

1206515 [2012] RRTA 642 (23 August 2012)

DECISION RECORD

RRT CASE NUMBER: 1206515

DIAC REFERENCE(S): clf2011/70608

COUNTRY OF REFERENCE: Sri Lanka

TRIBUNAL MEMBER: Antonio Dronjic

DATE: 23 August 2012

PLACE OF DECISION: Melbourne

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Sri Lanka, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] April 2011.
3. The delegate refused to grant the visa [in] April 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) 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 Refugees Convention.
6. 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.
7. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. 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.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant is a [age deleted: s.431(2)] year old single male born in Colombo, Sri Lanka. He stated to be of Sinhalese ethnicity and of Buddhist faith. According to the primary decision record provided to the Tribunal by the applicant with his review application, he arrived in Australia [in] March 2010 as holder of a Class TU Subclass 575 (student) visa, valid until [September] 2011.

Protection visa application

21. The current application for a protection visa was lodged [in] April 2011. The applicant's written claims are contained in his statement dated [April] 2011 submitted with the protection visa application and can be summarised as follows:
 - He started working as a Freelance Reporter for [Company 1] in January 2008;
 - In May 2009 a woman in the [suburb deleted: s.431(2)] was raped and murdered and he provided media coverage of the event;

- The woman's name was [Ms A] and she was [worked for] for the United National Party (UNP). [Mr B] had demanded secret information and documents from her but she refused to provide them and was abducted, raped and detained at the CID headquarters [further details deleted: s.431(2)];
- The applicant claims to have all information related to this murder, which he passed to media for broadcast. Media released information in May 2009.
- In June 2009 he received a threatening phone call stating he should withdraw the media release regarding the murder. He did not pay attention to the call;
- In August 2009 between five and eight individuals who claimed to be police visited his house. When he and his parents refused to open the door they kicked in a window and entered the house;
- They smashed goods in his house and their vehicle parked outside the house;
- He and his father were beaten and taken into custody. They were held for 15 days. During this time he was beaten and asked to resign from media work;
- The individuals that abducted the applicant and his father threatened to kill them if they did not provide 2,000,000 rupees;
- His mother organised the money and he and his father were released with a serious warning;
- He continued to work for the media after this incident and continued to receive threatening phone calls;
- In December 2009 five police visited his house and told his mother that he should report to the police station immediately. He did not do so;
- That night, seven to 10 police visited his house. They beat him and dragged him into a vehicle;
- They fired gunshots and his brother was [wounded];
- He was detained, beaten and tortured at Criminal Investigations Department (CID) headquarters and questioned about the media publication relating to the murder;
- His father paid a ransom for his release and was advised by the officer-in-charge that his son had been detained due to "political pressure";
- He was released after 20 days in custody with another serious warning;
- He was interviewed by the media about his abduction and gave a full account of what had happened to him. He went into hiding;
- In January 2010 CID personnel visited his house and beat his father;
- In February 2011 his media interview regarding the murder was re-broadcast;

- Again the police visited his house. They beat members of his family and detained his younger brother;
 - He fears he will be abducted, punished, falsely charged or killed if he returns to Sri Lanka.
22. With the protection visa application, the applicant submitted the following relevant documents:
- Certified copy of his passport;
 - Certified copy of Media Accreditation card suggesting that the applicant was provincial journalist in Sri Lanka in 2008/9; and
 - Submissions provided upon Department's invitation to submit any claims relevant to Complimentary Protection, in which the applicant essentially repeated the same claims as in his statement of claims of [April] 2011;
23. According to the primary decision record provided by the applicant with the review application, an interview with the applicant was held [in] March 2012. The delegate refused the visa application [in] April 2012 as the delegate was not satisfied that the applicant has a well-founded fear of persecution.

The Review

24. The review application was lodged with the Tribunal [in] May 2012. A copy of the primary decision record was included with the application.
25. [In] June 2012, the Tribunal wrote to the applicant indicating that it was unable to make a favourable decision on the material before it, and inviting him to attend a hearing scheduled for [August] 2012 to give oral evidence and present arguments in support of his claims.
26. [In] August 2012, the applicant provided the following documents:
- Submissions in which he mainly reiterates his previous claims and stating that his family is still getting death threats; that his cousin visited Melbourne upon his mother's request to "*see his conditions*"
 - Copy of the handwritten letter from [a doctor] dated [August] 2012 purportedly describing the applicant's mother's medical condition;
 - Copy passport and visa evidence of [name deleted: s.431(2)];
 - Copy [details of articles deleted: s.431(2)]

Tribunal Hearing

27. The applicant appeared before the Tribunal [in] August 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Sinhala and English languages.

28. The applicant confirmed his name, date of birth and current residential address in Australia. He stated that the protection visa application forms were completed by him personally; that he was assisted by his friend Raj; that he understood everything written in the forms; that everything stated in the forms is true and correct and that he does not wish to make any changes or add anything to his claims.
29. The applicant stated that, prior to his arrival to Australia, he lived in [a town] located 35 km from Colombo with his parents and younger brother and that one month prior to his arrival to Australia he lived with his auntie in the town of [town deleted: s.431(2)]. He further stated that he maintains regular contact with his parents and brother, at least two times per week, and that he has no relatives living in Australia.
30. The applicant stated that, prior to his arrival in Australia, he did not travel out of Sri Lanka; never held any other passport apart from the current one, which was presented to the Tribunal; that he had no problems obtaining the current passport and that he does not have right to entry and reside in any other country apart from Sri Lanka.
31. The applicant stated that he completed the equivalent of year 12 in Sri Lanka; that he never completed any education relevant for an occupation of a journalist; that he completed some subjects during his secondary education that are relevant to media; that he was enrolled into an ELICOS course in Australia which he never completed because he made an application for a protection visa. He further stated that he is currently [working] two days per week and earns approximately \$200.00 per week.

Applicant's employment in Sri Lanka

32. The applicant stated that he worked in Sri Lanka as a journalist for the [Company 1] and in particular for the radio station [Station 2] and that he worked there on "*an agreement basis*".
33. The Tribunal asked the applicant to clarify what he meant by working on an agreement basis and whether he ever signed any employment agreement with [Station 2]. The applicant stated that he never signed any employment agreement with [Station 2] and that the agreement was for him to bring the news to the station.
34. When asked by the Tribunal if he ever signed any agreement with [Station 2]; the applicant stated that he did sign the agreement specifying the rate of his pay for the news he brings to [Station 2], but is unable to produce a copy of this agreement to the Tribunal as everything was destroyed in his house in Sri Lanka.
35. When asked by the Tribunal if he ever asked [Station 2] for a copy of that agreement, the applicant stated that the management of the station changed and that "*after that they did not give me anything*". He further stated that he asked for a copy of the agreement before he came to Australia. The Tribunal asked if he could be more specific about the time he requested a copy of the agreement from [Station 2] and the applicant stated that before he came to Australia, he stopped working for [Station 2] for a period of one month and "*they said that they cancelled the agreement and they cannot give it to me again*".
36. He further stated that he asked for a copy of the agreement over the telephone in September 2009 while he was still living in Sri Lanka. The Tribunal asked the applicant why did he asked for a copy of the agreement at that time and the applicant stated that he did that in order to get his job back.

37. The Tribunal put to the applicant that in the protection visa application form he stated that he had been working for [Company 1] from January 2008 to January 2010. In his oral evidence he stated that in September 2009 he was trying to get his job back. The Tribunal pointed out to the inconsistency between his oral evidence and written claims and invited the applicant to comment or respond.
38. The applicant stated that the [Company 1] business practice was that he had to provide a copy of his agreement to the company with every news report he prepared for [Station 2], so they would know how much to pay him. He further stated that he signed the agreement with [Station 2] in January 2008.
39. When the Tribunal asked the applicant to clarify when he asked for the copy of the agreement from [Station 2], the applicant changed his evidence and stated that he did that in 2010 and that *“they told me that I no longer work for the company and for that reason they cannot give me a copy of the agreement”*.
40. The Tribunal pointed out to another inconsistency in his oral evidence. He first stated that he requested copy of the agreement in September 2009. When the Tribunal pointed out to the inconsistency between his oral evidence and written claims relevant to the period of his employment with [Station 2], the applicant changed his oral evidence and stated that he asked for a copy of the agreement in 2010. The Tribunal invited the applicant to comment or respond.
41. The applicant stated that in September 2009 he asked for a copy of the agreement but [Station 2] did not respond. He asked again for the copy of the agreement in 2010. On this occasion he was told that he cannot get a copy of the agreement because he no longer works for [Station 2]. He further stated that in January 2010 [Station 2] *“gave me resignation over the phone”* and that he did not receive anything in writing.
42. The Tribunal asked the applicant how he got this job with [Station 2], considering that in his oral evidence he stated that he did not have any work experience or education relevant to this occupation. The applicant stated that he responded to an ad in the papers and that only requirement for this job was that the applicants are able to talk; some experience *“about media”* and ordinary level of education. He further stated that work experience in the relevant field was not a criterion for this job.
43. The Tribunal put to the applicant that it finds it difficult to believe that any person who complete an ordinary level of [education] and has no relevant educational qualifications or work experience related to journalism would be able to get this job. The Tribunal invited the applicant to comment or respond.
44. The applicant stated that he obtained some experience at his school.
45. The applicant further stated that, during the two years of working for [Station 2], he completed approximately ten news reports (assignments). He further stated that he is not sure if any of the news reports were broadcasted by [Station 2] as his job was only to obtain the information.
46. When asked by the Tribunal to describe some of his significant news reports (apart from the story about murder of [Ms A]) the applicant stated that it was all related to politics and crime.

The Tribunal asked if the applicant could be more specific and the applicant stated that it was about what politician's do, their background and harm they cause to people.

47. When asked by the Tribunal how much he would be paid for any one of his news reports according to his written agreement with [Station 2], the applicant stated that maximum payment was 1,500 rupees; that no minimum payment was set out in the agreement and that a person from [Station 2] would make a decision as to how much would he be paid for any particular news report. The applicant was unable to state the name of this person and stated that money was paid into his bank account by the company.
48. The Tribunal put to the applicant that in his evidence he stated that he would bring his news report to a person who would then make a decision how much money would the applicant be paid for his work; that he produced at least ten news reports to [Station 2] and that the Tribunal is asking if he knows the name of the person that he submitted his news reports to.
49. The applicant changed his evidence and stated that they were several persons doing this job. When this inconsistency was put to the applicant, he stated that one person was deciding how much he will be paid for a news report and the other person would make a payment. He confirmed that he does not know the name of either of them.

Media coverage of murder of Ms [Ms A] involving [Mr B]

50. The applicant stated that he provided audio tapes and written material to [Station 2] in relation to the murder of [Ms A] involving politician [Mr B]; that he does not know the name of the person who received this report as he left this material at the reception; that he does not know on what day in May 2009 the information was broadcasted to public by [Station 2]; that he believes that the news report was released between middle and the end of May 2009 and that he did not listen to the broadcast as he did not know when it will be broadcasted.
51. The Tribunal put to the applicant that story related to the murder of [Ms A] involving powerful politician [Mr B] was his big story; that according to his claims, significant events took place in his life after the story was broadcasted to public. The Tribunal expressed its concerns about the fact that the applicant was unable to remember such a significant date in his life. The applicant confirmed that he cannot remember the exact date.
52. When asked by the Tribunal, the applicant stated that he does not have copy of the broadcast made by [Station 2]. When asked by the Tribunal, the applicant stated that he never attempted to obtain a copy of the broadcast from [Station 2] because he was not interested. He further stated that he never listened to the broadcast of the news report he brought to [Station 2].
53. The applicant stated that his parents told him, over the telephone, that his news report related to the murder of [Ms A] was re-broadcasted in February 2011. The applicant stated that he did not ask his parents to obtain a copy of the broadcast from [Station 2].
54. The Tribunal asked the applicant when [Ms A] was murdered (the exact day) and the applicant stated that it was in the middle of May 2009. The Tribunal put to the applicant that this was his news report, that, according to his claims he was the one who obtained information relevant to this murder and that Tribunal finds it difficult to accept that the applicant is unable to recall the date of [Ms A] murder. The applicant responded that he did the story after the murder and gave the story to [Station 2].

55. When asked by the Tribunal, the applicant stated that the business address of [Station 2] was address deleted: s.431(2)]. The Tribunal asked the applicant if the stated address was a business address for [Station 2] or [Company 1]s and the applicant confirmed that the stated address was business address of [Station 2].
56. The Tribunal put to the applicant that according to the independent country information the business address for [Station 2] was at [a different address], and invited the applicant to comment or response. The applicant stated that [Station 2's] Broadcasting unit is at that address. The Tribunal pointed to the applicant that in his oral evidence he stated the address of [Company 1]. The applicant confirmed that he stated the address for [Company 1]. He further stated that he left all of his news reports at the reception of the [Company 1] address.
57. When asked by the Tribunal, the applicant stated that the media accreditation card (copy of which was provided to the Department) was issued in April 2009 by the information department of the Government; that he has the original media accreditation card at home; that in order to be issued a media accreditation card he needed to provide his ID card. When questioned by the Tribunal if any person who provides his or her ID card will be able to obtain a media accreditation card, the applicant changed his evidence and stated that he needed to complete the application form and provide a letter from the media organisation he was working for. He further stated that he does not have a copy of the letter he provided with his application for a media accreditation card.
58. The Tribunal formally raised the issue of the applicant's credibility as a witness and explained the possible consequences of the Tribunal's findings that he is not a credible witness. The Tribunal further explained to the applicant that if the Tribunal does not accept his claim that he worked as a free-lance reporter for the [Station 2], or produced report involving the murder [Ms A], the Tribunal may not accept any of his other claims related to the past and future harm.
59. The Tribunal noted that the applicant central claim is that he worked as a free-lance reporter for [Station 2] and that, in the course of his work, he discovered, investigated and produced a news report related to the murder of [Ms A] involving the powerful politician, [Mr B]. According to the applicant's claims, as a result of his news report being broadcasted by [Station 2], he suffered harm orchestrated by [Mr B]. Claimed past harm and future serious or significant harm is a direct result of this news report being produced by the applicant and broadcasted to public by [Station 2].
60. The applicant stated that he understood and agreed with the Tribunal's explanation.
61. The Tribunal put to the applicant that he provided no independent evidence in support of his claims including a copy of the news report claimed to be broadcasted by [Station 2] on two occasions; copy of his written agreement with [Station 2] or a copy of the letter provided with his application for media accreditation card.
62. The Tribunal invited the applicant to comment or respond and the applicant stated that this happened as a result of political issues; that political situation in Sri Lanka "*is worse*"; that no information could be obtained due to "*political reasons*"; that the information is hidden; that there will be some harm for the government because of his story and that the "*Government is afraid that people will doubt the Government*" because of his story.
63. The tribunal adjourned the hearing for 10 minutes as the interpreter requested a short brake.

64. The hearing resumed and the Tribunal asked the applicant what harm he fears if he is to go back to Sri Lanka. The applicant stated that he fears that he may be killed and that the main threat is coming from [Mr B]. He further stated that he knows that [Mr B] is targeting him because of the past troubles he experienced in Sri Lanka.
65. When asked by the Tribunal if he had suffered any harm in the past as a result of public broadcast of his news report, the applicant stated that he was abducted on two occasions, once together with his father; that *“they stated that they are from CID department but I did not believe that”*; that they gave him *“a lots of trouble”*; that members of his family went through a lot; that his mother is still mentally *“very down”* and that he had provided a letter from her doctor to confirm this; that his younger brother received threats; that his father’s leg and hand was broken; that if he returns to Sri Lanka he will be immediately killed; that at this moment he is *“mentally down”* and cannot do a job because of his mental situation and that he requires help from a psychiatrist but at the moment has no money to do this.
66. The applicant stated that, on his mother’s request, his cousin recently came to Australia to inquire about his situation; that his mother wanted to see him in Australia but was unable to obtain a visa to travel to Australia and that his mother told him not to return to Sri Lanka.
67. The applicant confirmed that he arrived in Australia [in] March 2010 lodged his protection visa application [in] April 2011. When asked by the Tribunal why he waited more than a year before lodging the protection visa application, the applicant stated that he did not know how the law works in this country; that he made inquiries about it and that finally his friend helped him with the protection visa application.
68. The Tribunal put to the applicant that it finds it difficult to accept that a person who fears serious harm in his home country would not seek protection in Australia at the first available opportunity. The Tribunal explained to the applicant that delay in lodgement of the applicant’s protection visa application, together with the Tribunal’s concerns about his overall credibility as a witness, raises serious concerns regarding the gravity and credibility of the applicant’s claims to fear harm in Sri Lanka.
69. The Tribunal invited the applicant to comment or respond and the applicant stated that he knows that he will have *“a threat if he goes back to Sri Lanka”*; that he tried to get evidence to support his case but they *“destroyed all of that”* and that he cannot live in hiding in Sri Lanka.
70. The Tribunal asked the applicant if there is any other serious or significant harm that he is afraid of if he goes back to Sri Lanka and the applicant stated he is afraid that he will be killed; that *“they not going to kill him at once”*; that they are going to cause more harm to him before they kill him, like braking his knees.
71. The Tribunal put to the applicant that the reason for lodging the protection visa application was not because he was afraid to go back to Sri Lanka but because he wanted to extend his stay and employment in Australia and invited the applicant to comment or respond.
72. The applicant stated that he disagrees with that; that he does not want to go to Sri Lanka and that even if he is to face death in Australia it is better than going to Sri Lanka.

FINDINGS AND REASONS

73. On the basis of the available material, and in the absence of any contrary information, the Tribunal accepts that the applicant is Sri Lankan national. For the purposes of s.5.5(1) and s.36(2)(aa) and on the basis of the available material the Tribunal finds that the receiving country would be Sri Lanka. The Tribunal therefore assesses the applicant's claims against that country.

Applicant's credibility

74. When determining whether a particular applicant is entitled to protection in Australia, the Tribunal must first make findings of fact on the claims he has made. This may involve an assessment of the credibility of the applicant. When assessing credibility, the Tribunal should recognise the difficulties often faced by asylum seekers in providing supporting evidence and should give the benefit of the doubt to an applicant who is generally credible but unable to substantiate all of his claims. However, it is not required to accept uncritically each and every assertion made by an applicant. Further, the Tribunal need not have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. Nor is it obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.
75. If the Tribunal were to make an adverse finding in relation to a material claim made by an applicant but were to find itself unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true. (See *MIMA v Rajalingam* (1999) 93 FCR 220).
76. The Tribunal found the applicant not to be a credible witness. In considering the applicant's claims the Tribunal observes that during the course of the review a number of very significant inconsistencies and discrepancies in the central components of the applicant's evidence emerged that significantly detract from both the plausibility of the applicant's claims and his overall credibility.
77. Central to the applicant's claims to fear persecution is his claim that he worked as a free-lance reporter for [Station 2] and that, in the course of his work, he discovered a story related to the murder of [Ms A] involving the powerful politician, [Mr B]. According to the applicant's claims, as a result of his news report being broadcasted by [Station 2], he suffered harm orchestrated by [Mr B].

Applicant's employment with [Station 2]

78. The Tribunal does not accept the applicant's claim that he worked as a free-lance news reporter for [Station 2] from January 2008 to January 2010 for the following reasons:
79. The applicant's explanation as to how he obtained a job with [Station 2], despite not having any relevant education or work experience lacks credibility. When asked by the Tribunal, the applicant stated that he saw the advertisement for this job in a newspapers and that the requirements to work as a free-lance reporter were ability to talk, "*some experience about media*" and "*ordinary level of education*". When Tribunal put to the applicant that according

to his evidence, he did not have any media work experience prior to the claimed work for [Station 2], the applicant stated that he had some subjects related to media in his school.

80. The applicant stated that in January 2008 he had signed an agreement with [Station 2] specifying the rate of his pay. He further stated that he was required to provide a copy of this agreement to [Station 2] each time he submitted a news report. He gave inconsistent evidence as to why he is unable to provide a copy of this agreement to the Tribunal. The applicant initially responded that he telephoned the radio station and asked for a copy of the agreement from [Station 2] in September 2009 because he wanted to get his job back. When Tribunal put to the applicant that in the protection visa application form he stated that he worked for [Station 2] from January 2008 to January 2010 and pointed out to the inconsistency in his oral evidence, the applicant changed his oral evidence and stated that he had asked for a copy of the agreement in 2010 and was told that [Station 2] will not give him a copy of the agreement as he no longer works for the radio station.
81. When asked by the Tribunal why is he changing his oral evidence, the applicant stated that he asked for a copy of the agreement both in September 2009 and in 2010 and that [Station 2] gave him “*resignation*” over the phone in January 2010. Given the above mentioned inconsistencies in the applicant’s oral evidence and the Tribunal’s findings in respect to the applicant’s overall credibility, the Tribunal does not accept that the applicant ever asked for a copy of the agreement from [Station 2] or that he ever had any written agreement with [Station 2].
82. In his oral evidence the applicant claimed that, during the two years of working for [Station 2], he completed approximately ten news reports but was not sure if any of them were broadcasted by [Station 2]. The Tribunal does not accept that a person, who claimed to be making living as free-lance reporter, would not know if any of his news reports were broadcasted by the radio station.
83. The applicant’s was unable to provide any specific details about his other news reports produced for [Station 2]. The applicant was unable to recall the name of the person working for [Station 2] that he submitted his news reports to. The applicant gave inconsistent evidence to the Tribunal as to whether he submitted his news reports to a person working for [Station 2], several people working for the radio station or whether he left the news reports at the reception of [Company 1].
84. In his oral evidence, the applicant claimed that the media accreditation card was issued to him in April 2009. According to a copy of the accreditation card provided to the Department with the protection visa application, the card was valid for years 2008 and 2009. The Tribunal has serious concerns about the authenticity of this document and for this reason it gives it little weight.
85. Based on the applicant’s oral evidence and the Tribunal’s findings in respect to the applicant’s overall credibility, the Tribunal does not accept that the applicant produced any news reports for [Station 2] or that he ever worked for [Station 2] in any capacity.

News report related to the murder of [Ms A] involving [Mr B]

86. The applicant was unable to inform the Tribunal when in September 2009 (on which day) his news report related to the murder of [Ms A] was broadcasted by [Station 2]. He stated that he never listened to the broadcast of his news report despite the fact that the news report was re-

broadcasted in February 2011. The applicant further stated that he never attempted to obtain a copy of his news report broadcast from [Station 2] as he was not interested. The applicant was unable to inform the Tribunal on which day was [Ms A] murdered.

87. When the Tribunal put to the applicant that it find difficult to accept that he was unable to remember the key dates relevant to his news report, because significant events happened in his life after the story was released to the public, the applicant stated that he “did a story after the murder”.
88. Based on the evidence before it and the Tribunal’s findings in respect to the applicant’s overall credibility, the Tribunal does not accept the applicant’s claim that he produced a news report related to the murder of [Ms A] involving a politician [Mr B].

Other claims

As the Tribunal did not accept the applicant’s claims that he worked as a free-lance news reporter for [Station 2] or that he produced the news report related to the murder of a person named [Ms A] involving the politician named [Mr B], and because of the Tribunal’s findings in respect to the applicant’s overall credibility, the Tribunal does not accept the applicant’s claims that in June 2009 he received threatening phone call related to media coverage of the murder of [Ms A]; that in August 2009 several individuals claiming to be police visited the applicant’s house and gained entry by kicking in a window; that these individuals smashed goods in the applicant’s house or his vehicle; that the applicant and his father were ever beaten or taken into custody; that the applicant and his father were ever abducted and threatened to be killed if they do not pay money; that the applicant’s mother paid money for the applicant’s or his father’s release; that in December 2009 police visited the applicant’s house and that on this occasion the applicant was beaten by the police; that police fired gunshots and that the applicant’s brother was wounded in the hand; that the applicant was detained, beaten and tortured at Criminal Investigations Department (CID) headquarters and questioned about the media publication relating to the murder; that his father paid a ransom for his release and was advised by the officer-in-charge that his son had been detained due to "political pressure"; that the applicant went into hiding; that in January 2010 CID personnel visited the applicant’s house and beaten his father; that in February 2011 the police visited his house and beaten and detained any members of the applicant’s family; that the applicant’s younger brother received threats or that his father’s leg and hand were broken.

Delay in lodging the protection visa application

89. After his arrival to Australia there was a delay of more than 12 months before the applicant applied for a protection. When asked by the Tribunal to explain why he waited more than 12 months to lodge his protection application, the applicant stated that he did not know how the law works in this country.
90. The Tribunal finds that the explanation concerning the delay in lodging the protection visa application to be implausible and that the applicant’s failure to seek protection for over 12 months is inconsistent with his claimed fear of serious or significant harm in Sri Lanka.
91. The delay of more than 12 months raises serious concerns regarding the gravity and credibility of his claims to fear persecution in Sri Lanka. This causes the Tribunal to further question the truthfulness of the applicant’s claims. The Tribunal does not accept the review

applicant's explanations as to why he applied for a protection visa more than 12 months after arrival to Australia.

92. Having considered all of the applicant's claims singularly and cumulatively the Tribunal is not satisfied that the applicant has a well-founded fear of persecution for one or more of the Convention reasons, now or in the reasonably foreseeable future, if the applicant returned to Sri Lanka. The Tribunal finds that the applicant has not and would not be involved as a journalist on return to Sri Lanka and that there is no real chance of the applicant being harmed by [Mr B], or any other person for a Convention related reasons, now or in a reasonably foreseeable future.
93. As the Tribunal has rejected all of the claims of previous harm made by the applicant, and in the absence of any other evidence which suggest that the applicant may suffer harm upon removal from Australia to Sri Lanka, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of him being removed from Australia to Sri Lanka, there is a real risk that the applicant will suffer significant harm.

CONCLUSIONS

94. 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).
95. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).
96. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.]

DECISION

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