant, she met the second named applicant and he agreed to assume paternity of the unborn child. They married and her second child was born. To assist the applicant and her family, the second named applicant secured several substantial loans and left his job. The applicant claimed that the threats made by FARC against her family, now extend to her husband and children and put their safety at great risk.
40. The applicant stated the second named applicant's profession and interests. He studied English and has other education qualifications. The applicant stated her field of study and her profession and she indicated that she wants to work in this field. She stated that they will be a valuable asset and active contributors to Australian society.
41. She claimed that as a common citizen there are no political avenues she can pursue to improve her family's dire situation. The Colombian government is unable to help

because of the sheer scale of the problem. The only option available is to live in squats in crime ridden areas of Bogota. During her time in Australia she has experienced security and safety, something she can only dream about in Columbia.

42. In answer to question 41 of the application for a protection visa: 'Why did you leave that country?' the applicant repeated comments made in her written statement. She also stated that she and the second named applicant decided to leave Columbia and organise the present and future of their children in a calm, safe and prosperous [country].

43. In answer to question 42: 'What do you fear may happen to you if you go back to that country?' the applicant stated:

Today I am afraid to re-live the uncertainty, insecurity, inability to build a life for my family. Unfortunately, Columbia is a country where opportunities are filtered from the corruption of the government administrations in office. I fear for the threats that I witnessed as a child without any protection for my paternal family. Becoming a reality in the forced acceptance of inequality, insecurity and injustice (sic).

44. In answer to question 43: 'Who do you think may harm/mistreat you if you go back?' the applicant stated:

The threats to my parents and my family have only one exit: to move from the conflict zone and adapt to the city. Today I am head of my household with my husband and, paradoxically, in Columbia the problems inherited from our parents and we are in the process of transforming. The task does not depend solely on our efforts and has significant variations in matters of government, signed agreements, negotiation and time zones of economic and social crisis.

45. In answer to question 44: 'Why do you think this will happen to you if you go back?' the applicant stated:

Because the corruption of my government makes between the credibility of any negotiation or agreement to do with terrorist groups. I spent several years of my life and I have not experienced any change representative. Columbia does not matter in which the citizen is qualified, economic power is the one who defines the degree of risk from armed groups. If we return the adversity of my parents. Access to the peripheral area of the city and the daily conflict with the people displaced by violence (limitation on housing, education, recreation and work) (sic).

46. In answer to question 45: 'Do you think the authorities of that country can and will protect you if you go back? If not, why not?' the applicant stated:

The answer is no... because the displaced population in Columbia is too large, to the point of being a normal situation for many people, without thereby diminishing the degree of difficulty to be moved. Tenders are more protective emblems of the political campaign to a real situation. Access to health and public education in Columbia, speaking of basic needs is the conflict of interest described. The opportunity to have the service up to a long handle of officers, ranks and a prelude to civil servants. The most favourable (sic) solution is to pay for private care and avoid tramitologia (sic) long and saturated. I expect no protection from my government because we have no time to wait for the promises of the rulers become reality. Being consistent with our past experiences as a family we have chosen to build the future of our children away from home (Columbia) (sic).

47. The other applicants filled out Part D Application for a Member of the Family Unit. This form is to be filled out by a member of the family unit who does not have his or her own claims to be a refugee.
48. At the time of lodging the application for a protection visa, the applicants provided a number of documents (in a language other than English together with English translations) including birth certificates for the third and fourth named applicants. The second named applicant is named as the father of both the children on the birth certificates.
49. Other documents that the applicants provided were the marriage certificate of the first named and second named applicant, education documents, qualification of the second named applicant, birth certificate of the applicant and identity card of Person D. The applicants also provided a certificate from the Mayor of the Municipality of Village B in the Department of District C stating that Person D received death threats and was forced to move to the city of Bogota with his family. The applicant also provided a certificate from the General office of the Public Prosecutor of the Republic certifying that Person D and his family including his daughter, the applicant, have declared as displaced and their registration on the National Register of Displaced People by violence is pending. The applicants also provided an employer's report stating that Person D suffered an injury in the late-1990s. The applicants provided a document from the Mayor's office stating that Person D and his family were registered on the register of displaced persons since the early-2000s. The applicants provided documentary evidence of a loan in the name of the second named applicant.

The Department's interview

50. The Department held an interview with the applicant. The applicant informed the delegate that in 2003, because of threats by FARC, she and her family moved to Bogota. She stated that she is claiming refugee status for political reasons. The applicant stated that the second named applicant lent a large sum of money in Colombia and received a specified amount per week interest. She stated that sometimes there are links with FARC without you knowing about it and when the second named applicant went to collect money he was told the money had been used as ransom. This occurred in 2006. The applicants fear that they or the family may be harmed if they or an intermediary tries to collect the money. The applicant claimed that the second named applicant's money was stolen by Person E, a friend of the second named applicant, and he used the money to get Person F out of gaol. Person F was with the guerrillas and in a police raid she was taken. Person F was part of the FARC movement. The applicant was asked by the interviewer what is the threat to her and her family from FARC and she stated: kidnapping, disappearance, rapes.
51. When asked why she did not apply for protection until one year after she had arrived in Australia, the applicant stated that the second named applicant enquired and was told that all the family had to be here and one child was not here and did not arrive until 2009. The applicant claimed that in 2003 her father received threats from FARC and he moved the family to Bogota. FARC thought he was an informer. The applicant's family were warned of risks because her father had to collect money that he had lent to other people. The applicant stated that the risks were general risks.

52. The applicant also claimed that threats made by FARC against her family now extend to her husband and children. She claimed that these are specific to her family and they know that they are in Australia and they are wealthy. Her father who is now in Location G, received a threat not to continue working there because he was accused of being an informant for FARC and his photo is in the police station. The applicant claimed that someone told the paramilitaries that her father was an informant for FARC. The applicant stated that she did not personally receive threats from FARC.
53. The applicant told the delegate that she felt good saying the things about what had happened to her and her feelings and she felt good saying the things about what she felt inside and what had happened to her.
54. The delegate made a decision to refuse protection visas to the applicants.

The application for review

55. At the time of lodging the application for review with the Tribunal, the applicants did not make any comments. The Tribunal wrote to the applicants and acknowledged receipt of their applications for review. The Tribunal informed the applicants that if they wish to provide material or written arguments for the Tribunal to consider, they should do so as soon as possible.
56. The Tribunal wrote to the applicants and invited them to a hearing. The Tribunal received a response to the hearing invitation in which the applicants stated that the applicant and the second named applicant would attend the hearing.
57. The Tribunal received a letter from the applicants' representative who stated that he accepted instructions to assist the applicant with her application before the Tribunal. The representative requested that the hearing be rescheduled. The Tribunal considered the request and agreed to postpone the hearing. The Tribunal wrote to the applicants and informed them that the hearing had been postponed and the hearing would now take place ten days later.
58. The Tribunal received a letter from the applicants' representative who provided a number of documents including a Statutory Declaration declared by the applicant.

The applicant's Statutory Declaration

59. The applicant stated that she continues to rely on the claims in her application for a protection visa and at interview. She also stated that her father was threatened by members of the Revolutionary Armed Forces of Colombia (FARC) so he went to work in the area of Location H on the outskirts of Colombia. It is a dangerous area but it was his only option. In the area was a paramilitary organisation that she calls Group J. It collects protection money from companies that work in this area. Her father obtained a loan from a local company and was directly involved in making payments to Group J. After her father moved to Location H she got involved with a man called Person K and she claimed that he is the father of her older child. She did not know much about Person K's activities. She separated from him because he hit her and threatened her on several occasions. The applicant claimed that she took her child with her and her father supported her in this. She claimed that Person K often called her and threatened to take her child.

60. After about two years, her father met Person K at a meeting between the gas company and Group J and realised that Person K was an activist in Group J “and more of a threat than we had ever imagined.” Soon after the meeting the applicant’s father was told that his name was on a list of informants available to the police, even though he was not connected to any paramilitary organisation. Her father knew that the only way his name could be on the list is because Person K saw him at the meeting and wished to threaten him, and through him, her and her child. Until then her father had worked for a number of years for the company without any problem.
61. The applicant claimed that her father went to the local council and reported the threats and was issued with a certificate recording this report. She has a copy of this certificate and has sent it to be translated. The applicant stated that local authorities in Colombia are powerless to do anything. Her father complained in order to have proof that the incident occurred. He changed occupations in the company so that he no longer communicates with Group J but is still in great fear of the repercussions.
62. The applicant claimed that when she found out that Person K was part of Group J, the second named applicant was already in Australia and she already had plans to come here. She had kept the problem of Person K a secret from the second named applicant and did not want him to know. She claimed that that is why she did not mention this further threat in her application for a protection visa. After she began her relationship with the second named applicant, Person K continued to telephone her and threaten to take her child. About a month before she travelled to Australia, she received a telephone call from Person K who stated: “I want my [child] back or your family will suffer the consequences.” The applicant claimed that she heard from friends that Person K had been looking for her.
63. The applicant stated that her older child, the third named applicant, did not join her in Australia until 2009 and stayed with her parents until then.
64. She claimed that she fears that if she returns to Colombia she will be targeted by the paramilitary organisation that she calls Group J and will be targeted because of her connection to Person K who is one of their members. She also fears that her elder child may be in danger. The applicant claimed that the local authorities are powerless to protect people like her from paramilitary organisations “who are a law unto themselves and use extortion to control whole areas.”

The first Tribunal hearing

65. At the hearing the applicant stated that she had videos on her laptop from the place where her father works and the video tells the story of how the paramilitary work in that area. The Tribunal informed the applicant that it would not have time during the hearing to look at the videos and asked if she could make a copy and send them to the Tribunal. The applicant stated that she would put it on a CD and send it to the Tribunal. The Tribunal informed the applicant that it would give her time to provide documents or CDs to the Tribunal after the hearing. The Tribunal also informed the applicant that she could provide an explanation for any material she provided after the hearing. The Tribunal informed her that it had a number of questions to ask her and it also wanted to give her an opportunity to give her evidence and the Tribunal had to take evidence from the second named applicant and there may not be sufficient time to look at the material on her computer.

66. The applicant stated her occupation and that she is on a bridging visa and has permission to work. The Tribunal looked at her Columbian passport and returned her passport and the passports of her children to her. The applicant was born in the late-1980s.
67. The applicant stated that she did not get help in filling out her application for a protection visa. She filled it in with her husband. She stated that her relative helped with the translation. Her relative is the second named applicant's sibling. The applicant stated that immediately before she came to Australia, she lived in Bogota alone with her children. Her parents now live in that house.
68. The Tribunal asked the applicant if there was anything that had been left out of her application that she would now like to claim. The applicant stated that it is more her feeling, her fear as a mother and a wife, and she would try to explain why there is a new story in her application.
69. The Tribunal informed the applicant that it had concerns about her evidence because she had made no mention of these new claims when she lodged her application for a protection visa. As well, she attended an interview at the Department, which went for over an hour, and she did not tell the delegate about these new claims. As well, at the time she lodged the application for review with the Tribunal, she did not mention these new claims. The applicant agreed that she had not mentioned the new claims at those times.
70. The Tribunal informed the applicant that, in the Statutory Declaration, received by the Tribunal, she made new claims. The Tribunal asked the applicant if that was the first time that she had made these new claims to either the Department or the Tribunal. The applicant agreed that it was the first time. The Tribunal informed the applicant that the Tribunal had concerns as to why she waited such a long time to make the new claims and asked if she wished to say anything. The applicant stated that firstly it was out of fear of losing her home. The second named applicant had already planned his trip to Australia. At that time, the father of her elder child threatened to take the child any possible way. The applicant claimed that he is an active member of the paramilitary group in Location H. When the second named applicant travelled, the applicant did not know anything about this person, except for a vague knowledge of his profession and was constantly travelling. When the second named applicant went away, her father was working in Location H.
71. The Tribunal asked the applicant if she was just giving the information that she had already given in her Statutory Declaration. The applicant agreed that she was. The Tribunal informed the applicant that the question that the Tribunal asked was why she did not give this information earlier. The applicant stated that it is because she is in a database in Colombia of people who have been moved from the country to the city. Her family is on the database and when they looked into how to apply for a protection visa, they realised that they had something that they could use in the application and that is the database in which they appear.
72. The Tribunal informed the applicant that she was still not answering the Tribunal's question about why she did not mention this claim about paramilitaries threatening her until the Statutory Declaration that the Tribunal received. The applicant stated that this was a story, a very strong secret, which she wanted to keep. The situation was that she

had some evidence but they did not have much information about this kind of visa and decided to try it this way. She did not think it was that important to tell this story which her husband did not know until then. When she saw that her application was rejected, she spoke to the second named applicant and she thought about what she could do, so that they can see her fear. She cannot go back. When she told her husband this secret, he reacted and was very upset. In order to protect her family she has included this story.

73. The Tribunal informed the applicant that it may find that, because she did not mention this claim when she had previous opportunities to do so, it is not a true story. The applicant stated that she knew this was a possible consequence, but she knows and swears by God, that if she goes back to her country, she will lose her child. The applicant stated that it is a true story and the only evidence is a DNA test, but they do not have the means to do that.
74. The Tribunal brought to the applicant's attention that the second named applicant is named as the father on the child's (the third named applicant's) birth certificate. The Tribunal informed the applicant that she is either not telling the truth to the Tribunal or she has told untruths to the authorities in Colombia to register her first child. The applicant denied that and stated that it is all true. When she realised that this person was someone who did not want her to go forward or did not let her study, she decided to have her own life and her current husband has supported her since her pregnancy with her child and he has been with her until now. She stated that that is why he is on the birth certificate.
75. The Tribunal informed the applicant that the birth certificate is supposed to show who the father of the child is. The applicant stated that she did not want to. The Tribunal brought to the applicant's attention that, if what she is saying is true, that the second named applicant is not the father, then false information has been given on the birth certificate. The applicant stated: "In a way yes". The Tribunal brought to the applicant's attention that it is a government document issued about the birth of her child and it has the incorrect name of the father according to her evidence. The applicant stated that in her country, that is not really a problem. As a single mother, if the real father's signature is on the document and he is not supporting her, then that is worth nothing to her, whereas if she has the signature of the person who has been supporting her, in her country, that is normal. Also, if the real father's signature had been on the document, she would not have been able to change her child's last name.
76. The Tribunal informed the applicant of its concern that it had what appeared to be false birth certificate with the wrong father's name on it and the Tribunal also has a claim that was not previously made even though the applicant had been given opportunities to make her claims. The Tribunal informed the applicant that it had listened to the tape of her interview with the delegate and she had been asked if there was anything else that she wanted to add. The Tribunal asked the applicant if she agreed that she had been asked this. The applicant agreed. The Tribunal brought to the applicant's attention that she had also stated at that interview that she felt good saying the things about her claim. The applicant stated that it was the first one and she did not have anything and did not have a lawyer. They did the application for a protection visa with her husband with the help of her relative with the translation and they decided to try it that way.

77. The Tribunal informed the applicant that one of the concerns now is that she did not make the claim before the delegate's decision was made, and the Tribunal may not believe that it is a true claim. The applicant did not say anything. The Tribunal asked the applicant if there was anything else that she wanted to say about the claim that she has made in her Statutory Declaration. The Tribunal informed the applicant that it had read her claim in the Statutory Declaration and asked her if there was anything general or specific that she wished to say. The applicant stated that if she goes back to her country she can lose her home. She has someone behind her who is an active member of the paramilitary. The applicant stated that the video shows how this paramilitary group works. Before travelling, she could not see anything else. She only knew someone who was threatening out of jealousy and with taking her kids. Until now she has been doing some research because her father told about this paramilitary group and she realised that she cannot go back to her country
78. The Tribunal asked the applicant if the video she had was a general video that showed how the paramilitary works. The applicant stated that it shows how they work and how they affect the people working in that area and the kind of people living in that area. The Tribunal asked the applicant whether the video was specifically about her. The applicant stated that it was not specifically about her. This person is a paramilitary. Her father works in that area. The applicant stated that the video is not about her father or about her. She lived 100 metres from this area and she and her husband owned the house where they lived.
79. The Tribunal asked the applicant if there was anything else that she wanted to say about that claim. The applicant stated that they would like to bring evidence and videos and what she is saying is the truth. They know that the best would be DNA evidence but they cannot afford it. The Tribunal informed the applicant that even if she had DNA evidence it would not show that the natural father was a member of the paramilitary or that she had been threatened. The Tribunal informed the applicant that it had to hear her evidence and make a decision on the evidence. The Tribunal informed the applicant that it had brought to her attention that it had concerns that she had left out this claim even though she had attended the Departmental interview and there was an interpreter present, and she had had the opportunity to give this evidence at that time. The applicant agreed. The applicant stated that she did not say anything.
80. The Tribunal asked the applicant if she had other evidence she wanted to give about the paramilitaries. The applicant stated that when the second named applicant left Colombia, her father told her this story as he had direct contact with this area, because he is the one who does the agreement with these people to be able to work. When he found this person at the meeting, the applicant realised that he meant it and he would take the child in any possible way, good or bad. When her father told her the story, she realised that he can take the child away from her or be aggressive towards her husband or her child.
81. The Tribunal asked the applicant how old the child was when they left Colombia. The applicant stated the child's age when they left Colombia. The Tribunal brought to the applicant's attention that the man had not taken the child away at that point. The applicant agreed that he did not and she stated that her dad always kept the child at home and if they went out they went out together with the applicant's parents. The applicant stated that even when she was here (in Australia) they knew that they could kidnap the child. The applicant stated that even though they knew that her child was not

one hundred per cent safe, the applicant decided to risk it, because she knew, that if she told her husband, he might decide to go back. She decided not to say anything and if she came to Australia, she would be able to bring her elder child and if her husband had gone back, she would not have been able to take her kids anywhere and they would be in a worse situation in Bogota.

82. The Tribunal asked the applicant if she was able to go to another country in South America. The applicant stated that they chose Australia because of her husband's profession and her relative is here and she told them about possibilities for that profession. The second named applicant could apply to come here on a specific visa and then the applicant could come as a dependent.
83. The applicant stated that when the second named applicant first came to Australia he came on a specific visa and the applicant came with her younger child (the fourth named applicant) as a dependent. Her husband's visa has finished and the applicant has a substantive visa and they are dependents on her visa. The Tribunal asked the applicant why her husband had not continued to study. The applicant stated that he wanted to work with his profession here, but it is very hard, so they decided that she would study English and do a course to be able to apply as a resident. The applicant stated that when she heard about the possibility of applying for a protection visa and the fact that she had evidence, they decided to apply and try that way.
84. The applicant stated that her husband left her in Colombia and came on his own first. The Tribunal asked why he did that. The applicant stated that in order to get out of the situation that they were in, he borrowed money from a co-operative and some other money, that she also mentioned in her application, and he was relying on getting a loan and his sibling in Colombia and his sibling in Australia, were both going to be his sponsors and that was the reason he travelled. The Tribunal asked the applicant why the second named applicant left her and the two children in Colombia. The applicant stated that it was because of money reasons. They could not all come and he was going to come and bring her as a dependent.
85. The Tribunal brought to the applicant's attention that she then left Colombia and came to Australia and she left one of her children in Colombia and the Tribunal asked why she did that. The applicant stated that it was because of her new story that she is telling now. Also it was only possible for her to travel with one of the children and she brought the younger child with her. The Tribunal asked the applicant how, her bringing the younger child with her, fitted in with her new story. The applicant stated that it is because the younger one was only an infant and needed her. The Tribunal asked the applicant whether she was worried about the older child being at risk. The applicant stated that she was worried about him. The Tribunal asked the applicant why she left the older child in Colombia. The applicant stated that she knew what was going on and she decided to risk it. She stated that there were things that were contradictory that she knew could have been done differently but they had very little time, and she decided to bring the younger one and then within six months, maybe bring the other one.
86. The Tribunal informed the applicant that it had concerns about this. The Tribunal informed the applicant that it is inconsistent with her claimed fear about her older child, that she left her child in Colombia. The applicant stated that it was more because her other child was only an infant and her husband did not know them. When he went away, the applicant was still pregnant. That was her reason and she thought about it a

thousand times as to which one she was going to bring. If she left the baby, they were still a baby, and they still needed their mother and she was still breast-feeding them. If she left the older one, she knew how dangerous it was, because she was leaving her child in an extremely dangerous situation, but she made that decision. She did not make that decision by herself. She took it with her parents and her husband. They all made that decision and they knew that she would go back and get the other one within six months.

87. The Tribunal brought to the applicant's attention that her evidence is that she did not tell her husband that the older child was the child of a paramilitary. The applicant agreed. The Tribunal brought to the applicant's attention that her husband was not really involved in that decision. The applicant stated that her husband participated in the decision as to which child to bring. The younger child did not know him.
88. The Tribunal informed the applicant that it was finding it hard to believe this evidence. The Tribunal asked the applicant if she had told her husband that her older child, who her husband had taken as his child, was at risk of being kidnapped, or taken, which child would her husband have chosen to bring. The applicant stated that he would have come back. Also, her husband did not know his younger child and so he was not going to leave him either, and he would have said that he was going to return and see what happens. It was more as a father that he did not know his younger child. The older one knows him and will not forget him. The applicant stated that for her, it was very hard to agree with him, when he said to bring the younger one, because she knew that she was leaving the elder one in the situation that she was leaving her child in. However, if she told him, he would have come back.
89. The Tribunal asked the applicant if she considered staying and looking after both her children and protecting them. The applicant stated that she did not consider that, not by herself. She could not do that. She knew an opportunity to come to Australia would not come up very often. She decided to risk it to be able to come to Australia and because of her children she is making this application and risking it.
90. The Tribunal brought to the applicant's attention that according to her evidence, she risked her child's life by leaving him there. The applicant stated that she knew that she was doing that.
91. The applicant stated that she arrived in Australia in 2008. The Tribunal asked the applicant why she waited so long, for almost a year, to apply for a protection visa. The applicant stated that it was because they already had some plans and her husband was going to study and then because he could not work in his profession, they decided to apply on her part and cancel his visa. On her side they would apply for a residence visa. Because they had the children and they did not have much time, it was difficult with the children, but they decided to find out what types of visas they could apply for. When they found out about this type of visa and the references and information they needed to provide, and they saw that she appeared in that database of being moved from the country to the city, they assumed that it was a short cut. They had the evidence and they did not know much and did not know how protection visas worked. They knew they did not have much time and they decided to try that.
92. The Tribunal informed the applicant that in order to be granted a protection visa, the Tribunal has to be satisfied that she has a well-founded fear of being persecuted in

Colombia for a Convention reason. The applicant stated that she told her story about her father and being taken away from the land and her situation as a mother and how she was directly affected and also how her husband is involved in all this. The applicant stated that it is the truth. It is hard for her to say why she did not say it before and now she has to bear the consequences of not having told this before.

93. The Tribunal informed the applicant that it would take into account all her evidence. The Tribunal informed the applicant that it had concerns about her new claims and also that she waited quite a long time before applying for a protection visa. The Tribunal informed the applicant that it may find that it is inconsistent with her having a well-founded fear of being persecuted, that she waited so long. The applicant stated that when they applied for this visa they did think about these things, but she has sworn that everything she is saying is true. Because her husband's last name appears on the birth certificate, they thought about that and they have no other way of showing, other than DNA evidence and her swearing by affirmation today. The Tribunal informed the applicant that even if it accepted that the second named applicant was not the natural father of her older son, it still may not satisfy the Tribunal about the other matters that she had raised. The Tribunal brought to the applicant's attention that the Tribunal would not have before it a DNA test for the person that she claims is a paramilitary member.
94. The Tribunal informed the applicant that it had to firstly decide whether the evidence was true and then the Tribunal had to make a decision as to whether, as a result of that evidence, as a result of the things she said had happened, she does have a well-founded fear of being persecuted. The applicant stated that she does not know what else she can show. She stated that her parents are still alive and she has a number of siblings. The applicant married the second named applicant after their elder child was born. She stated that the second named applicant is aware of her claim relating to the person that the applicant claims is the natural father of her first-born child.
95. The applicant's mother works from home. Her siblings help her and have not finished studying yet. They only finished primary school and because of being moved from the country to the city, this had an impact on them. They have been unable to study because of safety reasons. The applicant stated that her siblings were not studying and they have not finished secondary school. She stated that they finished Year 12. The Tribunal informed the applicant that it did not understand her evidence. The applicant stated that their situation, as people who have been moved from the country to the city, means that they are affected in the sense that many educational institutions will not let them in because they are people without money and without resources. The Tribunal informed the applicant that it did not understand her evidence about her sibling's education. The applicant stated that her siblings have not finished secondary school. They got to Year 10. Both siblings did Year 10. Another sibling is a toddler and does not attend any kindergarten or any educational centre.
96. The Tribunal asked the applicant if she had had any trouble with the authorities in Colombia. The applicant stated that she had not had any trouble with the authorities in Colombia, personally. She did not have trouble with the police or the army. She moved with her family from Village B in 1997.
97. The Tribunal informed the applicant that it was going to ask about her claims in her application for a protection visa. The Tribunal referred the applicant to her claim that

the Colombian government made agreements with FARC, but because of corruption, the government reneged on the agreement and the guerrillas resumed their campaign of violence and intimidation (in page 2 of her statement lodged at time of application). The Tribunal asked the applicant what she means by that. The applicant asked if that was her situation. The Tribunal informed the applicant that it was her application for a protection visa. The applicant stated that she does not understand very well.

98. The Tribunal informed the applicant that FARC is the Revolutionary Armed Forces of Colombia and, in her statement she states: "The guerrillas forced people off the farms and out of the villages. The refugees moved to the outskirts of Bogota. The refugees appealed to the government for help and the government makes various agreements with the guerrillas to cease the unrest and displacements. Due to corruption, the government reneges on various agreements. The guerrillas resume their campaigns of violence and intimidation." The Tribunal asked the applicant what she means. The applicant stated that when they were moved to the city, people were there with nothing and had no jobs.
99. The Tribunal asked the applicant what she meant by her statement that the government reneges on agreements and the guerrillas resume their campaigns of violence and intimidation. The applicant stated that they are big groups and some people who have left the FARC to start their lives over, are promised jobs and the opportunity for a new life by the government but when they see how many people have left the FARC and the government has not complied with agreements for many people, these people cannot go back to the guerrilla groups because, if they do, they will get killed. So they start doing petty crimes and become delinquents and they start being part of paramilitary groups. The Tribunal brought to the applicant's attention that she did not say that in her statement and what she said was that the guerrillas resume their campaigns of violence and intimidation. The applicant stated that that is what they do. The Tribunal informed the applicant that she had just given evidence that they became paramilitary members. The applicant stated that there are cases and they do not work as paramilitary members, but it is a path they can take. Those are the available paths for them because the government does not provide any help for them.
100. The Tribunal informed the applicant that it had conducted research into the way the Colombian government deals with the Revolutionary Armed Forces of Colombia. The Tribunal had looked at various international reports which indicated that peace talks and political negotiations between the Colombian government and the FARC ended in 2002. The Tribunal informed the applicant that from the Tribunal's research, the Colombian government had not negotiated with the FARC since 2002 when President Uribe came into government. The applicant stated that she does not know the exact details of the peace negotiations between Uribe and this group but she does know that these paramilitary groups still work and she has been affected directly and she also wanted to show how President Uribe is part and a creator of the paramilitary forces. The Tribunal informed the applicant that it was not talking about the paramilitary at that point because her original claim for a protection visa referred mostly to the FARC. The applicant stated that she is not very clear about the dates and peace negotiations although she knows there were peace negotiations. She knows the people are still working. The Tribunal asked the applicant what people she was referring to. The applicant stated that she was referring to the FARC.

101. The applicant stated that after the accident her father was working in the city and when he went back to Village B, he was taken by the FARC as an informant. They were controlling the comings and goings of people and controlling that there was not an army in the area. They considered that her father was an informant and they all had to leave Village B area. The Tribunal asked the applicant if, after her father had his injury, he was still being threatened. The applicant stated that he was still being threatened. The Tribunal asked the applicant if the threats from FARC stopped. The applicant stated that her father cannot go back to that area. He has friends and knows about cases of people who are still being threatened and he cannot go back.
102. The applicant stated that she had not personally received threats from the FARC. She stated that when her father left Village B, he knew that if he did not leave, his children could be taken to work in the FARC or the whole family could be kidnapped and made to disappear.
103. The Tribunal asked the applicant what she feared if she returns to Colombia. The applicant stated that her fear is that now that she has been displaced, she has been directly threatened by her child's father and she could lose her kids. The Tribunal informed the applicant that it did not understand what she meant by 'displaced'. The applicant stated that she was displaced from the Village B area with her family and moved. The Tribunal brought to the applicant's attention that that took place in about 1997. The applicant stated that her siblings were not able to finish school because they were moved. The Tribunal brought to the applicant's attention that they had completed Year 10. The applicant stated that they had not finished school and cannot even work sweeping the streets. The Tribunal asked why they cannot do that. The applicant stated that in her country there are some jobs that you cannot apply for if you do not have a certificate that you have finished. Her father does not let them work with him because he is scared of what might happen to them. That is why they are at home with their mother, sewing and do not work or go out. They belong to a Christian group and that is practically the only place they go to where they feel safe.
104. The Tribunal asked the applicant if she finished high school. The applicant stated that she finished high school when she was pregnant. The Tribunal asked the applicant if she had had the opportunity to finish school. The applicant stated "yes" and taking into account that this person, Person K, her child's biological father, did not want to let her finish and wanted to keep her at home and did not let her visit her parents. The applicant stated that she wanted to go forward and finish high school. She was with him for about a month and she fell pregnant. She moved in to live with him for a short time. When she realised the situation she was in, she wanted to go on with her life and she had her father's support and that was around the time she met her husband. This person, Person K, had hit her. It was not very serious but he slapped her, yelled at her and pushed her. It was not easy to study while she was pregnant because sometimes they did not allow pregnant women to study.
105. The Tribunal asked the applicant if she was able to finish high school, why was it that her siblings have not finished school. The applicant stated that when she studied, the area was different. Her two siblings always studied together. Her siblings and the applicant studied at different schools. Sometimes there are no places available in the schools and sometimes, because they were moved, and her father has a document that they have been moved, and people who have been moved are supposed to get some help from the government for educational purposes, and so her father would show this

document at educational institutions and he would be told that they could not go and as well, he wanted to protect them, and now they are at an age that they cannot go to a normal school and would have to go at night.

106. The Tribunal informed the applicant that she had not really explained why she was able to go to school even though she was pregnant and yet her siblings have not been able to go to school. The applicant stated that she was older and her father always looked after her and picked her up. She was never alone. He dropped her off. She was worried but her husband supported her. Because of her nature she could not stay still and she only had one year to go and wanted to finish. The Tribunal informed the applicant that it did not understand why her siblings had not been able to go to school. The applicant stated that it was because of their age. They are both aged in their early twenties and for a normal institution, they are too old. The Tribunal asked the applicant why her siblings did not go to school three or four years before. The applicant stated that it was because of safety reasons. The Tribunal informed the applicant that this was a very general statement and asked her what she meant by that. The applicant stated that they were younger and because the applicant had been going through all these problems and her father was always over-protecting her and he could see all these important things were happening.
107. The applicant stated that her siblings left school because they were under-age at the time and her parents wanted to protect them for security reasons and now they would have to study at night and it is very risky. The applicant stated that her parents were protecting her siblings from being kidnapped. There are people in schools who belong to guerrilla groups or paramilitary groups. The Tribunal brought to the applicant's attention that this was a general fear and not a specific threat against her family. The applicant stated that right now it is a threat that Person K made. He threatened her dad and is in the area where he works. The Tribunal questioned the applicant as to whether this was the reason that her siblings did not finish school. The applicant stated that before then it was because of general security fears for them. The Tribunal asked the applicant whether there were specific threats against her siblings or her family at that time. The applicant stated that there were not specific fears against her family at that time.
108. The applicant stated that her husband's profession in Colombia. She stated that they cannot afford to get DNA testing.
109. The applicant stated her profession in Colombia and it was not a proper position and she was not employed properly. She worked casually and would work for three hours. That was why she did not mention it in her application for a protection visa. The Tribunal brought to the applicant's attention that the application for a protection visa asked her to give details of all past employment.
110. The applicant stated that she left Colombia legally. The passport she now holds is the first passport she has ever held. The Tribunal informed the applicant that it had asked her what she feared if she returns to Colombia and asked her if there was anything else she wanted to say. The applicant stated that she cannot be safe in her country or be in peace or secure. There is no stability in any sense. She could lose her home and her family and that is something that the country will not give her back. The Tribunal asked the applicant why she would lose her home. The applicant stated that she would not lose her house, but her home with her husband. She thinks that this person can take it

against her father because he is the one who got the threat, and also against him and her sibling and anyone in her family. The Tribunal informed the applicant that if it finds that it is a personal dispute between her and the biological father of her child, the Tribunal may find that it is not for a Convention reason that she has these fears. The applicant stated “no”, it is not that. She fell pregnant to someone that she did not know and she had a child with him and he is doing everything he is doing because the applicant left him and not because he loves her. He has reasons to do what he is doing.

111. The Tribunal informed the applicant that the threat of persecution does not have to be from the government of her country but it is enough if the government of her country is unwilling or unable to protect her from the threat. However, if it is a personal matter between her and the biological father of her child, the Tribunal may find that her reason for fearing to return to Colombia is not a Convention reason. The applicant stated that normally a paramilitary group is a very strong group and if they do not like you they can do anything to you. They can murder someone and they go unnoticed. Since they are very strong and President Uribe is the one who formed these groups, they are very strong. The applicant stated that if the paramilitary are being investigated by the government and the government is interviewing them, and they say that they killed so many people or murdered so many people, and they confess, then they can have their penalties reduced to three years. This why they do what they do. They know that they get caught and confess. Then they get out and there is no legal penalty for them. The Tribunal asked the applicant if she had evidence of that. The applicant stated that she has a video. The applicant stated that she has a testimony in Spanish and has not been translated. It is from a paramilitary member who was captured and then testified and then his penalty was reduced. The Tribunal informed the applicant that it did not know how this was going to assist the Tribunal to make a decision. The Tribunal brought to the applicant’s attention that confessions brought reductions in sentences for criminals as well. The applicant stated that it is like that and the testimony that she has from this person is that he killed 150 people and buried them in the Location H area. It is a documentary about a Colombian journalist who wanted to show how the paramilitary operated in Location H. The Tribunal informed the applicant that if it viewed the video together with a translation, it could make a determination as to whether it was relevant. The Tribunal informed the applicant that it did not know what was on the video.
112. The applicant stated that President Uribe has established the paramilitary groups. The Tribunal asked the applicant if she had evidence of that on the computer. The applicant stated that it is in Spanish and she tried to find something in English but could not find anything. She has a video in English about Location H and how the paramilitary operates in this area.
113. The Tribunal brought to the applicant’s attention that her claims appear to have shifted from the FARC and she appears now to be making claims only about the paramilitaries. The applicant stated that “yes” now it has shifted to the paramilitary because her father was threatened by it. This person, who is an active member, was seen by her father at this meeting where her father was going to have a contract signed to be able to work. The Tribunal brought to the applicant’s attention that she mentioned that to the delegate at the interview that her father had received a threat not to continue working in Location H because he was accused of being an informant for the FARC and she said that someone told the paramilitaries that her father was an informant for the FARC. The Tribunal brought to the applicant’s attention that she mentioned that about the

paramilitaries and that was an opportunity for her to give this evidence about the biological father.

114. The Tribunal informed the applicant that it was going to ask her to explain what she meant in her application for a protection visa as it did not understand a couple of her sentences.
115. The Tribunal referred to the application for a protection visa (Question 43), which asked 'who do you think may harm/mistreat you if you go back?' The Tribunal referred to the applicant's answer to that question and informed her that it did not know what 'time zones of economic and social crisis' means. The applicant stated that time zones in Colombia they call them negotiation tables, where the negotiations between the government and the guerrillas takes place. The Tribunal informed the applicant that the research it had conducted indicated that there had not been negotiations between the Colombian government and the FARC since 2002 when President Uribe came into government. The applicant stated that the people who have been moved cannot wait for the negotiation table to happen. The Tribunal brought to the applicant's attention that she and her family were moved 12 years before. The applicant agreed. The Tribunal informed the applicant that it did not understand the connection with them being moved 12 years ago and what was happening now. The applicant stated that when they left Village B, they left without a job. Her parents did not have a job. Her father was disabled, and was injured. They left without studies and without a place to stay.
116. The Tribunal asked the applicant to explain what the following sentence means: "I spent several years of my life and I have not experienced any change representative." The applicant stated that both her parents are alive and they have not had any direct attack on them and have not been kidnapped. They live with that fear. Thankfully they have not experienced that. The Tribunal asked the applicant if there was anything else that she wanted to say. The applicant stated that she is scared of returning to Colombia and in high risk of losing her child and her family.
117. The Tribunal asked the applicant why she is scared that her husband and family may suffer if she returns. The applicant stated that, if she goes back, this person has direct contact with this group. There are very many people and they can take it out against her father, her siblings or her family. They can take it out against her youngest sibling. They have no problem doing that. The Tribunal asked the applicant if the paramilitary group had a name, or if she had given it a name. The applicant stated that she had not and it is just a paramilitary group. That is what it is called. The Tribunal asked the applicant if there was more than one paramilitary group in Bogota. The applicant stated that this group works in more than one city in Colombia. The Tribunal asked if there was more than one group. The applicant stated that there is just one group that works in different places. They control several cities in the country. The Tribunal asked the applicant if she was saying that there was just one paramilitary group in the whole of Colombia. The applicant stated that there is just one.
118. The Tribunal asked the applicant if she was already living with her husband when her older child was born. The applicant stated that she was living with him.
119. The Tribunal referred the applicant to her Statutory Declaration in which she stated that she separated from Person K because he hit her and threatened her on several occasions and she stated that she took her child with her and her father supported her in this. The

Tribunal informed the applicant that this evidence implied that she was with Person K when she had her child. The applicant stated that she was pregnant. The Tribunal informed the applicant that she had stated: 'I took my [child] with me.' The applicant stated that she was pregnant at the time.

120. The Tribunal referred the applicant to her statement that Person K "often called me and threatened to take back my [child]." The applicant agreed. The Tribunal asked the applicant whether her husband was present when Person K called. The applicant stated that her husband knew about some of the calls. At that time they did not know what Person K was or what he did. They just took it as something normal that Person K wanted to bother her.
121. The applicant stated that she never reported him to the police for threatening her. She never reported Person K to the authorities for the threats. The Tribunal asked the applicant whether she had not reported Person K to the authorities even though she did not know at that time that he was a member of a paramilitary group. The applicant stated that she could not do it. Her fear increased one hundred per cent when she found out that if she went to the police. Then she was too scared. It was a matter of silence and she could not say anything. The Tribunal asked the applicant why she did not report Person K for threatening her, before she knew he was a member of a paramilitary group. The applicant stated that these people take it against anyone where someone does not agree with the laws. They do not pay for the vaccines. They could have made her disappear. The applicant stated that they are called vaccines in her country. For example, her father worked at a company and he was the direct person to do the contact with them. This person asked for a certain percentage for them to be able to work. If the money is there and they agree with the contract then they are allowed to work. That is a vaccine.
122. The Tribunal brought to the applicant's attention that at the Department's interview, she gave evidence about a loan that was given from her husband to a friend of his, yet it was not referred to in her application and she had not mentioned it at the hearing. The applicant stated that she mentioned it when she referred to her husband's trip to Australia and he borrowed some money from a big company and he also used this money. The Tribunal informed the applicant that it was referring to the money that she had stated at the interview that her husband invested, where he received interest. The applicant stated that he had that money with that interest that he also used for the trip. The Tribunal asked the applicant if he lost some of that money. The applicant stated that her husband lost all of that money and her husband invested a large sum of money and received weekly interest. She does not know how many payments he got.
123. The Tribunal asked the applicant if she was still claiming in relation to that part of the evidence. The applicant stated that at that time, she had that as evidence having been moved and she thought it would help her application. The Tribunal asked the applicant if her claim was that the money that belonged to her husband, was used for the release of a member of the FARC. The applicant stated that it was and they used it for that purpose. The applicant stated that the name of the person who was to be released is named Person F. The second named applicant never saw that money again. His mother was going to receive the money in instalments, however, they disappeared and never returned calls. The second named applicant tried to contact Person E, who is Person F's husband. A friend's brother said not to do anything.

124. The Tribunal asked the applicant if she had been personally threatened because of giving them the money. The applicant stated that they never referred to her personally but he is her husband and is the father of her children. They can hurt him.
125. The Tribunal brought to the applicant's attention that her husband had not made a claim for a protection visa in his own right and had claimed as a member of her family unit. The applicant stated that that was right. The Tribunal brought to the applicant's attention that the second named applicant only filled out Form D and that is for applicants who do not have their own claims to be a refugee. The applicant agreed. The Tribunal asked the applicant if she was saying that her husband was threatened by them. The applicant stated: 'Yes' She stated that she would like to clarify something, that they had to tell the story and in the first application they did not know how to fill it in, how to tell it. Then when they told the story and got the reply and it said all the things that the "judge" was telling her now, and it was that story that her husband was the one who was threatened and that was why the applicant told it.
126. The Tribunal informed the applicant that she had used a word in her application for a protection visa and the Tribunal asked the applicant if she knew what it meant. The applicant stated that: 'the most favourable solution is to pay for private care and avoid tramitologia', and the Tribunal asked what the word 'tramitologia' meant. The applicant stated that she did not understand. The Tribunal informed the applicant that she had used it and showed her in the Application for Protection Visa at Folio 99 of the Department's file (Question 45). The applicant stated that it means paperwork.
127. The second named applicant then gave evidence. He stated when he was born and his current occupation. He stated his profession in Colombia. The Tribunal asked the second named applicant if he finished his studies here. The applicant stated that he applied for an English course and another course and finished those courses. The Tribunal asked the second named applicant if there was anything he would like to say. He stated that he wished to give his point of view about the application. The Tribunal returned his passport to him. The second named applicant stated that when they applied for a visa to enter Australia, it was his sibling's preference. She has been living in Sydney for a number of years. His wife was a dependent on his visa. They tried to apply for a new visa for her to be able to study in Australia. Then he lived through the situation of having a child (the fourth-named applicant), while she was studying. When they were faced with this difficult situation, they looked to obtain a visa to stay in Australia, because he knew about his father's-in-law situation.
128. They realised that a protection visa was relevant because the applicant is in the database. When they got the response from Immigration, they had the option of going back to their country and that is when his wife told him about the threat from the biological father of his child. When he found out about this problem, it was a very big fear for him and his family. When he was in Colombia, he assumed that the child's father is a normal person. At the moment, in his country, the paramilitary governs and controls everything that is happening in every area. President Uribe has two armies, one armed and uniformed and another one that is civil. When he was governor of Antiochia he formed the groups Convivias and these are self-defence groups. It was used by different drug trafficking groups. The President has the power and has been re-elected. They have been under his government for eight years. There is special treatment for the paramilitary and punishment is reduced when they confess what they have done. This situation terrifies the second named applicant because he did not know that he would

have an enemy of such a calibre. Now they have the option and are in Australia. The thought of going back has made him crazy. When he decided to assume the paternity of the boy, he was fearful, but with all the love and willingness of forming a family.

129. The second named applicant stated that he worked in a public institution and is experienced with people who have been moved and in this kind of situation. When the second named applicant found out about the situation of his father-in-law who explained what had happened, such as choosing to have his children locked up because they were three teenagers and now they are adults, and also that he has a disability and has an injury, he explained to the second named applicant how he made a living. They are very good people with very good principles. The second named applicant realised that he is involved and in a way linked to the problem.
130. The second named applicant stated that in 2007 he was robbed and they took some keys to his workplace, the keys to a motor cycle and they scratched his car a couple of times. The most difficult thing for the second named applicant was finding his documents with people he worked with. They took his wallet. He does not know exactly what happened but he imagines a gang. The documents started appearing one by one with different people. He asked the director at his place of employment to take responsibility and look into it. It was a shock to him to find out that it was up to the police and they could not do anything about it. The second named applicant did not go to the police. The Tribunal asked the second named applicant how this is relevant to the claim by the applicant. The second named applicant stated that the place of employment is linked to different gangs and the applicant worked at that place. The Tribunal informed the second named applicant that it did not quite understand the point of his evidence. The second named applicant stated that there were a series of coincidences after his marriage. He worked there before the applicant came there and nothing ever happened. At that time he thought it was juvenile delinquents and nothing more than that. Then he decided to leave the country to find a future for his family
131. The second named applicant stated that he came to Australia to do a course for a year and did a year of study. The Tribunal brought to the second named applicant's attention that the visa was a temporary visa and asked what he planned to do after a year. The second named applicant stated that he planned for his wife to come out before the visa ran out and to exchange the visa so that she could study and do a professional course.
132. The Tribunal asked the second named applicant why he said that he was the father of the older child when he was not the biological father. The second named applicant stated that in Colombia there are several paths that one can take as a single mother. One option would have been for her father to have assumed fatherhood of the child. The other option would have been for the applicant to use her two last names for the child's last names. And the one that he took is that a boyfriend or a husband assumes fatherhood. The Tribunal brought to the second named applicant's attention that it was an untrue statement on the birth certificate. The second named applicant stated: "No" The second named applicant stated that the older child is not his biological child but he assumed the role of the father. He fell in love with the applicant when she was already pregnant. She told him about her problems and trusted him. The second named applicant stated that he decided to be the child's father. The Tribunal brought to the second named applicant's attention that he had put his name down as the father of the child and the Tribunal may find that that is a false statement on the birth certificate because he was not the father, even though he had assumed paternity. The second

named applicant stated that that is the only official document for the child. The name of the other father is not registered anywhere. To get a school child pregnant does not take a long relationship. There are 10-15 pregnant mothers in each year of school. It is a very common problem in Colombia.

133. The second named applicant stated that all the robberies and stuff made him realise that there were going to be problems. He is now beginning to understand the magnitude of the situation he became involved in. The Tribunal informed the second named applicant that it did not know yet whether it believed this information and still had to make a decision on it. The Tribunal informed the second named applicant that the applicant had given a different story to the Department at the interview from the application for a protection visa and was now making another claim. The Tribunal brought to the second named applicant's attention that the claims have changed and have been added to. The second named applicant stated that it is because she kept silent when she told him that she was scared to go back to Colombia. If there are no more student courses, they have to go back. He could see that she was very anxious to get the third named applicant over there as well and the information they had when they applied to the Department was a problematic situation with his father-in-law, the fact that he had been moved and the difficulty in finding work and the work in Location H.
134. The Tribunal informed the second named applicant that it had some concerns including that his wife attended an interview with the Department and did not give this information that has been now given to the Tribunal. The Tribunal also informed the second named applicant that it had concerns about the 11-month delay in applying for a protection visa after arriving in Australia. The second named applicant stated that he is older than his wife. He is aware that she trusts what he organises for the family. She kept quiet to let him go ahead with the project and not influence it.
135. The Tribunal brought to the second named applicant's attention that he had not made his own claims for a protection visa and had applied as a member of the family unit of his wife. The second named applicant stated that that is correct. The Tribunal brought to the second named applicant's attention that whether he gets a visa depends on whether his wife gets a visa. The second named applicant stated that he understood that.
136. The Tribunal asked the second named applicant whether he had his own claims. The second named applicant stated he does not have his own claims to be a refugee. The second named applicant stated that he would like to thank the Australian government for the assistance they had been given. He understands that it can be bothersome to have this story told bit by bit. The Tribunal informed the second named applicant that it is not a matter of it being bothersome, rather it makes the Tribunal question whether it is true when it keeps being added to. The Tribunal informed the second named applicant that it had to ask why the information was not given either in the original application or when the interview took place with the Department, or even when the application for review was first lodged with the Tribunal. The second named applicant stated that it is because in Colombia there is a lot of fear and impunity and people are used to keeping quiet.
137. The Tribunal then spoke with the applicant and asked her if there was anything that she wanted to add that had not already been said. The applicant stated that she has a young team with whom she is working and she wants to move forward and she would like the Tribunal's co-operation and pleads for help. She wants to better herself. He husband is

very intelligent. Australia offers her a very good opportunity for her life and her kids. The Tribunal informed the applicant that it would look carefully at all the information and would give her time to provide further information including the video which the Tribunal has not had time to look at. The Tribunal informed the applicant that if the video is in Spanish, the Tribunal will not know what it says. The applicant stated that she will try to find some other evidence that will help her in English. The Tribunal informed the applicant that if she is able to provide the video in a way that the Tribunal can understand it. The applicant stated that the one she has has subtitles. The applicant stated that the other one is a woman speaking in English.

138. The Tribunal informed the applicant that if she thinks the videos are relevant to her case, then the Tribunal will attempt to view them with the help of the information technology people at the Tribunal. The Tribunal informed the applicant that she can provide any other statement during the time allowed.
139. The Tribunal asked the applicant to explain whether the database that she referred to is the database of people who move from the country into Bogota. The applicant stated that it was. The Tribunal asked if that goes back to 1997 approximately. The applicant stated that she guesses so but is not exactly sure. The Tribunal informed the applicant that if there was anything that she wanted to put to the Tribunal about this, as the Tribunal was not sure of the relevance of this information then she could provide a further statement about that.
140. The Tribunal received a letter from the applicant's representative who stated that as part of the applicant's application for a protection visa, she claimed, on behalf of her children, that her children have a well-founded fear of being seriously harmed in Colombia by paramilitary and other organisations. She fears that her children will be seriously harmed in Colombia because of their membership of a particular social group comprised of children. The representative submitted that children are a particular social group within Colombian society "as all members of the social group have a common characteristic: their age, which distinguishes them from members of society at large" The representative stated that there is considerable evidence in relation to the prevalence of abduction, forced recruitment and mistreatment of children in Colombia by paramilitary groups and other organisations, including the Colombian authorities. The representative referred to the US State Department in its Country Report on Human Rights Practices in 1995. In relation to the extent to which children are seriously harmed in Colombia today, the representative referred to the United Nations Security Council report published in August 2009. The representative also referred to the United States Department of Labour Report 2008, 'Finding on the Worst Forms of Child Labour – Colombia' published on 10 September 2009, which described the ongoing problem of child abuse and exploitation, including the forced recruitment of children by militias in Colombia. The representative also referred to the US State Department Trafficking in Persons Report 2009 – Colombia. He further referred to Amnesty International's report 'Leave Us in Peace!': Targeting Civilians in Colombia's Internal Armed Conflict, 28 October 2008.
141. The representative provided extracts from a number of the reports and stated that the applicants are required to establish that there is a substantial, as opposed to remote, chance that the persecution will occur. The representative submitted that independent country information demonstrates that if the children were to return to Colombia, the chance that they will actually be seriously harmed in the reasonably foreseeable future

because of their status as children, is very real, and cannot be characterised as remote. The representative referred to a decision of the Refugee Review Tribunal (differently constituted) ([2008] RRTA 256). The representative stated that although the children in that case were older than the children in the present matter, he submitted that the children's relatively young age in the present case does not render the likelihood that they will be seriously harmed speculative for the following reasons:

- There is evidence that young children are targeted by the militias and militias have targeted children for a significant period and continue to do so.
- There is no evidence to suggest that the militia will cease to target children and it is almost inevitable that the applicant's children will reach an age where they will become increasingly likely to be targeted by the militias.

142. The representative stated: "Based on the commentary in the Report of the Secretary-General on Children and Armed Conflict in Colombia in relation to the extent that children are seriously harmed by the militias and the authorities, we submit that it is not open for you to conclude that the visa applicant's could access effective protection from the serious harm that they fear."

143. The Tribunal invited the applicants to attend a further hearing.

144. The Tribunal received from the applicants' representative a letter in which he referred the Tribunal to a number of internet links which "relate to the activities of paramilitaries" in Colombia and requested that the Tribunal view the material before the hearing.

The second Tribunal hearing

145. The first named applicant and the second named applicant attended the hearing. The Tribunal informed the applicant that it had attempted to access the internet sites referred to in their representative's letter but was unable to access some of them. The Tribunal informed the applicant that it was able to access the 1st site but not the 2nd site. The Tribunal was able to access the 3rd and 4th sites but they were in Spanish and the Tribunal member does not understand Spanish. The 5th site was a short video on YouTube and it had some English but the Tribunal had some concerns about the quality of the translation. The Tribunal could not access the 6th, 7th and 8th internet site.

146. The applicant stated that the 3rd site was about the president. The applicant stated that she could not find the site in English. The Tribunal informed the applicant that the Tribunal could not understand what the video was saying. The Tribunal informed the applicant that it viewed the whole of the 4th video but it was in Spanish and had something to do with Jozzer TV. The 5th site had a translation of some of the video into English but the Tribunal had concerns about the translation accuracy but does not know if it was accurate. The applicant stated that it was 'Rapping because of fear' The Tribunal informed the applicant that the 5th video was called "Uribe's ties to the paramilitary". The Tribunal repeated that it could not access the 6th, 7th and 8th internet site. The Tribunal informed the applicant that it does not know whether these sites are relevant or whether they will assist the applicants. The Tribunal informed the applicant that just because these videos are on the internet does not mean that they are true.

147. The Tribunal asked the applicant if there was anything else that she wanted to say. The applicant stated that her idea was to give the videos in English and see if they assist her. She was not good on the internet or finding links and only found ones in Spanish.
148. The Tribunal asked the applicant if there was anything else she wanted to say about her claims. The applicant stated that she hopes to clarify any doubts and is afraid of going back to her country. The Tribunal asked the applicant if she was giving evidence on behalf of her children. The applicant referred to documents about male children in Colombia downloaded by her representative from the United Nations. The Tribunal informed the applicant that it had seen those documents. The Tribunal again asked the applicant if she was giving evidence on behalf of her children. The applicant stated that she is giving evidence on behalf of her children. Her children have not been tortured, kidnapped or taken by the paramilitary but they might be. She is giving their evidence as their guardian.
149. The Tribunal asked the applicant about the database that she mentioned at the last hearing and asked the relevance of that. The applicant stated that her family is on the database because they were displaced and you can receive some aid, for education and health. The Tribunal asked the applicant if she was claiming that she is at risk because her name is on the database. The applicant stated that she thinks the database was made a long time ago and was used so that they could access education and health. The Tribunal informed the applicant that she raised it at the last hearing and the Tribunal had to ask the point of raising it. The applicant stated that it was done many years ago. She does not think it is relevant to her situation, but it was a normal process to obtain assistance.
150. The Tribunal brought to the applicant's attention that at the last hearing she indicated that when she was considering what sort of visa to apply for, she applied for a protection visa because she recalled that she had been on the database. The applicant stated that it was her husband in the visa process trying to seek a way to stay here because the Student visa is too expensive for them. When they came across the protection visa and fear of persecution and everything else written here, the applicant remembered that they had problems before and had moved because of the guerrillas and because of the paramilitary and they thought that there could be some grounds and apply for protection visas. Her husband and she decided to apply for protection visas.
151. The Tribunal asked the applicant what she meant when she said that she had problems before and had moved because of the guerrillas and because of the paramilitary. The applicant stated that when they lived in District C her family had to be moved away to the city because of the guerrillas as her father was wanted by the guerrillas as an informant.
152. The Tribunal asked the applicant what she meant when she said that they had to move because of the paramilitaries. The applicant stated that she fears as a mother and it is related to the paramilitary. The applicant stated that she did not have to move because of the paramilitary.
153. The Tribunal informed the applicant that it was going to give her information that may be a reason or a part of the reason for affirming the decision to refuse the visa. The Tribunal informed the applicant that she claimed at the Departmental interview that she and her husband (the second named applicant) and her children were at risk of being

harmed because of a loan made to Person E and Person F and she claimed that Person F was a guerrilla for the FARC and that she was taken in a police raid and was in gaol. The Tribunal informed the applicant that she did not mention this in her application for a protection visa and she did not mention it in the written statement that she provided it to the Department and she did not appear to pursue this claim at the Tribunal hearing until the Tribunal raised it with her.

154. The Tribunal informed the applicant that this information is relevant to the review because it might lead the Tribunal to conclude that it is not a genuine claim. If the Tribunal finds that it is not a genuine claim, the Tribunal may find that the applicant is not telling the truth and the Tribunal may disbelieve other claims she had made and other evidence she had given. The Tribunal informed the applicant that if the Tribunal does not accept her claims and is not satisfied that there is any basis on which she has a well founded fear of being persecuted for a Convention reason, it will affirm the delegate's decision. The Tribunal asked the applicant if she wanted to comment on or respond to the information. The Tribunal asked the applicant if she wanted more time to comment on or respond.
155. The applicant stated that she wanted to clarify that part because it is true. She did not want more time and stated that she wanted to do it now. The applicant stated that that happened to her husband when they first married and it is true. Person F and Person E are friends of her husband. Her husband has not been displaced and has not had problems with the guerrillas. The applicant stated that because of Person E, he was involved in that situation. They previously presented this evidence at the Departmental interview, but were told that it was a robbery and was not a well founded fear and that is why they decided not to continue with it and decided to continue with the ground that her family had been displaced and the guerrillas. They were not well informed. The applicant stated that it is true and it is theft and they are afraid that in the future they may persecute the second named applicant or her children.
156. The Tribunal informed the applicant that it may also find that the fear she has about the loan to Person E and Person F is not Convention related.
157. The Tribunal informed the applicant that at the first hearing the Tribunal had brought to her attention that she did not mention at the Departmental interview about this fear of the paramilitaries. The Tribunal informed the applicant that it had listened again to the Department's recording of the interview and she told the delegate that she felt good saying the things about what had happened to her and her feelings and she felt good saying the things about what she felt inside and what had happened to her. The Tribunal informed the applicant that the delegate asked her if there was anything else to add and yet the applicant never mentioned this problem which she now says is there with the paramilitary. The Tribunal also informed the applicant that in talking about her father at the interview, she referred to the paramilitaries and that was then an opportunity for her to mention having a fear herself of the paramilitaries. The Tribunal informed the applicant that it had concerns about this and would now give this information to her.
158. The Tribunal informed the applicant that it was going to give her information that may be a reason or a part of the reason for affirming the decision to refuse the protection visa. The Tribunal informed the applicant that she made no claims in her application for a protection visa or in her written statement to the Department or at the Departmental interview that she feared her child being abducted by Person K, who she claimed was a

member of the paramilitary. The Tribunal also informed the applicant that she did not make this claim at the time she lodged the application for review.

159. The Tribunal informed the applicant that this information is relevant to the review because her omission to give this information to the Department in writing or at the interview, might lead the Tribunal to conclude that it is not true. If the Tribunal finds that it is not true, the Tribunal may disbelieve other claims she had made and other evidence she had given. The Tribunal informed the applicant that if the Tribunal does not accept her claims and is not satisfied that there is any basis on which she has a well founded fear of being persecuted for a Convention reason, it will affirm the delegate's decision. The Tribunal asked the applicant if she wanted to comment on or respond to the information. The Tribunal asked the applicant if she wanted extra time to comment on or respond.
160. The applicant stated that she wanted to comment now. She stated that as she said in the previous hearing, it has not been an easy process for them. Whatever she has said is 100% true She is afraid about Person K, the biological father of her child. She kept it a secret because of her child's security and her own security. This secret was only known by her parents and the court (sic) hearing in Australia. She did not know whether she should have mentioned this before. Her husband left Colombia and came here by himself and later she joined her husband and she came with her younger child because he did not know his child. When she took this decision and took into account the biological father of her older child, she was afraid of leaving the child and also because of her parents. Then she found out that the father is an active member of the paramilitary. They have a lot of power. The applicant claimed that the biological father is a very active member of the paramilitary and can use any means to take the child away from the applicant. The applicant claimed that if she had told her husband the problem that she was facing, because he did not know, he would have returned to Colombia. She decided not to say anything to her husband as she was going to travel to Australia with her younger child and the other child would join them within seven months. The applicant stated that it was a difficult decision because even though her child was with her parents, her child was by themselves. This was the means that she used to take her child away from the situation.
161. The Tribunal informed the applicant that the evidence that the Tribunal does not understand is why she left the child who was at risk in Colombia. The applicant stated that her husband was not aware of the situation. It was not easy and this solution was the best way to get out of the situation she was in rather than her husband coming back to Colombia.
162. The Tribunal informed the applicant that even if the Tribunal finds that this is true, the Tribunal informed the applicant that it may find that the claim by the biological father to the child is not Convention related. The Tribunal may find that her fear that her child may be abducted by Person K, the biological father, who is linked to the paramilitary, is not Convention related. The Tribunal informed the applicant that as the biological father he may have rights to have the child with him. The Tribunal informed the applicant that the Tribunal had to decide whether she has a well founded fear of being persecuted for reasons of her race, religion, nationality, membership of a particular social group or political opinion.

163. The Tribunal informed the applicant that the fear of abduction of the child by the biological father may not be a Convention reason. The applicant stated that she understands that any biological father has rights but he is an evil person and if her child is brought up in that environment that would not be good for the child. She has fought to keep her family together and she does not want to lose her child. The Tribunal brought to the applicant's attention that whilst she was in Colombia there was no attempt to abduct her child. The applicant stated that he did not do it but there were threats. The Tribunal informed the applicant that it may find that her fear of being targeted by a paramilitary organisation, because of her connection to Person K, is not well founded. The applicant stated that in Colombia anything can happen. It has not happened to them but anything can happen.
164. The Tribunal informed the applicant that another issue of concern related to when she moved from the country to the city and her original claim was that she feared persecution by the Revolutionary Armed Forces of Colombia and that they were forced to move in 1998. The Tribunal informed the applicant that it may find that the claim in relation to the FARC is so remote that the Tribunal may find that she does not have a well founded fear of being persecuted because of any fear that she may have about the FARC. The applicant stated that this was an avenue to get a protection visa. There were many threats made to her father because her father was an informant and she is his daughter and thought there could be repercussions and her father had contact with the paramilitaries. The Tribunal asked the applicant if her father was an informant. The applicant stated that her father was suspected of being an informant and that was why she showed her evidence and applied for a protection visa.
165. The applicant stated that she owned her house in Bogota and her parents still live there. Her husband and the applicant own that house. They lived there for 2 years. It was her husband's for a long time before they married. The Tribunal asked the applicant if the second named applicant's aim was to apply for a permanent residence. The applicant stated that that was not his aim. He came to study and he wanted her to join him with their younger child. The Tribunal brought to the applicant's attention that a Student visa is a temporary visa and asked what the plan was when the visa ended. The applicant stated that when the visa ended she would study and the family would be under her visa. The applicant stated that the sibling of the second named applicant is here.
166. The Tribunal informed the applicant that it had further information to give to her. The Tribunal informed the applicant that if the Tribunal finds that if she is not refugee, it may then find that the other applicants are not entitled to protection visas, because they applied as members of the same family unit as the applicant. The Tribunal informed the applicant that the children had recently made their own claims to be refugees. The Tribunal informed the applicant that if it found that she was not a refugee, it may affirm the decision to refuse the visas to the other applicants. If the Tribunal is not satisfied that there is any basis on which the other applicants have a well founded fear of being persecuted for a Convention reason, it will affirm the delegate's decisions to refuse them visas. The applicant stated that she understood. The Tribunal asked the applicant if she wanted more time to comment or respond. The applicant stated that her children are not safe in her country. She wants her children with her.
167. The applicant stated that she and her husband are still working, and she stated her occupation.

168. The Tribunal asked the applicant about the claim by her children that there is a fear of abduction in Colombia. The Tribunal informed the applicant that her representative had made submissions and provided material about the prevalence of forced abduction and mistreatment of children by paramilitary groups and other organisations. The Tribunal informed the applicant that it would take the information into account but informed the applicant that the Tribunal may find that the fear is not well-founded and the Tribunal may find that there is not a real chance that the children applicants will face serious harm for reasons of their membership of a particular social group in the reasonably foreseeable future if they return to Colombia. The applicant stated that her child is the child of an active member of the paramilitary and anything can happen. She has a lot of information and knowledge about things that happened to children in Colombia and she does not want that to happen to her children. The applicant stated that she will do anything in her power so that the children will be well here.
169. The second named applicant gave evidence that they had not planned to apply for refugee visas and he was surprised about the information the applicant provided later. That is why there may appear contradictions in the way they did this process. The applicant kept secret all the threats that her child's biological father made. The second named applicant does not know what harm he can do to their family. He did a lot of harm to the applicant. It makes her fear for her family. The second named applicant stated that the paramilitary organisation is very strong in Colombia. The second named applicant stated that he cannot prove how the president is involved with the paramilitaries, but there is a strong link. The second named applicant stated that because of his profession in Colombia he is in some way he is linked to a political party on the left opposing the paramilitary.
170. The second named applicant stated that their life was not easy and will not be easy. His children are at risk of being involved. There are 3 armed forces in Colombia that do damage to civilians: the paramilitaries, the guerrillas and the army. They all have made this war a business. They do not see any future in this. He has seen many young lives with the vision of being involved in this war to survive and the second named applicant does not want this for his children.
171. The second named applicant stated that he had money stolen and when he wanted to recover it, they protected themselves and said they belonged to a guerrilla group and would return the money when the guerrilla group returned it to them. The second named applicant stated that he wanted to keep away from this situation.
172. The Tribunal asked the second named applicant if he was making his own claims to be a refugee. The second named applicant stated that he was. The Tribunal brought to the second named applicant's attention that he said at the first hearing that he did not have his own claims to be a refugee. The second named applicant stated that the applicant is the main applicant but he is involved in all the problems because he is her husband. The second named applicant stated that he mentioned at the previous hearing about money being stolen but it was not considered important. The Tribunal informed the applicant that an issue about the money being stolen was whether it was Convention related.
173. The Tribunal also informed the second named applicant that it had to determine whether some of the claims are Convention related and also whether there is a well founded fear of being persecuted for a Convention reason. The second named applicant stated that they are afraid and do not want to go back. He stated the question is whether

they belong to a particular social group or a political party. The Tribunal informed the second named applicant that the issues were not only these. The Tribunal informed the second named applicant that some of the claims made may not be related to the Convention and some of the claims are so remote that the Tribunal may find that there is not a well founded fear. The second named applicant stated that they are afraid and the difficulty is fitting it into one of the definitions of a refugee.

174. The Tribunal informed the second named applicant that if the Tribunal is satisfied that they do not have a well founded fear of being persecuted for a Convention reason, it will affirm the decision to refuse the visas. The Tribunal informed the second named applicant that if there is not a real chance that they face persecution or one of the applicants faces persecution in the reasonably foreseeable future if they return to Colombia, then the Tribunal may find that the applicants are not refugees or that the applicant is not a refugee or that the children are not refugees. The second named applicant stated that they are telling the truth about what happened to them. His political view is limited and he cannot say what he thinks. His wife is under threat of someone who has power. His children are growing up and they can be harmed. He feels safe here and does not want to go back.
175. The Tribunal informed the second named applicant that the Tribunal had not made its decision but it may find that they are not refugees. The Tribunal informed the second named applicant that the fear must be well founded. The second named applicant stated that if they go home they will be at risk as a family in that place. He does not want to be separated from his wife and children.
176. The Tribunal brought to the second named applicant's attention that it had informed the applicant of its concerns. They did not apply for a protection visa for quite a while after they arrived in Australia. The applicant arrived in 2008 and did not apply for approximately 11 months for a protection visa. The Tribunal informed the second named applicant that the delay in applying for a protection visa is inconsistent with the claimed fear of being persecuted. The Tribunal also informed the second named applicant that the information increases with each interview. Claims were made at the Department's interview that were not made in the application for a protection visa and then claims were made at the Tribunal hearing that were not made before the Department. The Tribunal informed the second named applicant that even if the Tribunal finds that the claims are true, it may find that the applicants do not have a well founded fear of being persecuted for a Convention reason.
177. The Tribunal brought to the second named applicant's attention that he is now claiming to be a refugee in his own right. The second named applicant stated that he has a direct problem, an economical problem. The Tribunal asked the second named applicant how his economical problem is related to being a refugee. The second named applicant stated that in Colombia, punishment is very constant. Kidnappings can take place and things can be silenced. The thing is to keep quiet.
178. The Tribunal informed the second named applicant that it had to decide whether the fear is well founded, whether it has a real objective foundation. The Tribunal informed the second named applicant that the fear of kidnapping that he raised is a general fear. The second named applicant stated that he knew these people and when he wanted the money he was threatened and he was full of fear.

179. The second named applicant stated that when he left his country his intention was to take his family to another country. He never read in the paper the refugee definition and he was going to apply. His intention was to study and bring his wife, then his children. When his wife arrived she told him of the threats made by Person K.
180. The Tribunal asked the second named applicant whether his purpose for coming to Australia was to study. The second named applicant stated that it was to get out of Colombia. The Tribunal informed the second named applicant that he obtained a temporary visa to come to Australia and the Tribunal asked what was going to happen at the end of that visa period. The second named applicant stated that it was to bring his wife to study and they could start building security and family in Australia. The second named applicant stated that his sibling and their spouse came to Australia to study and then applied for a temporary visa. The second named applicant stated his profession in Colombia and his English proficiency. He stated his age and they hoped that the applicant could do a technological course after the English course.
181. The Tribunal informed the second named applicant that it was going to give him information that may be a reason or a part of the reason for affirming the decision to refuse the visa. The Tribunal informed the second named applicant that he applied for a protection visa as a member of the same family unit as the applicant. Prior to the hearing today he stated that he did not have his own claims to be a refugee. The Tribunal informed the second named applicant that if the Tribunal finds that his wife, the applicant, is not a refugee the Tribunal may find that the second named applicant is not entitled to a protection visa because he applied as a member of the same family unit as the applicant. The Tribunal informed the second named applicant that if the Tribunal does not accept that there is any basis on which the second named applicant has a well founded fear of being persecuted for a Convention reason and also finds that he is not entitled to a protection visa as a member of the same family unit as the applicant, the Tribunal will affirm the delegate's decision to refuse the protection visas.
182. The Tribunal asked the second named applicant if he wanted to comment on or respond to that information and also asked if he wanted extra time. The second named applicant stated that they cannot go back. They do not know what other alternative they have. They do not know how long they have and what they can do within that time frame.
183. The Tribunal asked the second named applicant if his main fear is that his older child will be taken. The second named applicant stated "yes" because the applicant has received threats. His child is happy here with their family.
184. The Tribunal brought to the second named applicant's attention that he lived in Colombia all his life until his early thirties when he came to Australia in 2008. The second named applicant stated that he knows his country but he did not know his enemy. He knows that he is a member of the paramilitary which is very powerful there. The president protects these people.
185. The Tribunal brought to the second named applicant's attention that the child was in Colombia for a number of years before they came to Australia and nothing happened to them there. The second named applicant stated that it will happen and the child is older and will be more vulnerable. It is an ugly situation to think that your child can be abducted at any time. The second named applicant stated that he can do nothing against Person K.

186. The first named applicant stated that she received threats from Person K on the telephone before she came to Australia. She stated that he was violent with her.
187. The Tribunal informed the applicants that it would consider all the evidence in deciding whether they were refugees. The Tribunal also informed the applicants that it would consider whether to make a humanitarian referral and invited them to provide a submission in that regard.
188. The Tribunal received from the representative a letter enclosing a Statutory Declaration declared by the second named applicant who stated that he feared that he and the applicant will be seriously harmed by persons associated with the Auto Defensas of Colombia (AUC) as a result of the dispute between the applicant and her former partner over the custody of the third named applicant. The second named applicant also stated that he fears he will be at risk because of his profession and it will be easy for the AUC to learn his schedule and harm him. He claimed that he feared that he and the applicant will be harmed by poor people in Colombia because they will be perceived as wealthy because of the time they have spent in Australia. The second named applicant also claimed that he feared his children will be seriously harmed by paramilitary groups in Colombia and they may be abducted, forcibly recruited to fight or killed by groups such as the FARC or AUC. He fears that the children will be at risk because the applicants live in a poor area of Colombia. He further claimed that he fears the third named applicant will be at greater risk than the fourth named applicant because of the dispute between the applicant and the biological father. The second named applicant claimed that the authorities are either aligned with paramilitary groups or are unable to provide effective state protection.
189. The representative made submissions that the claim that the children will be seriously harmed by paramilitary groups is a claim that the children will be seriously harmed because of their membership of a particular social group that is defined as children. The representative referred to the judgement of Driver FM in *VFAY v MIMIA* [2003] FMCA 35 and the judgement of the High Court of Australia in *Applicant S v MIMA* [2004] HCA 25. The representative also referred to the Human Right Watch World Report "Paramilitaries' Heirs" published on 3 February 2010.
190. The representative contacted a Tribunal officer and stated that the applicants needed to travel overseas, but not to their country of origin, to attend to a serious personal matter. The representative stated that the applicant intended departing the following day and may be offshore for as long as 3 months. The representative asked whether the Tribunal would undertake not to make a decision until the applicant returns from overseas. The Tribunal officer informed the representative that he was unable to give such an undertaking, and that it is for the Member to determine when they will make a decision on a case. The representative then asked whether the Tribunal would agree to informing him 14 days before a decision is made so that arrangements could be made for the applicant to return to Australia. The Tribunal officer informed the representative that he would speak to the Tribunal Member and then would call him back.
191. The Tribunal officer telephoned the representative to advise that the Tribunal Member did not agree to his request to delay making a decision on this case. However, the Tribunal Member agreed to his request to give a minimum of 14 days notice before the decision is finalised.

192. The Tribunal received a letter from the applicants' representative who confirmed that the presiding Member will not defer making a decision in the matter until the applicants return to Australia. However, the Member will inform the representative's office, no fewer than 14 days before making the decision on the applicants' application for review, that the decision will be made. The representative stated that based on the above information the applicants will proceed with their plans to depart Australia.
193. Some weeks later, the Tribunal contacted the representative, and informed him that the Tribunal's decision will be made any time after a specified date thus giving the applicants a minimum of 14 days notice.
194. The Tribunal wrote to the applicants and informed them that the Tribunal informed their representative that the Tribunal Member had agreed to give a minimum of 14 days notice before the decision is finalised. The Tribunal also informed the applicants that a case officer contacted their representative by telephone and advised that the Tribunal's decision will be made any time after a specified date, thus giving a minimum of 14 days notice of the decision. The Tribunal confirmed its advice to their representative that the Tribunal's decision will be made at any time after a specified date.
195. The Tribunal received a letter from the applicants' representative who stated that the applicants maintain that they have a well founded fear of being seriously harmed in Colombia. The representative stated he has instructions that the child of the second named applicant continues to receive treatment in Country L and the applicant's immediate return to Australia (i.e. before the specified date) could compromise the efficacy of treatment that the child of the second named applicant is receiving. The representative stated that the applicants are extremely reluctant to compromise the health of the second named applicant's child by returning to Australia on or before the specified date and "our clients intend to return to Australia before their bridging visas expire." The representative then requested that a decision is not made until the date on which the travel authority attached to their bridging visas expires.
196. The Tribunal wrote to the applicant and stated:
- I am writing about the applications for review made by the applicants in relation to decisions to refuse to grant Protection (Class XA) visas.
- The Tribunal has carefully considered the applicants' request that the Tribunal not make a decision until the date on which the travel authority attached to the applicants' Bridging B visas expires. The Tribunal notes that the applicants departed Australia on [date].
- The Tribunal does not agree to delay the decision and, as previously advised, the Tribunal's decision will be made any time after the [date].
- However, the Tribunal will consider again the request to delay the decision for all or any of the applicants if the following information is provided to the Tribunal by [date]:
1. The applicants stated in Form B (of the application for a protection visa) that the country of residence of the [child] of the second named applicant, [name], is Colombia. Please explain why [child] is receiving treatment in [Country L] if [child] is a citizen and resident of Colombia.

2. At what hospital or clinic in [Country L] is the [child] of the second named applicant receiving treatment?
3. What is the address of the clinic or hospital?
4. Who is the doctor?
5. What treatment is the [child] of the second named applicant receiving and for what illness or condition?
6. Why would the applicants' return to Australia compromise the efficacy of the treatment that the second named applicant's [child] is receiving?
7. Why would the applicants' return to Australia compromise the health of the second named applicant's [child]?
8. Please provide medical evidence as to the health of the [child] of the second named applicant and why the applicants' return to Australia would compromise the efficacy of the treatment and/or the health of the second named applicant's [child].
9. Why is it necessary for all the applicants to remain outside Australia whilst the second named applicant's [child] receives treatment?
10. Please provide documentary evidence of the applicants stay in [Country L] from the time they arrived in [Country L], including copies of airline tickets, stamps in passports, hotel accommodation.

197. The Tribunal did not receive any further correspondence from the applicants' representative or from the applicants.

FINDINGS AND REASONS

198. The Tribunal accepts that: "applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule." The Tribunal also accepts that: "if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt". (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para 196). However, the Handbook also states (at para 203): "The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts".
199. The Tribunal does not have to accept uncritically all statements and allegations made by an applicant. (Beaumont J in *Randhawa v MIEA*, 124 ALR 265 at p.278). "The mere fact that a person claims fear of persecution for reasons of political opinion does not establish either the genuineness of the asserted fear or that it is 'well-founded' or that it is for reasons of political opinion. It remains for the Minister in the first place to be "satisfied"<http://www.law.mq.edu.au/Units/law404/MIEA v Guo HCA.htm - fn118#fn118> and, where that decision is adverse and a review is sought, for the

applicant to persuade the reviewing decision-maker that all of the statutory elements are made out." (*MIEA v Guo and Anor* (1997) 144 ALR 567 at 596).

200. The Tribunal accepts that the applicants are citizens of Colombia based on the certified copies of their passports. The Tribunal accepts that, at the time the application for a protection visa was lodged, the applicants were outside their country of nationality.
201. At the time the application for a protection visa was lodged the second named applicant stated that he did not have his own claims to be a refugee. He applied for a protection visa as a member of the same family unit of the applicant. At the time the application for a protection visa was lodged, the third and fourth named applicants did not have their own claims to be refugees but applied as members of the same family unit of the applicant.
202. At the time the application for a protection visa was lodged, the applicant claimed that in 1998 Colombian FARC guerrillas forcibly removed her family from their village, Village B, and threatened her father with death if they returned. The applicant claimed that the purpose of the evictions was to increase their area of influence and exert pressure on the government. The applicant's family was forced to flee to Bogota and the situation deteriorated with further threats being made by FARC against her father and this impacted on family life and his employability. Her father was injured in an industrial accident and this limited his ability to provide for his family. The applicant further claimed that in 2003 the government of District C transferred to the administration of Bogota and the influx of displaced people from the country put strain on the economy and infrastructure of Bogota which was unable to cope with the crisis. Although her father was entitled to assistance on humanitarian grounds, this was for basic health and education which is underfunded. The applicant claimed that they are insufficient to provide, to a displaced family under threat, a basic standard of living which is a fundamental human right. The applicant claimed that her family was forced to live in Location A, a dangerous suburb on the outskirts of Bogota, where the crime rate is high. She claimed that the guerrillas force people off farms and out of villages and refugees move to the outskirts of Bogota and appeal to the government for help. The applicant claimed that the government is corrupt and makes various agreements with the guerrillas to cease the unrest and displacements, but due to corruption, the government reneges on various agreements and the guerrillas resume their campaigns of violence and intimidation.
203. The applicant also claimed that she met the second named applicant when she was pregnant with her first child and he assumed paternity of her unborn child. She claimed that in order to assist her and her family, the second named applicant secured large loans and left his job. She claimed that the threats made by the FARC against her family, now extend to her husband and children and put their safety at great risk. She claimed that the Colombian government is corrupt and she fears the threats that she witnessed as a child without any protection for her paternal family. She claimed that there is inequality, insecurity and injustice. The threats to her parents and her family will move from the conflict zone to the city.
204. Pursuant to section 91R(1)(a) of the Act the claimed fear of being persecuted must be for reasons of race, religion, nationality, membership of a particular social group or political opinion. The reason must be the essential and significant reason or the reasons must be the essential and significant reasons for the persecution.

205. The applicant's claims, at the time the application for a protection visa was lodged, are that she has a well founded fear of being persecuted for reasons of her membership of a particular social group, having been forced, with her family, to move from her village to the city of Bogota by FARC guerrillas.
206. At the time of the Department's interview, the applicant claimed that the second named applicant gave a loan of money to a friend who stole the money and used it to get a woman, Person F, who was part of the FARC and was with the guerrillas, out of gaol. The applicants fear that they may be harmed if they try to get the money back.
207. After the application for review was lodged the applicant claimed that the biological father of her older child (the third named applicant) was a member of an unnamed paramilitary group, that she called Group J, and had threatened her and had threatened to take the child. The applicant claimed that the applicants were at risk of harm from the paramilitary group because the biological father of the third named applicant was an active member of a paramilitary group. The applicant also claimed that the third and fourth named applicants are members of a particular social group, children, and that they have a well founded fear of being seriously harmed by paramilitary and other organisations.
208. The second named applicant did not have his own claims to be a refugee at the time the application for a protection visa was lodged and he confirmed at the first hearing that he did not have his own claims to be a refugee. However at the second hearing he claimed that he had his own claims to be a refugee. He provided a Statutory Declaration after the second hearing and claimed that he and the applicant will be seriously harmed by those associated with the AUC because of the dispute between the applicant and her former partner. The second named applicant also claimed that he will be at risk because of his profession and the AUC can easily learn his schedule. He further claimed that the third and fourth named applicants are at risk of being harmed by paramilitary groups and are at an increased risk because the applicants reside in poor areas of Colombia. The second named applicant also claimed that the third named applicant is at an increased risk of harm because of the custody dispute between the applicant and her former partner.
209. In this matter, the applicants requested that the Tribunal postpone the hearing as originally scheduled. The Tribunal agreed to the applicants' request. The Tribunal rescheduled the hearing. The Tribunal allowed the applicants time to provide further information to the Tribunal. Because of further claims made in a letter received from the applicant's representative, the Tribunal held a second hearing. The Tribunal allowed the applicants further time to provide further submissions and a further submission was received.
210. The representative contacted a Tribunal officer and stated that the applicants had to travel overseas but not to their country of origin, to attend to a serious personal matter. The representative stated that the applicant intended departing the following day and may be offshore for as long as 3 months and asked whether the Tribunal would undertake not to make a decision until the applicant returned from overseas. The representative also asked whether the Tribunal would agree to informing him 14 days before a decision is made so that arrangements could be made for the applicant to return to Australia. A Tribunal officer telephoned the representative to advise that the Tribunal Member did not agree to his request to delay making a decision on this case.

However, the Member did agree to his request to give a minimum of 14 days notice before the decision is finalised

211. The Tribunal received a letter from the applicants' representative who confirmed that the Tribunal will not defer making a decision in the matter until the applicants return to Australia. However, the Member will inform the representative's office no fewer than 14 days before making the decision on the applicants' application for review that the decision will be made. The representative stated that based on the above information the applicants will proceed with their plans to depart Australia.
212. The Tribunal contacted the representative, and informed him that the Tribunal's decision will be made any time after a specified date thus giving the applicants a minimum of 14 days' notice.
213. The Tribunal wrote to the applicants and informed them that the Tribunal informed their representative that the Tribunal had agreed to give a minimum of 14 days notice before the decision is finalised. The Tribunal also informed the applicants that a case officer contacted their representative by telephone and advised that the Tribunal's decision will be made any time after a specified date, thus giving a minimum of 14 days notice of the decision. The Tribunal confirmed its advice to their representative that the Tribunal's decision will be made at any time after the specified date.
214. The Tribunal received a letter from the applicants' representative who stated that the applicants maintain that they have a well founded fear of being seriously harmed in Colombia. The representative stated he has instructions that the child of the second named applicant "continues to receive treatment in [Country L]" and the applicant's immediate return to Australia (i.e. before the specified date) could compromise the efficacy of treatment that the child of the second named applicant is receiving. The representative stated that the applicants are extremely reluctant to compromise the health of the second named applicant's child by returning to Australia on or before the specified date and "our clients intend to return to Australia before their bridging visas expire." The representative then requested that a decision is not made until the date on which the travel authority attached to their bridging visas expires.
215. The Tribunal wrote to the applicants and informed them that it had carefully considered their request that the Tribunal not make a decision until the date on which the travel authority attached to the applicants' Bridging B visas expires. The Tribunal informed the applicants that it did not agree to delay the decision and, as previously advised, the Tribunal's decision would be made any time after the specified date.
216. However, the Tribunal informed the applicants that it would again consider the request to delay the decision for all or any of the applicants if the following information was provided to the Tribunal:
 1. The applicants stated in Form B (of the application for a protection visa) that the country of residence of the [child] of the second named applicant, [name], is Colombia. Please explain why [child] is receiving treatment in Ecuador if [child] is a citizen and resident of Colombia.
 2. At what hospital or clinic in [Country L] is the [child] of the second named applicant receiving treatment?

3. What is the address of the clinic or hospital?
 4. Who is the doctor?
 5. What treatment is the [child] of the second named applicant receiving and for what illness or condition?
 6. Why would the applicants' return to Australia compromise the efficacy of the treatment that the second named applicant's [child] is receiving?
 7. Why would the applicants' return to Australia compromise the health of the second named applicant's [child]?
 8. Please provide medical evidence as to the health of the [child] of the second named applicant and why the applicants' return to Australia would compromise the efficacy of the treatment and/or the health of the second named applicant's [child].
 9. Why is it necessary for all the applicants to remain outside Australia whilst the second named applicant's [child] receives treatment?
 10. Please provide documentary evidence of the applicants stay in [Country L] from the time they arrived in [Country L], including copies of airline tickets, stamps in passports, hotel accommodation.
217. The Tribunal did not receive any further correspondence from the applicants' representative or from the applicants.
218. The Tribunal is satisfied that the applicants departed Australia. The applicants' representative informed the Tribunal officer that the applicants would depart the next day and may be offshore for as long as 3 months. The applicants' representative informed the Tribunal that the applicants intend to return to Australia before their bridging visas expire and the applicants requested that a decision not be made until the date on which the travel authority, attached to their bridging visas, expires.
219. The Tribunal is not satisfied that the applicants have returned to Australia.
220. So far as is relevant to this matter, s.36(2) of the Act provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is a non-citizen *in Australia*. This means that a Protection (Class XA) visa may only be granted if the applicant is in Australia.
221. The Tribunal is satisfied from the circumstances set out above that the applicants are not in Australia. Therefore, the applicants do not satisfy the requirements of s.36(2) and cannot be granted Protection (Class XA) visas.
222. Having reached this conclusion, it is not necessary to consider the applicant's substantive case for the grant of the visa.
223. Although the Tribunal does not have to determine the substantive case made by the applicants, the Tribunal does not accept that the applicants are refugees. The applicant's claim at the time she lodged the application for a protection visa was that in 1998 she and her family were forcibly removed from their village to Bogota and her father was threatened with death if they returned. The Tribunal finds that this claim relating to

FARC and the threats they made is so remote that the Tribunal does not accept that the applicant has a well founded fear of being persecuted as a result of this forced removal and subsequent threats.

224. The applicant then claimed at the Department's interview that the second named applicant was unable to retrieve money owed to him by a friend who used it to pay for the release of a woman from gaol. The applicant claimed that the woman was a member of FARC and involved with the guerrillas. The Tribunal is not satisfied that the money owed to the second named applicant and the threats he received, to not pursue the money, are Convention related.
225. The applicant made a new claim after the application for review was lodged at the Tribunal. She claimed that the biological father of her older [child] was not her husband (who appears on the child's birth certificate as the father) but another person (Person K) who she claimed was an active member of a paramilitary group. The applicant claimed that the third named applicant may be abducted by Person K and that the applicants are at risk of harm from him and from the paramilitary group of which he is an active member. A significant concern that the Tribunal had about this claim was that the applicant did not make the claim until after the application for review was lodged with the Tribunal and also that the third named applicant's birth certificate which was provided to the Department shows that the second named applicant is the father of the third named applicant. A further significant concern that the Tribunal has is that the applicant came to Australia with her younger child, the fourth named applicant, and left her older child, the child that she claimed was at risk from an active member of the paramilitary, in Colombia. The third named applicant did not arrive in Australia until some months after and the Tribunal finds it not credible that, if the child was really at risk of being abducted or harmed in any way, the applicant would have left them in Colombia for approximately 7 months and travelled to Australia without her child. The Tribunal finds that it is inconsistent with the claimed fear for the child that the applicant left her child in Colombia and came to Australia to join her husband seven months before the third named applicant. The Tribunal does not believe the applicant's claims about threats from the paramilitary or from a member of the paramilitary.
226. The Tribunal finds that the dispute between the applicant and the claimed biological father of the third named applicant is a personal dispute and the claimed fear that the applicant has is not for a Convention reason.
227. The applicant gave evidence that she never reported the claimed threats from Person K to the police. The second named applicant gave evidence that he did not report to the police that his vehicle was damaged or that his wallet was taken. The applicants have not sought state protection. The Tribunal is not satisfied that the Colombian authorities denied the applicants state protection.
228. A further concern about this claim relating to the paramilitary is that the applicant did not mention it until after she lodged the application for review. Yet she attended an interview with the Department and she agreed at the Tribunal hearing that she did not mention the claim relating to the paramilitary or a member of the paramilitary at the Department's interview, even though she was asked whether there was anything further she wanted to say. The applicant even stated that she felt good saying all the things. She had the opportunity at the Department's interview to give this information about the man she claimed is the biological father of her older child, yet she did not do so.

229. The Tribunal also finds it significant that the applicant did not lodge her application for a protection visa until she had been in Australia for almost 11 months. The Tribunal finds that the delay in lodging the application for a protection visa is inconsistent with the applicants' claimed fear.
230. The Tribunal also had concerns about the applicant's application for a protection visa and the statements therein because the applicant was unable to clearly explain what her claims were when the Tribunal asked her to explain them. As well, the independent country information was inconsistent with the applicant's evidence that the Colombian government makes various agreements with the guerrillas to cease the unrest, and the government reneges on various agreements and the guerrillas resume their campaigns of violence and intimidation. A September 2007 'working paper' by the United States Institute of Peace provided information as to the Colombian government's relationship with the FARC. The report stated that from 2002 to 2006 "President Uribe made no public overtures to the FARC, focusing instead on intensifying military pressures against that group" (Bouvier, V. M. 2007, *New Hopes for Negotiated Solutions in Colombia: United States Institute of Peace Working Paper*, United States Institute of Peace website, 25 September, pp. 6, 9-11 & 15 – 17 <http://www.usip.org/files/resources/Sept2007.pdf> – Accessed 17 November 2009.) There was a 2009 timeline for Colombia published by the *BBC News* and this indicated that peace talks and political negotiations between the Colombian government and the FARC ended in 2002. The report stated that in March 2009 President Alvaro Uribe offered "FARC rebels peace talks if they halt 'criminal activities' and declare a cease-fire" ('Timeline: Colombia' 2009, *BBC News*, 31 October http://news.bbc.co.uk/2/hi/americas/country_profiles/1212827.stm – Accessed 17 November 2009).
231. The Tribunal is not satisfied that the applicant has given truthful evidence. The Tribunal does not accept that any of the applicants are refugees. The Tribunal is not satisfied that the evidence supports their claims to be refugees.
232. The Tribunal is not satisfied that the applicant has a well founded fear of being persecuted for a Convention reason. The Tribunal is not satisfied that the other applicants have a well founded fear of being persecuted for a Convention reason.
233. The Tribunal has already found that the applicants do not satisfy the requirements of s.36(2) and cannot be granted Protection (Class XA) visas. It is not necessary for the Tribunal to consider the applicants' substantive case for the grant of the visa. However, the Tribunal is not satisfied that the applicants are refugees.
234. The Tribunal has considered the applicants' case and has considered whether to refer the case to the Department for consideration by the Minister pursuant to s.417 of Act which gives the Minister a discretion to substitute for a decision of the Tribunal another decision that is more favourable to the applicant, if the Minister thinks that it is in the public interest to do so. The Tribunal has considered the ministerial guidelines relating to the discretionary power set out in PAM3 'Minister's guidelines on ministerial powers (s345, s351, s391, s417, s454 and s501J)' but has decided not to refer the matter. The Tribunal notes that the applicants can still make a request directly to the Minister.

CONCLUSIONS

235. The Tribunal is not satisfied that the applicants are persons to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants do not satisfy the criterion set out in s.36(2) for a protection visa.

DECISION

236. The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.