

1310886 [2013] RRTA 669 (19 September 2013)

DECISION RECORD

RRT CASE NUMBER: 1310886

DIAC REFERENCE: CLF2013/133873

COUNTRY OF REFERENCE: Cambodia

TRIBUNAL MEMBER: Wendy Boddison

DATE: 19 September 2013

PLACE OF DECISION: Melbourne

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) 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. 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 Cambodia, applied to the Department of Immigration for the visa on 14 June 2013 and the delegate refused to grant the visa on 23 July 2013.
3. The applicant appeared before the Tribunal on 30 August 2013 and 9 September 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Khmer and English languages.
4. The applicant was represented in relation to the review by his registered migration agent.

RELEVANT LAW

5. 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 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.

Refugee criterion

6. 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).
7. 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.
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)). Examples of 'serious harm' are set out in 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 '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 in respect of 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 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').

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.

Section 499 Ministerial Direction

19. 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 expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

20. The issue in this case is whether the applicant has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion if he returns to Cambodia and if not, whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to, Cambodia there is a real risk that he will suffer significant harm. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

Background

21. The applicant arrived in Australia [in] February 2012 as the holder of a visitor visa which expired [one month later]. [In] 2013 he was placed in immigration detention. The applicant was refused a bridging visa on 23 May 2013 and that decision was affirmed by the Migration Review Tribunal (MRT) on 31 May 2013. He was served with a notice of removal on 12 June 2013 and lodged his Protection visa application on 14 June 2013.

Protection visa application

22. In his protection visa application the applicant claimed that he left Cambodia because his life was in grave danger. No local authority would protect him. He had said that corruption in

Cambodia was bad and this upset an army [officer]. If he went back he would be treated badly. The powerful army [officer] could do what he wants including harm the applicant.

23. His protection visa application indicated that a detailed statement was being translated and would be provided as soon as possible. When the applicant and his adviser were asked about this at the tribunal hearing, the adviser indicated that they had intended to provide a detailed statement but the applicant was interviewed by the delegate before the statement could be prepared so the applicant was relying on what he had told the delegate in the interview.
24. When interviewed by the delegate the applicant claimed:
 - He was born in Siam Reap. His mother and sister lived in Cambodia and his father died when the applicant was young. His mother worked at [location]. The family owned their home in Siam Reap and had a large block of land. When the government wanted to build a road they took half of the family's land.
 - He went to school for [a number of] years sometimes he worked selling groceries at home and then he worked as a [salesman].
 - Whilst working as a [salesman] he met two people who he regarded as his adopted siblings who worked on a farm. At the beginning of 2011 he joined them to work on the farm in [Province 1]. He worked there for 2-3 months supervising the workers. The [boss] of the farm was a high ranking army officer. Where they were farming the land was not legally owned by the boss; it was owned by citizens. He told the boss that he did not want to work on the land as the boss did not own it and should not be farming it. His boss became very angry at him; he was swearing at him and wanted to get a gun to kill the applicant. The applicant pleaded with him not to kill him and his adopted brother intervened and convinced the boss not to harm him. When he saw the gun the applicant ran away.
 - The boss did not like the fact he had accused him of illegally seizing land. The boss was angry that the applicant refused to work there.
 - His mother was concerned that his boss would harm him so she paid \$15,000 USD to obtain a visa for the applicant to come to Australia. He was in hiding with friends for a while before he left Cambodia and he also went to Thailand for a short period before he came to Australia.
 - He did not want to return now as there was an election and there was lots of fighting connected with the election. He could not live elsewhere in Cambodia as he had no money and no work. The boss was high ranking and could do whatever he wanted.
25. The applicant told the tribunal that his mother was still living in a house owned by the family in Siam Reap. In 2009 some of the family's land was confiscated in order to build a road. They received no compensation for the land. He did not know the value of the land as he did not really pay any attention. It was about half of the land the family owned. The family lodged an application with the provincial authorities for compensation but they had no

response to their application at all. Nothing happened; they wanted to go further but no one would help them with it.

26. After the applicant left school he worked as a middle man for a [salesman]. He would find people who wanted to buy [certain merchandise] and take them to a dealer; he was paid by commission. He did this until the end of 2009. He ceased because his god brother asked him to join him working on a farm. At that time people had come to Cambodia indicating that there was a good [Produce A] market and the price of [Produce A] was high. The applicant worked on the farm for nearly a year. It was situated in [Province 2] and was about [Distance 1] from his home. For a three month period the applicant went to the area 2-3 times a week to survey the place to find some suitable land that would be good for growing [Produce A]. The applicant's god brother was providing the capital for the venture and wanted the applicant to manage the farm. When they went to survey the area they had coincidentally met a [public official] who worked on the border who had convinced the applicant and his god brother to work for him. The [public official] told them that he had the equipment and the machinery. The [public official] provided the land for the farm.
27. Once it was settled the applicant went back to manage the farm in [2011] and stayed until the end of the year. They did not start immediately as they wanted to observe the [Produce A] market and it was a big investment of capital. There were [a number of] workers on the farm.
28. When the applicant went back he was not very involved in the planting of the [Produce A] as he was forced to be involved in illegal activities. He was forced to transport [illegally obtained goods] and to transport drugs. He used civilian and army cars and he was given an army uniform to wear so that it would be safer. He mainly transported items to Siam Reap. He did not get paid. He was told that if did not do this work he would be tortured. He had been threatened with a gun and he had been hit across the head with a gun on two occasions and still had the scars. He undertook this work for 6 months. Due to the fact he was involved in these activities he became scared for his life. The applicant was hit first by the [public official] who worked on the border and also by his boss who was in the army. His god brother did not know that this was happening. He was asked if his god brother noticed that he was not supervising or managing the farm. He said that his god brother knew that he was at the farm but did not know the details or of the illegal activities he was involved in.
29. After 6 months the planting stage of the [Produce A] was over and they allowed the applicant to go home. The applicant understood that he had to return after a short break. The [public official] also told his god brother about some other land that was in [Province 1]. The applicant refused to go and work in [Province 1]. After they finished planting the [Produce A] 3 workers had to stay at the farm. He refused to go back because previously there had been a killing at the farm [in] 2013. Someone came onto the farm and killed someone.
30. The tribunal asked the applicant how he refused to go back to work and he said that when he was telephoned and told there was another job he told them that he was busy with his business and could not do it. He was told that if he did not come back they would send the army to take him away. After that the applicant tried to flee. He went to Thailand for 4-5 nights. He did not stay there as he did not know anyone there, he could not speak Thai and he came to understand that Thai people did not like Cambodian people. When the applicant returned to Cambodia he did not return home but stayed in a different village in Siam Reap district.

31. The applicant claimed that he had to leave Cambodia because the people he had been working for were very powerful and it was not a good job or a permanent job from which he could earn a living.
32. The applicant was asked if there was a problem with the land on which the [Produce A] was grown and he said that he heard from the villagers that the land did not belong to the powerful men; they had grabbed it. The applicant asked his bosses about this but he was threatened. He continued to work for them after this because he could not withdraw himself.
33. When his mother saw his head injury she thought that he should not go home. She arranged his visa and paid \$15,000. It was put to him that this was a very large sum of money. He said that she borrowed from friends and also borrowed using the family home as security.
34. After the applicant left his mother was visited on one occasion in [2011] by a person who asked for the applicant. His mother told him that the applicant was working in a remote place.
35. The applicant believed that if he returned to Cambodia they would find him or kill him. He had brought the two uniforms that he had been provided with him to Australia. He was asked why he had done this and he said that they reminded him of a difficult time in his life.
36. The [army officer] and [public official] had not contacted his god brother. It was discussed with him that if they were looking for him they would have. He was also asked, if they had threatened to harm his family, why they had not done anything to his mother. He responded that he was the target the threats about his family were just to scare him and his mother lived in a crowded place which was safer.
37. It was discussed with the applicant that there were differences between what he told the delegate and his evidence to the Tribunal and these differences were outlined. The applicant responded that he did not have the opportunity to explain to the delegate as he was told not to go into details. He was also too scared to tell the full story and he did not think the Australian authorities could help him. A doctor at the detention centre had explained to him the importance of telling his story. He denied that he told the delegate the [Produce A] farm was in [Province 1] or that it was [Distance 2] from his home.
38. He was asked why he could not live somewhere else in Cambodia and he said that he did not know any other areas. He would have nowhere to live and no job. He was asked why he could not establish his [other] business and he said that he did not know people or have networks in other places.
39. The applicant also gave evidence that there were going to be demonstrations after the elections and that he feared that they would twist the truth to accuse him of being an opposition supporter. Powerful people who could do anything were after him.
40. The tribunal discussed his migration history with him and his failure to mention the concerns he had about returning to Cambodia at many stages when interviewed. When he was interviewed by Immigration compliance the only reason he provided for not wanting to return to Cambodia was that he wanted to support his elderly mother and he had a girlfriend in Australia who could sponsor him to remain permanently. He told the MRT he wanted to remain in Australia because he liked it and had a girlfriend here.

41. The applicant was invited to comment pursuant to s424AA of the Act regarding the differences between what he had told the tribunal and what he told the delegate and his failure to mention important aspects of his claims at an earlier time. The applicant responded at the second hearing.
42. In response the applicant said that what he had told the tribunal was no different to what he had told the delegate. The inconsistencies that the tribunal had raised were a result of the interpreter at the delegate's interview getting it wrong.
43. The tribunal clarified with the applicant whether he had told the delegate that he had been forced to be involved in drug trafficking and illegal [activity] and he confirmed that he had not told the delegate about these incidents. He said that at the detention centre he was too afraid to speak. He said that the interpreter misinterpreted where the plantation was and how far it was from his home, It was [Distance 1] not [Distance 2] as said by the interpreter and it was in [Province 2] and not [Province 1].
44. The applicant explained that when the [army officer] asked him to come back to the plantation the applicant did not pick up the phone when he telephoned as he did not want to communicate with him. Later on the [army officer] asked for some officials to look for him at home and after that the applicant avoided talking to him.
45. In [2011], the [army officer] in charge of the farm was organising a big event at a restaurant near the farm. He invited the applicant's god brothers and asked the god brothers to invite the applicant. The applicant did not go. His god brothers went and after they had been there a while one of them called the applicant and told him to come to the restaurant. The applicant did not want to go but the god brothers kept insisting, saying that the applicant worked on the plantation and had a responsibility to help at the party being held at the farm.
46. The applicant went to the party. His god brothers and the [army officer] discussed matters and called the applicant to the table. They invited the applicant to work with them and in return he would get a shareholding in a 1000 ha plantation. The applicant believed that this was just a trick to get him to go back and work for them. When the [army officer] mentioned the land the applicant told him that he did not want this land as it belonged to other people and there were a lot of problems with the land. The [army officer] was very angry with the applicant because:
 - The applicant had refused to work with him again
 - He had tried to avoid him
 - He felt that the applicant looked down on him by saying that he had grabbed other people's land.
47. The [officer] put a gun to the applicant's head. The applicant knelt down and begged for mercy. The applicant's god brother managed to calm him down and told the applicant to get out of the place. The applicant ran away and went home. Whilst the applicant was travelling home his god brother secretly telephoned him and told him not to go home so the applicant went to stay at a friend's place in another village in Siam Reap.
48. The applicant initially stated that he did not tell his god brothers that he had been forced into [illegal activity] and drug trafficking and beaten by the [army officer] because he was afraid that it would cause a problem. They could not intervene or protect him because they were not

military officials just business men who worked in the market. He was too afraid to tell them in case they lost their property. He was asked whether he wanted to warn his god brothers that they were involved with people who were involved in illegal activities and he responded that they did not know and he did not tell them until he tried to escape. He told them at the end of 2011 when he was staying with his friends. He understood his god brothers then asked the [army officer] about his allegations and his god brothers then told the applicant that he had problems with powerful people and that he should seek refuge.

49. People came to his mother's home looking for him about 5-6 times towards the end of 2011. They also had the house under surveillance. They also asked his neighbour where he was. It was put to him that at the previous hearing he had said that they came looking for him on one occasion in [2011]. He said that at the last hearing his mother had only told him about one visit. He was asked about the last time he spoke to his mother and he said it was a few days earlier and she had only said that things were a lot quieter. Because he was a [dealer of certain merchandise] and many people knew him and wanted to buy [merchandise] they were often asking his mother where he was and why he was not doing business.
50. The applicant said that he was afraid that if he returned to Cambodia powerful people would get him and give him a drug injection. That would be the end of him, he would be their slave or they would hand him over to the authorities and say that he was a drug trafficker.
51. They would want to harm him because he knew a lot about their illegal business. The applicant was asked why this would be a problem as he had never indicated that he would tell anyone. Further the applicant had indicated that they were powerful and connected to the police so there was no point telling the police about them. He said they were afraid that because he had this knowledge he was going to cause problems. They needed to shut him up. A lot of people were killed because of these types of problems.
52. As far as the applicant is aware the god brothers are still in contact with the [army officer] as they do not want to jeopardise their business interests. He did not know if the god brothers were involved in illegal activities. He just knew them because they came from the same village.
53. It was discussed with the applicant that if the military commander wanted to harm him he had the opportunity to do so at the restaurant or they could have followed him. The applicant said they did not harm him at the party as they did not want his god brother to lose face and he was warned by his god brother that he was being followed.
54. The applicant had not mentioned his fear of being injected with drugs before as he had not had the opportunity before- the interpreter left at the last hearing.
55. The applicant said that he would now be in more difficulty as the ruling party had won the elections. It was put to him that this would mean things would be the same. The applicant said that the ruling party let powerful people do what they like. They would find him wherever he went as he is well-known through his [business].
56. He was so afraid that he had asked the doctor in the detention centre to give him a lethal injection because he not to want to go back to suffer.
57. The applicant's agent submitted that the applicant did not have much respect for government authorities in Cambodia and that had carried through to his actions in Australia. The agent

shared his view, coming from the same country. The agent had read a report that drug injections are given forcibly to people in Cambodia. There was no protection from powerful people in Cambodia.

Confiscation of the family's land

58. The applicant was consistent in his account regarding the confiscation of some family land by the Cambodian authorities. The tribunal accepts that in 2009 a portion of applicant's family's land was confiscated by the Cambodian authorities to build a road. The tribunal accepts that the family received no compensation for the compulsory acquisition and that they had lodged an application for compensation with the provincial authorities and received no response.
59. The tribunal accepts that the confiscation of the land had a detrimental effect on the family. However the applicant's mother continued to live in the house and the loss of the land did not threaten the applicant's, or his family's, capacity to subsist. The tribunal finds that it did not amount to serious harm within the meaning of s 91R(1)(b) of the Act.
60. Further the tribunal does not accept that the confiscation of the land amounts to significant harm within the meaning of s5 and s36(2A) of the Act.
61. There is no material before the tribunal that would suggest that the applicant's family is at risk of having further land confiscated in the future. The tribunal finds that there is no real chance that this would occur in the reasonably foreseeable future. *MIAC v SZORB* [2013] FCAFC 33 is unanimous Full Federal Court authority for the proposition that the 'real risk' element of the test in s.36(2)(aa) is the same as for s.36(2)(a): namely, is there a 'real chance' an applicant will suffer significant harm if returned to their country of nationality? Therefore the tribunal finds that there is no real risk that the applicant's family would have property confiscated.

Fear of harm connected to the applicant's work on the plantation.

Credibility

62. As discussed with the applicant there were considerable differences between what he told the delegate and what he told the tribunal and he raised new claims with tribunal that had not been mentioned in interview with the delegate or in his protection visa application. There were also differences between his evidence at the first tribunal hearing and the second tribunal hearing. He raised further new claims at the second hearing relating to being forcibly injected with drugs.
63. The applicant's initial explanation for the differences was that there were no differences. He then confirmed that he had not told the delegate about being forced to be involved in drug trafficking and illegal [activity].
64. The applicant maintained that he said that the plantation where he worked was [Distance 1] from his home (not [Distance 2]). The tribunal re-listened to the recording of the delegate's interview and accepts that the answer was indistinct and that he said [Distance 1]. However it is clear that from the recording the applicant said the plantation was in [Province 1] whereas now he is maintaining that it was in [Province 2].
65. The applicant provided three reasons for not mentioning his involvement in drug trafficking and illegal [activity]. The first was that he claimed that he did not have the opportunity, the

second was that there were interpreting errors and thirdly was that he was not comfortable talking about these matters until he spoke to the doctor at the detention centre who told him that he must tell everything.

66. The tribunal does not accept that the applicant did not get the opportunity to put his claims to the delegate. He was asked open ended questions and at the end of the interview asked if there was anything else he wanted to say.
67. The applicant is represented by a Khmer speaking agent who was present at the delegate's interview. The agent did not raise concerns that the applicant had not had the opportunity to state all his claims nor were any issues raised with the interpreting. As the applicant has been represented he should have understood the importance of setting out all of the reasons why he believed he was at risk if he returned to Cambodia. The tribunal does not accept that it was interpreter errors that resulted in the discrepancies, nor does the tribunal accept that the applicant did not appreciate that he needed to discuss his whole story.
68. The applicant's evidence as to the length of time he spent at the farm and when he was there was different when interviewed by the delegate. He told the delegate that at the beginning of 2011 he started working on the farm. He stayed on the farm for two to three months and supervised [a number of] workers. He then had a disagreement with the boss about who owned the land and left. When it was put to him that this must have been about 12 months before he left Cambodia he said that he was in hiding for 6 months at a friend's home.
69. He told the tribunal that he initially went to the area in 2011 to research the market. In [2011] he went back to stay and remained there until the end of the year. He stayed there for about 6 months.
70. The tribunal also notes, as outlined in the delegate's decision, that when the applicant was interviewed by immigration compliance officer they only reason he gave for not wanting return to Cambodia was that he wanted to support his elderly mother and he had a girlfriend in Australia. He did not mention that he feared anything in Cambodia. He told the MRT he wanted to stay in Australia because his girlfriend was here.
71. The applicant did not mention to the tribunal the main basis of his claim to the delegate, that he had protested about farming land that had been illegally seized, until prompted by the tribunal. He then provided a different account of being called back to the plantation to attend a social event, making this complaint and being threatened with death. Given that the applicant had claimed that he had at this stage been threatened and tortured and forced into illegal drug trafficking and [activity] the tribunal finds it implausible that he would at a social function stand up to those that were inflicting this harm and criticize them for farming on illegally seized land. Further if the offence the applicant gave was so great that they wanted him dead they could have harmed him at the function or if they did not want to disrupt the function and offend the god brother they could have followed him outside to harm him or follow him from the function. Yet according to his account they let him go. He claimed he was followed after he left the function yet they did nothing.
72. The tribunal had regard to the Guidelines on Credibility and also on Vulnerable Persons and considers that undue weight should not be placed on a degree of confusion and omission in accounts given at various stages of the proceedings. The tribunal notes the applicant has spent some time in detention is mindful of the effects that trauma can have on an individual. When assessing credibility, it is important to be sensitive to the difficulties often faced by asylum

seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but who are for instance, unable to otherwise substantiate all of their claims. However, this does not mean that inconsistent evidence, implausible evidence, internally inconsistent evidence and the inclusion of late claims are unimportant or should not reflect on credibility. While the benefit of the doubt should be given to applicants who are generally credible but unable to substantiate all of their claims, the tribunal is not required to accept uncritically any or all allegations made by a claimant. See *Randhawa v MILGEA* [1994] FCA 1253; [1994] FCA 1253; (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* [1994] FCA 1105; (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* [1998] FCA 1126; (1998) 86 FCR 547.

73. The tribunal finds that the new claims raised by the applicant at the first tribunal hearing were recent inventions to make the treatment he had received in Cambodia more serious. Further the new time frame was an attempt to shore up some of the deficiencies in the case he presented to the delegate particularly the issue regarding how long he remained in Cambodia after he was threatened.
74. Further due to the inconsistencies in the applicant's account and the fact he failed to mention important parts of his claims at an earlier stage and the implausible nature of some of his evidence the tribunal does not accept that the applicant was the supervisor of a farm where he complained to those in charge that they had illegally seized other people's land for the farm. Consequently the tribunal does not accept that those in charge attempted to harm him and threatened to harm him as a result of his disclosures.
75. The tribunal does not accept that the applicant was forced to participate in drug trafficking or illegal [activities]. The tribunal accepts that the applicant has a scar on his head but does not accept that it was inflicted in the manner described by him, namely by being hit with a gun by those who were forcing him into drug trafficking and illegal [activity]. The tribunal accepts that the applicant brought Cambodian army uniforms to Australia but does not accept that these uniforms were given to him to use in illegal activities in Cambodia.
76. The tribunal does not accept that there are people in Cambodia connected to the farm who want to kill or seriously or significantly harm him, including forcibly injecting him with drugs. The tribunal does not accept that he would be made a slave and that he would be accused of being a drug trafficker. The tribunal does not accept that there are powerful men in Cambodia who want to harm the applicant because he knows about their illegally activities or for any other reason. The tribunal does not accept that someone was killed at the farm in [2011]. The tribunal finds that the applicant had fabricated his claims for refugee status.
77. According the tribunal finds that there is no real chance that the applicant would be persecuted in the reasonably foreseeable future if he returned to Cambodia and for these reasons or that there are substantial grounds for believing that as a necessary and foreseeable consequence of being removed from Australia to Cambodia there is a real risk that he will suffer significant harm for these reasons.

Will he be imputed with a political opinion?

78. The tribunal does not accept that the recent election in Cambodia will mean that he is at risk of serious or significant harm. The applicant has made no claims that he has ever been involved in politics in Cambodia. The applicant does not accept that he would suffer serious or significant harm as a result of post-election demonstrations. The tribunal does not accept

that there is any reason why, and no real chance, he would be accused of being an opposition member or supporter of the opposition or be harmed at a demonstration in the reasonably foreseeable future if he returned to Cambodia. Any fear of persecution on this basis is not well-founded.

79. For the same reason the tribunal finds there is no real risk that he would be accused of being an opposition member or supporter of the opposition or be harmed at a demonstration and that this would result in him suffering significant harm on return to Cambodia.
80. The tribunal finds that the applicant does not have a well-founded fear of persecution for reasons of any Convention ground and that he is not a refugee.
81. The tribunal is satisfied that there are no substantial grounds for believing that as a necessary and foreseeable consequence of being removed from Australia to Cambodia there is a real risk that he will suffer significant harm.
82. 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).
83. 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).
84. 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

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

Wendy Boddison
Member