

1413076 (Refugee) [2016] AATA 3769 (2 May 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1413076
COUNTRY OF REFERENCE:	Nepal
MEMBER:	Mara Moustafine
DATE:	2 May 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 02 May 2016 at 4:43pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. The applicant, [name], is a [age] citizen of Nepal, from [suburb] in [name] district, Kathmandu. She arrived in Australia on a [subclass] Student visa [in] July 2007 and was subsequently granted several [Student] visas, the last expiring in [in] March 2012. She then applied for a Subclass 485 Skilled graduate visa [in] March 2012. This was refused [in] December 2012. She appealed to the MRT [in] January 2013. However, on 28 March 2013, the MRT was found to have no jurisdiction in the matter. During this time the applicant departed Australia between [date] November 2008 and [date] January 2009 and from [date] June to [date] July 2012.
2. The applicant fears that if she returns to Nepal she may be forced into an arranged marriage by her family.
3. The applicant applied for a Protection visa [in] April 2014. A delegate of the Minister for Immigration refused to grant the visa [in] July 2014 and the applicant applied to the Tribunal for a review of this decision, a copy of which she provided to the Tribunal.
4. The applicant appeared before the Tribunal on 28 April 2016 to give evidence and present arguments. The Tribunal also received oral evidence from [name], the applicant's close friend and housemate (witness 1) and [name], the applicant's [relative] (witness 2). The Tribunal hearing was conducted with the assistance of an interpreter in the Nepali and English languages, as required.
5. The applicant was represented in relation to the review by her registered migration agent, who attended the hearing.
6. The issue in this case is whether the applicant's claims are credible; and whether there is a real chance that, if she returns to Nepal, she will be persecuted for one or more of the five reasons set out in the Refugees Convention; and, if not, whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of her being removed from Australia to Nepal, there is a real risk that she will suffer significant harm.

CONSIDERATION OF CLAIMS AND EVIDENCE

Relevant Law

7. The criteria for a protection visa are set out in s.36 of the Act and 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 in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
8. 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 in respect of 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).
9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.

10. 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 in respect of 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').
11. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade (DFAT) expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

Credibility

Applicant's claims

12. In her Protection visa application, the applicant stated that she left Nepal seeking higher education to make her own career, be independent and also to escape from getting involved in marriage 'soon'. She claimed she had experienced harm in Nepal because her parents were forcing her to get married. She was dependent on them and wasn't able to do anything on her own. She also noted that at the time, the situation in Nepal was 'no good', with citizens always fearful of crime, no proper job opportunities and no secure future.
13. The applicant fears that, if she returns to Nepal, her parents may force her to marry, for which she is not ready; and as a career-oriented woman, she believes she should have the right to choose her own partner, not marry 'some stranger and devote her life to his family'. She fears harm from her parents and her grandmothers who 'religiously believe that if they see their granddaughter's marriage, wash her and her husband's feet and drink water, they will reach heaven after their death'. The applicant thinks this will happen to her as she has already exceeded the 'normal age for girls to get married' (18-25) and they want her to get married as soon as possible as they think she is getting old and will not find a good family and a good man. She will not be able to deny her parents and believes that, if she refuses, the authorities in Nepal will support them rather than her.
14. [In] April 2016, ahead of the hearing, the applicant's representative emailed to the Tribunal a number of documents in support of her claims, including evidence of the applicant's father's status in Nepal the Ministry of Education, Communist Party of Nepal (Marxist); a 1998 report on Domestic Violence in Nepal by the Minnesota Advocates for Human Rights; a list of names headed 'Presence of family throughout Nepal and reason why applicant is unable to relocate within Nepal'; and a medical report related to the applicant.
15. At hearing the applicant submitted materials from the Internet, including several articles regarding the situation of women in Nepal and arranged marriages in Nepal; and a photograph of men, allegedly including the applicant's father, at a meeting of [an association] Nepal, which she said proved that he was politically involved.

Witness Evidence

16. At the hearing, the Tribunal first took evidence from the two witnesses.
17. Both witnesses came to Australia in 2008 or 2009 as students and have been sharing a house with the applicant for over four years, together with another Nepali male. Witness 1, [age] from Kathmandu, is currently on a bridging visa applying for temporary residence visa. He did not know the applicant before coming to Australia but, since moving into the share house in 2011, had become like 'part of the family'. Although people thought he was the applicant's boyfriend, this was not true. He said that since 2012 the applicant had confided everything in him: she was mentally very stressed because she did not want an arranged marriage, into which her family was pressuring her. In the time he lived with the applicant he had not known her to have a boyfriend. From several visits to Kathmandu, he observed that people's attitudes were changing as most families had one member overseas, although the majority had the same old perceptions.
18. Witness 2, [deleted] is currently studying and has been living with the applicant since 2009. He told the Tribunal that if the applicant returns to Nepal she would be forced into an arranged marriage, which she does not want. If she refuses, her family, as well as her uncles, will harm her because under Nepalese law, a single woman after age 35 stands to inherit property. The applicant had [siblings]: [Sibling 1], a [occupation], who had an arranged marriage in 2007 or 2008 and lives in Kathmandu with [spouse] and child; and [Sibling 2], a [occupation], who married a [person] from a different caste in 2012 and had gone to live in [Country 1]. The applicant's father was a [Occupation 1] who was very active in the Nepali Congress Party, while her mother was a housewife, who married in her teens. Witness 2 said that his mother had married his father in a 'love marriage' against her parents' wishes while both were studying [a course] in the [country]. Even though they were educated and from the same caste, it was difficult for them. His parents were now [occupation] in Kathmandu and were planning to set up a [type of] institution, in which he might be involved when he completes his [studies] in a year and a half. The applicant later commented that her father was involved in the Communist Party, not the Congress Party, but that everything else her [relative] said was accurate.
19. Key points from the applicant's evidence at hearing were:
 - a. [Sibling 1] had an arranged marriage in 2008 when [Sibling 1] was [age]. [Sibling 1] lived in Kathmandu and worked at the [name] School. [Sibling 2] entered into a 'love marriage' against the will of parents and went to [Country 1].
 - b. Her father was a [Senior Officer 1] of a [Utility 1] supply company, [Occupation 2] of the [Paper 1] and a well-known [Occupation 1] in Nepal. He was politically involved in the Communist party from the time he was young to this day. She did not know which Communist party, but thought it was the one that was currently the government. Her mother was a housewife.
 - c. The applicant confirmed that her migration history set out in the Department's decision record was accurate. She came to Australia in 2007, studied for a [qualification] and then [higher qualification] in [course], which she completed in 2011. She was then looking for what to study and applied for a skilled migration visa, although she could not find a sponsor. The visa was refused in December 2012. She then applied for a Protection visa. While in Australia she worked in [occupation] in a café, at [employer] and [employer] in [city].
 - d. The applicant said her intention had always been to go back to Nepal after she finished her studies and work in a business or an office. However, after she returned from Nepal in 2012, her fear of being forced into a marriage increased and she thought she would

find a way to reside in Australia until she found someone. She said that until that time she had not been afraid of being forced to get married. However, after her [sibling] got married, with all her cousins already married, she was the only one left unmarried and getting older, so her family wanted her to come back and get married as soon as possible.

- e. The applicant confirmed she went back to Nepal for [Sibling 2]'s wedding, then added that she also went for medical treatment and that the wedding did not take place as [Sibling 2] went for a 'love marriage'. The applicant stayed in Nepal for a month having medical treatment for her [medical conditions]. She was still taking the prescribed medication, but confirmed that she was fit to give evidence.
- f. Asked what happened to make her fear that she would be forced to get married, the applicant did not respond directly but said she did not believe in arranged marriage and had seen her mother suffering and thought same thing would happen to her. Asked if anything happened to her while she was back in Nepal, the applicant said no but that when she was there in 2012, her parents were always introducing her to new people and trying to match someone with her. However, she did not like anyone and came back to Australia.
- g. The applicant said she did not have any boyfriends but wanted to marry someone who could understand her and accept her as she was, including her medical condition. She did not respond directly when asked if she had discussed this with her parents, but said she had said no many times and that they were concerned that, as she was getting older, she would not find a husband.
- h. Asked why she was afraid to return to Nepal, the applicant said it was because her family would force her into an arranged marriage by trying to introduce her to potential husbands and she would not be able to say no to them because this was the culture in Nepal. [Sibling 1] had been forced to do it, as no one could say no to parents.
- i. To the Tribunal's suggestion that this would be [Sibling 1's] choice and that [Sibling 1] had the option to resist [their] parents demands, as [Sibling 2] had apparently done, the applicant said her parents did not talk to [Sibling 2] or invite [Sibling 2] and that [Sibling 2] had left the country. She said that, if she went back, she could not go against her parents' wishes, or live elsewhere in Nepal as it would be easy for them to spot her anywhere she went.
- j. In a discussion as to what her family would do to force her into an arranged marriage, the applicant said variously that they could bring her back from anywhere she went, punish her, lock her up, physically harm her or 'do something' until she said yes. Asked if they had ever done this before, the applicant responded no, because she was never there; and that she had 'not seen that face but might see that face'. Asked if anything happened during her two return visits to Nepal, the applicant said that in 2012, she came under a lot of pressure to get married but that she had assured her parents that she would find someone in Australia. She confirmed that her family did not do anything to [Sibling 2], who 'just did it and went to [Country 1]'.
- k. Asked why she did not apply for a protection visa on her return to Australia, the applicant said that at that time, she still had a right to stay in Australia and did to know what a protection visa was. She applied for protection after her visa was refused as she now had no choice because her family would force her to get married if she returned. The Tribunal suggested that, in view of her migration history, an alternative view might be that she did so as all the other options to remain in Australia had failed. The applicant responded that she thought she could apply for another visa to study but did not have time and was advised that she could apply for a protection visa.

- i. With regard to the documents relating to her father, which she submitted to the Tribunal (paragraphs 15 and 16), the applicant said they demonstrated that he was a respectable man with connections, as well as family in different parts of Nepal. He would not let her escape her obligations and be able to track her easily anywhere in the country and take her home and 'somehow' force her to marry. The medical documents she submitted showed that she was suffering from tension headaches and was taking medicine for anxiety. Her illness was another reason she wanted to find a husband who could understand her and help her, not someone she did not know who would expect her to work even when sick, as women were expected to in Nepal. The Tribunal noted that, while it would have regard to the documents, it also had to be mindful of country information, including from DFAT¹ and the US State Department that fraudulent documents were widely available in Nepal and were sometimes used in visa applications.
- m. In accordance with s. 424AA of the Act, the Tribunal drew the applicant's attention to inconsistencies between the information she provided in the context of her student visa application and her evidence at hearing, noting that it might raise doubts about her truthfulness and general credibility. In particular, the applicant told the Tribunal that she had [siblings].s However, in her student visa application – in the 'Details of Relatives' section, the family relationship document and her statement of purpose – she identified only one [sibling] – [Sibling 1], then [age]. Further, while she and her [relative] both told the Tribunal that her mother was always a housewife, in the student visa application she was identified as a production manager in [Company 1].
- n. The applicant responded that she had not included [Sibling 2] as [Sibling 2] was not in Nepal but in [another country] at the time and that [Company 1] was her cousin's business, where her mother had worked for a few months as support and that it was long ago so it slipped her mind.
- o. Further, the Tribunal noted that as well saying that her father was [Senior Officer 1] of a [Utility 1] supply company, the applicant had provided documents indicating that he was [Occupation 2] of [Paper 1], a member of the [organisation]; [leader] of [an association] and a Central Committee member of the Nepal Communist Party (Marxist). However, based on a recording of her interview to which the Tribunal had listened, the applicant told the Department only that her father was retired but had been [Senior Officer 1] of a [Utility 1] resources company, whose name she did not know and was politically related to the Communist Party.
- p. The applicant responded that she was nervous and sick at the time of the interview and that what she had submitted to the Tribunal was true. Her father had retired from the [Utility 1] supply company but was still working as [Occupation 2] of [Paper 1]. Moreover, at that time she did not have any documents to show.
- q. In a discussion about country information, the Tribunal said that it would have regard to the materials provided by the applicant regarding the situation of women, domestic violence, violence against women and arranged marriages in Nepal (paragraphs 15 and 16). In addition, it would also have regard to other information from independent sources. This included that Nepal's civil code prevents forced marriage and that marriage from 21 years of age is legal without parental consent. While most marriages in Nepal are arranged by the parents, with varying degrees of control, there is a trend among younger, well-educated and well-travelled Nepalis to ignore past caste and

¹ DFAT, *Country Information Report: Nepal*, 21 April 2016; US Department of State, 'Fraud Summary – Kathmandu, Nepal', Wikileaks website, 5 October 2009, <http://wikileaks.org/cable/2009/10/09KATHMANDU910.html>

ethnic restrictions and make their choice of life partner a personal one based on their own identities and values². Moreover, in Kathmandu, where the culture is most 'westernized', people casually date before marriage, are financially stable and well-educated, women have distinct careers and past taboos are gradually unwinding, although traditional conservative culture still dominates almost everywhere else in Nepal³.

- r. The Tribunal noted that country information had to be viewed in the particular context of the applicant's individual circumstances. It is relevant to note that the applicant comes from an urbanised and educated family, which supported [children] to pursue education and careers, including overseas and there were a number of 'love marriages'.
 - s. The applicant told the Tribunal that her mother was married at 16 and had faced domestic violence. Because of this she did not want her daughters to be in the same situation but to study and make their own careers, which she had been unable to do in her time. Her mother did not have a problem with the applicant, but her father did. However, the situation had changed because she was getting older.
 - t. Growing up the applicant had always studied in a [private] school, and her parents were strict, not allowing her and her [siblings] to leave home after 5 pm or to have boyfriends. Although she had not mentioned it, she was beaten and her [sibling] had been locked up for going to a party. The Tribunal observed that it was curious in light of this that her parents now tolerated her living as a single woman in a household with three men. She responded that they were her [relatives] or 'like family'.
 - u. She later added that her uncles, as well as her father beat her a long time back. They would try to force her to marry because a woman single at 35 years old had a right to inherit.
 - v. The Tribunal drew to the applicant's attention that, in contrast to her evidence that the wedding ceremony for [Sibling 2] did not proceed in 2012, in her letter to the Department's Compliance section in May 2013, which was on the Departmental file and referred to in the Department's decision, she stated that when she was Nepal in June 2012, she was sick and 'at the same time was my [Sibling 2] marriage ceremony so they [her parents] were busy with it'. The applicant responded that everything was arranged for the marriage, but that [Sibling 2] left with another [person] on the day of the wedding.
20. The applicant's representative submitted that the Tribunal should accept, as had the Department, that being forced into a marriage amounted to degrading treatment and therefore significant harm. Due to her father's status as a senior and respected person in the community, he would uphold the social norm in Nepal of an arranged marriage and if the applicant refused and tried to live elsewhere, he would make every attempt to locate the applicant and force her into marriage. The applicant had provided evidence that she had relatives all around Nepal whom the father could engage in keeping a lookout for the applicant. While the applicant had not made specific references to her father harming her, he could keep her locked in the house and force her into a marriage, which would constitute significant harm and degrading treatment.

Consideration of applicant's claims

² 'Caste no bar', Nepali Times, 16 January 2009.

³ Bensal 2013; 2012, "Rising awareness of legal rights doubles divorce rates in Nepal's capital", Global Press Institute

21. On the basis of the applicant's passport presented at the hearing and in the absence of evidence to the contrary, the Tribunal accepts that she is a citizen of Nepal and that Nepal is her country of reference and receiving country.
22. In assessing the applicant's claims, the Tribunal has carefully considered and weighed a range of independent material about Nepal, including that submitted by the applicant and referred to in the delegate's decision, as well as the recent DFAT country information report on Nepal⁴, prepared expressly for protection status determination purposes. Like the Department, the Tribunal has been unable to locate any credible country information specifically related to the treatment of women who refuse to enter into an arranged marriage, which suggests that it has not been an issue on the radar of organisations focusing on women's rights in Nepal.
23. As discussed with the applicant, any country information need to be viewed in the context of the applicant's own circumstances, including that she comes from an educated professional family from the Kathmandu valley, which has supported its [children] to pursue education and careers and, in her case, to live independently in Australia for over eight years. This suggests a family with a less conservative attitude, as described at paragraph 20.q.
24. The Tribunal accepts that it is customary in Nepal for marriages to be arranged by parents of the couple, though with varying degrees of involvement and control. It accepts that the applicant's parents would like to see her married, especially as she is now in her [age]; that they may prefer for her to have an arranged marriage and may have tried to introduce her to potential partners when she visited Nepal in 2012. However, for the reasons outlined below the Tribunal does not find the applicant's claims credible and is not satisfied that there is a real chance that if she returns to Nepal, the applicant would be forced into marriage by her parents or other family members against her will or face serious or significant harm at their hands.
25. The applicant's evidence regarding her central claim – that she will face harm in Nepal at the hands of her family who will force her into an arranged marriage against her will – was vague, unsubstantiated and speculative. In both her written and oral evidence, the applicant consistently said her fear was that she herself would not be able to deny her parents wish that she marry (paragraphs 14 and 20.h and 20.i). As discussed with the applicant, it is a matter of choice for her whether or not she follows her parents' wishes. Contrary to the situation she described when she first came to Australia – when she claimed she was 'dependent on them and wasn't able to do anything on her own', the applicant now completed a [tertiary qualification] and lived and worked independently in Australia for almost nine years.
26. The applicant was very vague as to what means her family might use to force her into an arranged marriage, saying they might punish her, lock her up or 'do something' until she said yes. She confirmed that they had never done this before (paragraph 20.j) and made no suggestion that they had threatened her with harm. By her own evidence and as set out in her migration history in the Department decision, the applicant travelled back to Nepal on two occasions, first in late 2008 and again in June-July 2012. However, beyond introducing her to potential husbands and reminding her that she was getting older, the applicant's parents did not take any action to coerce her into marriage, lock her up or otherwise prevent her from returning to Australia but were allegedly persuaded by her that she would look for a husband in Australia.
27. The Tribunal notes that at the time of her last visit home in June 2012, the applicant was already [age] and had exceeded the 'normal age for girls to get married' (18-25), which she claims is driving her family to pressure her (paragraph 14) and had already completed her

⁴ DFAT, *Country Information Report: Nepal*, 21 April 2016

degree. However, there is no suggestion that her parents made any attempt to forcibly detain her and marry her off. In light of this, the Tribunal is not satisfied that they would take 'forcible' action should she return to Nepal now.

28. The Tribunal has had regard to the list of 'family throughout Nepal', who the applicant claims would help her father track her down wherever she lived in Nepal. However, there is no evidence to suggest an undertaking by these people to do so, even if her father was set on pursuing his daughter in this way, of which there is also no evidence beyond the applicant's assertion. The Tribunal also notes that among her relatives the applicant could probably count on the support of her [relative]'s parents, who married for love marriage many years ago and are well-established [occupation] in Kathmandu.
29. The Tribunal is also concerned at inconsistencies in the applicant's evidence as to her intentions after completing her studies and when she began to fear harm. The applicant told the Tribunal that she had always intended to return to Nepal after finishing her studies and only started to look for a way to reside in Australia after she returned from Nepal in July 2012 (paragraph 20.d). However, the Tribunal notes that she had already applied for a Subclass 485 Skilled graduate visa [in] March 2012. Moreover, in her protection visa application, she gave as one of the reasons she came to Australia her wish to escape from getting involved in marriage 'soon' (paragraph 13).
30. Further, while the applicant stated in her protection visa application that she feared harm from her parents and her grandmothers (paragraph 14), at hearing she made no mention of the grandmothers but introduced a new claim that her uncles, as well as her father, might force her to get married and possibly harm her because a woman who remained unmarried up to 35 years of age had the right to inherit property (paragraph 20.u). The Tribunal notes that this point was marked with highlighter in a *Wikipedia* article 'Women in Nepal', which the applicant submitted at hearing and also made by the applicant's [relative] in his witness evidence. This suggests the claim may be speculation, based on Internet research, rather any concrete suggestion to this effect by the applicant's uncles.
31. The applicant also introduced new evidence at the hearing that [Sibling 2]'s wedding for which she went to Nepal in June 2012, did not in fact proceed, but that [Sibling 2] married another [person] from a different caste against[their] parents' wishes and went to live in [Country 1] (paragraph 20.e). As discussed with the applicant at paragraph 20.v, the Tribunal finds it implausible that she would have written in her letter to the Department in May 2013 that when she went to Nepal in June 2012 her parents were 'busy' with [Sibling 2]'s marriage ceremony if it did not, in fact, go ahead, as she now claimed. In the Tribunal's view, the applicant embellished her evidence in an attempt to strengthen her claims.
32. The Tribunal's concerns about the applicant's truthfulness and overall credibility are compounded by the multiple inconsistencies between the information she provided in her student visa and protection visa applications as to how many [siblings] she had and her parents' employment. The Tribunal has had regard to, but is not persuaded by the applicant's various explanations at paragraphs 20.n and 20.p. As discussed with the applicant, the Tribunal does not find it plausible that she would omit a sibling who happened to be away when asked to identify all members of her family on an official form, as well as in the relationship document and her own prose (paragraph 20.m). In light of this, the Tribunal is not satisfied that the applicant ever had a second [sibling], who entered into a love marriage against [Sibling 2's] parents' wishes and left Nepal in 2012.
33. The Tribunal is also concerned that, if, as the applicant claimed at hearing, her mother was a housewife who did not work, other than for a couple of months (paragraph 20.n), she had been prepared to identify her as a [occupation] at [Company 1] in her student visa application. As discussed with the applicant, this suggests a readiness to be flexible with the truth in order to secure a migration outcome.

34. The Tribunal has had regard to the documents relating to the high profile roles held by her father, which the applicant submitted to the Tribunal. However, it does not give them weight, given the applicant's failure to mention these roles when the Department expressed scepticism that her father had high-level connections like the President and Prime Minister (as noted in his decision); as well as its concerns about the applicant's general credibility; and country information regarding the prevalence of false documents in Nepal. The Tribunal is also dubious about the veracity of the document on the letterhead of the Communist Party of Nepal (Marxist) dated [in] April 2016 stating that the father was a member of the Central Committee in light of country information, including in Wikipedia, that this party is 'defunct', having merged in 2005 with the Communist Party of Nepal (United) and formed the Communist Party of Nepal (United Marxist), which itself ceased to exist in 2013⁵.
35. Considered together, the reasons discussed above, lead the Tribunal to find that the applicant has not been truthful about her experiences in Nepal and the reasons she fears returning to that country; and to conclude that her claims are not credible. The Tribunal is not satisfied that the applicant ever experienced harm in Nepal because her parents were forcing her to get married; nor that she will face harm in Nepal at the hands of her father, mother, uncles or extended family, who will force her into an arranged marriage against her will, should she return to Nepal now or in the reasonably foreseeable future. The Tribunal is not satisfied that they would force her into an arranged marriage by punishing her, locking her up, physically harming her or 'doing something' until she says yes, as submitted by the applicant or her representative.
36. The Tribunal is not satisfied that the applicant's delay in applying for a protection visa was due to her not knowing about the purpose of this visa and that she applied for it after she had no choice left because of her fear of being forced into marriage. As discussed with the applicant, in light of her migration history, it is the Tribunal's view that the applicant applied for the protection after she had exhausted all other options to stay in Australia and that she fabricated her claims in order to achieve a migration outcome.
37. On the basis of the evidence before it, the Tribunal is not satisfied that, if she returns to Nepal, the applicant has a well-founded fear of persecution now or in the reasonably foreseeable future arising essentially and significantly for one or more of the five Convention reasons.
38. Having regard to its findings of fact above that it does not accept the applicant's claims and on the basis that the applicant lacks credibility, the Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Nepal, there is a real risk that she will suffer significant harm as defined in subsection 36(2A) of the Act.

CONCLUSIONS

39. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
40. 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 in respect of whom Australia has protection obligations under s.36(2)(aa).

⁵ [https://en.wikipedia.org/wiki/Communist_Party_of_Nepal_\(Marxist\)__\(1991-2005\)](https://en.wikipedia.org/wiki/Communist_Party_of_Nepal_(Marxist)__(1991-2005)).

41. 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).

DECISION

42. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Mara Moustafine
Member