

071498471 [2007] RRTA 247 (25 October 2007)

DECISION RECORD

RRT CASE NUMBER: 071498471

DIAC REFERENCE(S): 2006/015077 CLF2007/73007

COUNTRY OF REFERENCE: Colombia

TRIBUNAL MEMBER: Gabrielle Cullen

DATE DECISION SIGNED: 25 October 2007

PLACE OF DECISION: Sydney

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

**STATEMENT OF DECISION AND REASONS
APPLICATION FOR REVIEW**

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Colombia, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.

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.

The applicant applied to the Tribunal for review of the delegate's decision.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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.

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 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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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:

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.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* [1989] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (2004) 217 CLR 387.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

The Tribunal has before it the Department’s file relating to the applicant, as well as the file relating to the applicant’s application for a subclass 300 visa. 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.

Protection Visa Application

The applicant’s protection visa application indicates that the applicant is a single male from Colombia. He obtained a professional qualification. He stated in his past employment that for about five years he was a student studying, then worked in his relevant field. He did his compulsory military service. From the 1980s until his

departure from Colombia he lived at the same address in Bogotá. He indicated at question 53 that he came to Australia to marry his girlfriend.

Below is his statement attached to his protection visa application.

...name is [name] and I am [number] years of age. I was born in Colombia and I come from an average middle class family of two kids, whom were brought up to be educated, knowledgeable children whom carry good moral and values. My mother passed away only [years] ago and since my father has been the sole provider of the family and has tried his best to provide with the basic necessities in life.

...me begin by saying that since I was a youngster I have been studying and self educating myself. I finished high school at the age of 16 and was ordered to go to compulsory military service and after that I went to university to further my studies and graduated with a [degree]. From there I went back to the military and I became a [occupation] for a year. Once I finished, I went back home to live with my sister and father, where I was [employed] in my country. While [working] I was training myself in the field of [field] and so I was able to start my own company, which was [specific details of employment deleted in accordance with s431 of the Migration Act]. Everything in my professional life seemed to be going fine and I was well established with my career and so I started to think about my personal life and about starting my own family, whom I was more than capable of supporting.

...my search for love I met [Person X] (a lady who is a fair bit older than me but a lady of a great heart) the [date], whom came from Australia with her daughter to visit her parents and [nature of visit]. Through the months that she stayed in Colombia I got to know her and her daughter as well as her parents very well and we became inseparable. We went away on a holiday outside the capital city of Colombia and that is where [Person X] and I expressed our deep feelings for each other and when we started to plan our future together as well. We were so in love we wanted to get married and live together for better or for worse. However, we could not get married in Colombia as she did not have the documentation required for marriage and so we applied for a visa for me to move to Australia permanently and marry the woman I loved.

I obtained my visa I was so excited to start my new life with [Person X] and never expected anything to go wrong with her - so I sold my business, gave away all my belongings and so I had lost and given up all the possessions that I gained over my entire life to come to Australia and start a new life with my love. I also got a loan from the [bank] to get some money to help me become established and help me set up a new life in Australia with [Person X] and her daughter.

I arrived, [Person X] and I decided to start travelling in Australia (with my borrowed money, which my dad had to pay off for me) and visit the best restaurants and hotels to explore this beautiful country with my new family. However, soon my Colombian money started to run out due to its low conversion once I transferred it to Australian dollars, but for me that didn't matter because I was doing it for my family - well so I thought. When the little money that I did have started to run out, [Person X] and I started to have personal problems over it and from one problem another one showed, and that is when I started to suspect that she did not love me as she said she did and

rather just wanted to use me for the money that I had and for the adventures. This started to make more sense after more and more situations were confirming my thoughts, one of which I found most critical was to know that when applying for my visa she required the amount of [amount] which was meant to be covering the cost of the application form that later on I found to be a much cheaper value.

...all this time I had opened a joint account, in Colombia which was linked to [an account], which [Person X] had access to. When I was trying to access this account I found all the money had gone and when I asked who had taken it out they told me that [Person X] had from Australia. Then she began to blackmail me, by asking me to give her [a large sum of money] in order to gain my papers off her and for her to become my wife. If I was to refuse this offer, she was going to contact immigration and have me deported back to Colombia. This has been an ongoing process of refusal on my behalf of giving her the [sum of money]. After some time of going through emotional anguish and worry I called her informed her that I refused her offer and told her to call immigration because I have been undergoing too much emotional pressure and stress due to her harassment.

...contacted immigration and I have been asked to write this letter explaining my situation. I am however afraid that if she finds out about this letter that my family and I will be harmed and will be in great danger. This is because her family whom is currently living in Colombia is part of a renowned company which is part of the biggest black market in Colombia. Because of this control they have; they can easily harm those whom stand in their way and thus, if [Person X] ever finds out about me even discussing this matter she will not only harm me but my [family] as well.

I don't pay this money to [Person X] and I am still deported back to Colombia I will still be in grave danger due to the fact that [Person X]'s family has the means and alliance through which she can harm me in any way including by buying off the Colombian government as well as the people whom I worked with before coming to Australia. Therefore, I will be harmed not only emotionally, physically but also financially, which will have enormous affects on not only me but my [family].

...do realize that this seems to be a bit far fetched but this is how our lives are in Colombia and although I had a great family, career and was supporting myself without any problems I was played into thinking that [Person X] really loved me and did want to marry me. I never expected any of this to happen and so I had not planned anything apart from a new life with my new family and wanting to become a [professional] in Australia. I am more than capable of supporting myself as well as educating myself at university to achieve my goals of becoming a [professional] in Australia. I am not asking for any financial support from the Australian government, I am only asking for compassion and help in achieving my dream.

Tribunal Hearing

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from Person Y. The Tribunal hearing was conducted with the assistance of an interpreter in the Spanish and English languages.

The applicant indicated that he was born in Bogotá, Colombia. He said he attended University and his father paid. He said his father works in a large company. He said he had lived at the same address as his father since he was born, with his sibling.

The applicant indicated that he finished his studies and went to work in a named workplace. He said he worked there for six months and then went back to Bogotá and started studying his specialisation in a particular workplace and later worked for several months in that workplace. He said he started his own company. He said stated the name of the company. The Tribunal asked him whether he had any documents from the company, he said no when he came he left them in Colombia. He said he closed the company down when he left Colombia and that he owned it by himself. At that time he said he was also working at another workplace. The Tribunal asked what the company did and he gave a brief account. The Tribunal asked him why he did not sell the company when he left; he said he did not sell it as there was no time as he was looking forward to meeting his fiancée, Person X.

The Tribunal asked him why he did not mention he owned the company in his application for a fiancée visa. The applicant said that in Colombia when you open a company you have a trial period and he was in that period when he made the application. He said he opened the company in a particular time. The Tribunal put to him that it had doubts as to whether he ever owned a company, as he had not mentioned it in his application for a specific visa and he had no documentation. The applicant repeated that he was in the trial period, that it was not registered, well not permanently registered and that not until the company was legally constituted could he have big shops or contracts. The Tribunal put to him that he had a number of people working for him and that this indicated that the company was operational; he said they were only on casual employment. The Tribunal asked him why he did not mention that he owned the company in the past employment question in his protection visa application, he said he did not think it was relevant. The Tribunal asked him whether he had any documentation with regard to the company in Colombia, and he said he must do and that if he did not, the chamber of commerce would have it.

The applicant said he came to Australia to live with Person X, his fiancée, and said that the relationship ended a short time later. The applicant said Person X's siblings live in Australia. The Tribunal asked the applicant whether he had ever faced any difficulties, threats or harm from Person X's family. He said not in Australia from her siblings, but on different occasions Person X had threatened him and that when he called his father, his father said people have been calling asking when he was coming back.

The Tribunal asked the applicant why he feared returning to Colombia. The applicant said that Colombia is a country where many people are wealthy and many are poor. He said the wealthy people unite and usually their main source of business is narco trafficking and/or illegal business. He said it was not easy for him to get a job in his profession and very difficult in his specialisation. He said Person X's family make their money from a particular line of business, sometimes illegally.

The applicant said that when he came to Australia he was coming to make a family and to start a life with Person X. He said the photos he had submitted and that he was at Person X's address show this. He said he bought a large sum of money which they

spent in a few months. The Tribunal asked him why he said in his visa application that he only had a smaller amount, he said that this was the cash money he had.

He said that for a short period they were going places and that after the money ran out he was forced to start working. He said that Person X continued to work but that they would go out at night, to restaurants. He said the only work he could find because of his lack of English, was in a manual occupation. He said Person X never expected to see him in those circumstances, as she used to see him well dressed with his hands clean. He said he worked in the city for a particular man. He did not know the name of the company and said he got his job from approaching some third parties.

He said Person X did not like him working in that occupation and she rejected him and that the situation between them was not tolerant. He said he persisted with the relationship and that she told him that the problem between them was that he could not speak English. He said he found an English course to do for free and that he was working at night and studying in the day. He said she was also stressed from working. He said both decided that he should move out and that they should stop the relationship. He said he moved to another location and that they tried on weekends to work the relationship out.

The Tribunal asked again why he feared return to Colombia. He said when the relationship ended that Person X said to him to marry her for the money. He said he thought she was joking and he felt much pressure from being asked for money. He said the girl sharing, suggested that he record a conversation that is on the tape he submitted – made in a particular time. He said it was the only way he could prove if anything happened in Colombia as a result of the situation in Australia.

The applicant said that Person X was asking for a large sum of money to marry him. He said he had to pay half of this at the time of marriage and then a smaller sum weekly for four to five years or double that sum per week for two years. He said if he paid it at once it would be a specific amount. He said he wasn't sure whether she would not stop asking for money after he paid. He said he kept telling her that he would pay the money so that she started looking for an apartment to buy. He said a number of days before the visa expired he said he told her he was not going to pay her. According to the applicant Person X then threatened him by saying that if he did not pay, she would call the Immigration Department. He said he changed his address and telephone number and she was calling every day and night insulting him. He said that a day or two before his visa expired he told her he was going to return to Colombia and that she should relax because he was leaving. The applicant said that Person X said she hoped all went well for him, and that her family was waiting for him.

The applicant said that in Colombia life is worthless and that his family knew a person who had business with Person X's family and that this person had to leave to come to Australia. He said that person was Person Z, the father of the witness and they have been supporting him.

He said his fear is that something will happen to his life in Colombia or with regard to his family. He said Person X's family have power and he says he is trying to hide here and as far as he knows Person X thinks he is studying and that the family are waiting

for him. The Tribunal asked him how he knew this and he said Person X works where the witness's sibling attends and she had told that family.

The Tribunal asked him how he knew Person X's family wanted to get him in Colombia. He said that Person X told him and before he came here, her father had bought illegal stuff from another country. He said this crime was meant to take him to jail but because of corruption he did not go and that other people died because of it. He said at the minimum the harm he will suffer if he returns to Colombia is that he will never be able to find a job or more seriously they will kill him.

The Tribunal asked why Person X's family would want to harm him. He said they thought he came from Colombia to study although he was helped by Person X. He said they thought he was living in her place free and that all of a sudden love developed and that he proposed marriage and changed his mind just before they were married. He said the family did not initially support him because of his lesser family background but then realised that he wanted to make a family with Person X. He said he knew what he was getting into but that his idea was to make a family with Person X.

The Tribunal asked why her family was so upset; the applicant said that they believed he had dishonoured their daughter as his family is poorer than hers. The Tribunal asked him whether it was essentially a personal reason as to why he would be harmed, he said no, it was a social problem but that he is the one who will be harmed.

The Tribunal asked him why the police will not protect him in Colombia. He said the police and army are puppets of the narco traffickers. The Tribunal asked him whether the police could not protect him because he was not one of the powerful people. He said it is not whether you are powerful but that the police cannot handle the power of the narco-traffickers. He said the police were supposed to protect some Ministers but they were killed. He said the police cannot protect him although effective because their powers are limited. Again the Tribunal asked why the police could not protect him, he said because of organised crime and that most of the powerful are part of it. He said money buys anything. He said Person X's family organisation has power to control anything in Colombia and as a result, the police are not effective in protecting him. The Tribunal asked him whether the police could not protect him because of corruption, he said not all of the police are corrupt, but that they are under a system of corruption from the ELN, paramilitaries and armed guerrillas.

The Tribunal asked what Person X's family organisation was called, he said in Colombia they are cartels. The Tribunal asked the name of the cartel and the applicant paused, he said there are different cartels and they support each other that they exist.

The Tribunal put to him that there appeared to be no Convention related motivating factor for the persecution and his fear. It said, as it had previously explained to him, to be a refugee one had to fear persecution for one of the convention reasons. It said that in his case there did not seem to be a Convention reason. The applicant said he thought he fitted membership of a social group.

The Tribunal also put to him that from the evidence it seemed that the police were not withholding protection for a Convention reason. He said it was for the reason of social

group and for political opinion as the cartels in Colombia have financial power and he was involved with the daughter of a cartel member and that he can't find a way to hide or to be protected.

The witness said she came to Australia because of violence in Colombia. She said she did not know Person X's family and was not sure whether her father knew them. She said she came to Australia because of general violence in Colombia. She said Colombia has different classes and there is a lot of violence against people who are well-off. She said her parents were targeted and threatened because they were well off. She said the applicant's family used to work for her parents and that they have good status but she is not sure now. She said she had met Person X as her relative goes to the place where Person X works.

The Tribunal asked her whether she knew the reasons why the applicant was claiming refugee status. She said she knew Colombia was dangerous and that families seek revenge when people are hurt. She said that if Person X is hurt that she would be seeking revenge. The Tribunal asked why she would be hurt, she said because they had problems and that she did not get into the details of people's private life. The witness said that the applicant was not working but was helping her with her studies. The Tribunal asked her when she came to Australia, she replied, and she repeated after being questioned by the Tribunal that she did not know Person X's family.

The witness said that her father used to own companies in Bogotá and that the applicant's father worked for her father and that she had known him from when he was little. She said that her parents love him like a son and that he comes to dinner a number of times a week. She said two of her close friends have been killed in a similar situation to what she had heard had happened to the applicant with Person X's family, and that is why he is in danger. The Tribunal asked what she had heard of Person X's family, she said that through the applicant she had heard they are dangerous people with power. She said in Colombia where everyone avoided the rules, anyone can do anything.

The Tribunal asked the applicant if there was anything further he wanted to say, he said life has changed and he is not prepared for that shock. He says he wants to be able to live in peace.

The applicant submitted the following documents at the hearing:

- A tape which he alleges is evidence of Person X making threatening telephone calls to him, asking for money to get married;
- Photographs of the applicant with Person X;
- Application for a voluntary position at a named workplace as a volunteer
- Numerous documents relating to his academic record and registration as a professional.

The Tribunal listened to the above-mentioned tape submitted by the applicant which indicated the following:

The call was made by a man and recorded on a specific date. There is a conversation between a man and a woman called Person X.

asked [Person X] if she still wants to go ahead with the business.

said yes, but she wants to be sure because she has another business in hand.

he asked her if he pays her [amount] and within 3 or 4 months another [amount] the total will be [amount]. She said if he gives her half of the amount ([number]) before and when is done the others [amount], then she will charge him [amount].

asked her if he pays the whole amount in one go, how much is it going to be. She said that is going to be [amount], because she had asked for [amount]. Then he asked her if he pays the whole amount can she leave it at [amount]. She agreed to that and told him that he has to pay for the application, for the person who married them and later on for the divorce. He asked how much is for the divorce and she said about [amount] dollars but that one is going to be within 3 or 4 years.

also asked if she continues with the idea that it is only business or if she wants to have family, she said she wants to have nothing more than just business.

s.424A Letter

The Tribunal raised the following concerns in a s.424A letter to the applicant and explained the relevance of the Tribunal relying on these inconsistencies.

- At hearing on [date] you stated that in [years] you started a company called [name] and that it was registered with the [authorities].

in your application for a [visa] and at interview with the Department delegate on [date] you never mentioned that you started a [Company] rather that you worked in the [workplace] and managed a [particular section].

hearing you were unable to provide any documentation that you owned a company called [name].

- At hearing on [date] you stated that you bought [amount] to Australia.

your application for a [visa] you indicated that you intended to bring [amount] to Australia.

- In your statement attached to your protection visa application you said that if you do not pay [amount] requested by [Person X], [Person X]'s family has the means to harm you.

did not mention this as the reason [Person X]'s family want to harm you at the hearing on [date].

at hearing on [date] when asked by the Tribunal why [Person X]'s family want to harm you, you said the reason [Person X]'s family want to harm you if you return to Columbia is they thought you were going to Australia to study, albeit helped by [Person X]. You said they thought that love developed in her place and that you proposed and then changed your mind. You said her family did not initially support it because of your lesser family background. You said the family want to harm you because you have dishonoured their daughter.

- At hearing on [date] you said [Person X]'s family thought you were going to Australia to study, albeit helped by [Person X] and that they thought you were from a lesser family.

your application for a [visa] a statutory declaration was submitted by [Person X]'s [relative], [name] (attached). In that statement she says that you were already in a relationship with her [relative] when she travelled to Columbia, that you had

discussed marriage on the phone prior to you coming to Australia and that you had plans to start a family as soon as you came to Australia. She also states “ our family supports this marriage because we know [the applicant] is well educated and from a good family.”

inconsistencies cast doubt on the claim that your fear is well founded and that you will be persecuted for one of the Five Convention reasons if you return to Columbia and may lead to a finding that you do not meet the relevant criteria for the grant of a protection visa.

also indicates that you may not be credible and that evidence has been created and provided to the Department and Tribunal to obtain a protection visa. This may lead the Tribunal to find that you will not be persecuted for one of the Convention reasons if you return to Columbia and that you do not meet the relevant criteria for the grant of a protection visa.

No reply was received by the Tribunal from the applicant by the time of this decision. The letter was returned to the Tribunal with the letter marked, return to sender. The Tribunal sent it to the address given by the applicant in his application for review.

FINDINGS AND REASONS

On the basis of the Colombian passport sighted by the Tribunal, the Tribunal finds that the applicant is a citizen of the Republic of Colombia and assesses his claim against that country.

The applicant claims fear of persecution in Colombia because he has dishonored the daughter (Person X) of a wealthy and powerful family in Colombia. He also claims that he will be harmed if he returns to Colombia as he did not pay Person X the money for marrying him and that as a result her family will harm him on his return to Colombia. In addition, while he did not directly claim it, he inferred that he will be unable to obtain employment in his profession because of the power of Person X’s family.

The Tribunal finds that the applicant’s testimony is vague, internally inconsistent and implausible amounting to a fabrication for the reasons set out in the paragraphs below. As a result it does not accept that the applicant has dishonored the daughter (Person X) of a wealthy and powerful family in Colombia, will be harmed for not paying the money to Person X if he returns to Colombia and will be unable to obtain employment in his profession if he returns to Colombia.

Dishonouring Person X

The Tribunal does not accept that the applicant will be persecuted if he returns to Colombia as he dishonoured the daughter of a wealthy and powerful family in Colombia who will harm him if he returns to Colombia due to the inconsistent evidence.

The applicant claimed at hearing that Person X’s family thought he was coming to Australia to study, although he was helped by Person X. He said they thought that he lived in her place for free in Australia and that love developed and that he changed his

mind just before they were to be married. He said the family believed that as a result he had dishonoured their daughter as his family is poorer than hers.

The witness when asked why the applicant was claiming refugee status indicated that she knew families seek revenge when people are hurt, and when asked why Person X would be hurt she said because they had problems but she did not go into people's private life.

However, as was put to the applicant in the s.424A letter, to which the applicant did not reply, in the applicant's application for a visa (specific subclass visa) a statutory declaration was submitted by Person X's relative. In that statement she says that the applicant was already in a relationship with her relative when she travelled to Colombia, that he had discussed marriage on the phone prior to him coming to Australia and that he had plans to start a family as soon as he came to Australia. She also states "our family supports this marriage because we know [the applicant] is well educated and from a good family."

The Tribunal would expect that if the applicant's claim was true, his evidence given at hearing would not be inconsistent with a pre-existing statement made by Person X's family, before the applicant entered Australia on the particular visa. Although the witness gave evidence that the applicant was claiming refugee status because the family could seek revenge because Person X is hurt, she was unable to provide any details and when asked why she said she does not go into people's private life. As a result the Tribunal has placed little weight on this evidence as it is very vague and lacks detail. As the applicant did not reply to the s.424A letter to explain this inconsistent evidence which goes to the heart of the applicant's claim, the Tribunal does not accept the truthfulness of the claim.

As the Tribunal does not accept that the applicant will be persecuted if he returns to Colombia as he dishonoured the daughter of a wealthy and powerful family in Colombia, it does not accept that he will be harmed by her family for this reason if he returns to Colombia.

Payment of Money

The applicant claims that he will be harmed by Person X's family for not paying Person X money to marry her. The applicant claims that he came to Australia on a particular visa to genuinely marry Person X and start a family with her. He said both he and Person X decided that he should move out. He said then Person X started to ask him for money to marry her, a specific sum otherwise she would tell the Immigration Department. He said that when he told her he was going to return to Colombia, she said she hoped all went well for him and that her family are waiting for him. He claims that her family are from a powerful cartel and he is unable to obtain protection from the police, if he returns to Colombia. He claims as Person X's family are very powerful that he will be unable to obtain employment in his profession, he fears they may harm both him and his family and he claims that they have called his father a number of times asking when he will return.

In support of his claim the applicant submitted a tape which he claims is him talking with Person X on the phone about the money. He claimed at hearing it was a record of

conversation made at a particular time, but according to the tape it was made much earlier. He claimed at hearing that it is evidence that Person X is threatening him. Although the tape indicates a money transaction about marriage to defraud the Department to obtain a visa, it does not indicate that the applicant will be harmed by her family for not paying the money.

The Tribunal finds that the applicant's testimony is internally inconsistent and implausible amounting to a fabrication for the reasons set out in the paragraphs below. As a result it does not accept that the applicant will be harmed by Person X's family for failing to pay money to Person X for the aborted marriage.

As indicated above, the applicant provided inconsistent evidence when asked why Person X's family would want to harm him. When asked by the Tribunal why Person X's family would want to harm him, he said because he had dishonoured their daughter. However as detailed above, the oral evidence in this regard is inconsistent with pre-existing statement made by a family member for the visa.

The Tribunal also finds it implausible and inconsistent that on the one hand the family would want to harm the applicant because he dishonoured their daughter because he did not marry her, as the applicant claims and then will also harm him because he has failed to give her money for the aborted marriage deal. If the family so prized their daughter that they would harm her fiancée for failing to marry her, it seems implausible and inconsistent that they will also harm him for failing to pay her money for a marriage deal.

The applicant was also unable to provide any detail and was vague about Person X's family cartel. When the Tribunal asked what Person X's family organisation was called, he said in Colombia they are cartels. When the Tribunal asked the name of the cartel, the applicant paused and he said there are different cartels and they support each other. The Tribunal would expect that if the applicant was fearing persecution at the hands of this cartel, he would have more detail than that which he was able to provide to the Tribunal.

The applicant was also internally inconsistent about the company. At hearing he stated that he started a company and that it was registered. However, as was put to him in the section 424A letter in his application for a visa and at interview with the Department delegate he never mentioned that he started nor owned a company rather he said that he worked in a particular workplace and managed a particular section. When this was put to the applicant at hearing the applicant was vague when he said it was in a trial period, that it was not registered, well not permanently registered. He was further unable to provide any documentation that he owned a company.

While the applicant has provided taped evidence of his conversation with Person X about the exchange of money for marriage, it places little weight on this as it is unable to verify who is talking. In any event, even if a deal was done for a payment to marry and obtain a visa, it is not evidence that the applicant will face harm from Person X's family if he returns to Columbia. The only evidence is the applicant's oral evidence which is unreliable.

On the basis of the applicant not being a witness of truth for the reasons outlined above, the Tribunal does not accept that there was an aborted monetary deal between the applicant and Person X for a visa, it therefore does not accept that the applicant will be harmed by Person X's family if he returns to Columbia for the breakdown of this agreement. The Tribunal does not accept that there is a real chance of the applicant being persecuted if he returns to Columbia. The Tribunal is not satisfied on the evidence before it that the applicant has a well-founded fear of persecution within the meaning of the Convention as qualified by the Act.

For the reasons outlined above the Tribunal does not accept that the applicant will be targeted by Person X's family if he returns to Columbia as he has dishonoured their daughter or because he has not paid money to their daughter. It does not accept that he will face persecution as he owes Person X money for the failed marriage transaction, and therefore does not accept that either he or his family will be harmed if he returns to Columbia. It also does not accept that he will be unable to obtain employment in his profession as a result of the above two claims if he returns to Columbia.

The Tribunal does not accept that there is a real chance of the applicant being persecuted if he returns to Columbia. The Tribunal is not satisfied on the evidence before it that the applicant has a well-founded fear of persecution within the meaning of the Convention as qualified by the Act.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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