

**0805569 [2009] RRTA 2 (2 January 2009)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0805569  
**COUNTRY OF REFERENCE:** Nepal  
**TRIBUNAL MEMBER:** Jennifer Ciantar  
**DATE:** 2 January 2009  
**PLACE OF DECISION:** Sydney

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

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Nepal, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights.
3. The applicant sought review of the delegate's decision
4. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
5. The matter is now before the Tribunal.

### RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### Definition of 'refugee'

9. 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.
10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204

CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. 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.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. 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.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## CLAIMS AND EVIDENCE

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. In a statement provided with his visa application, the applicant states [details about the applicant family composition & education deleted under section 431 of the *Migration Act* as it may identify the applicant] he set up a small retail shop and continued it for many years but he could not make a profit so he decided to close it and he opened another business, which ran well. The situation in the country was good because the Maoists were not around and a large number of foreigners used to travel to Nepal and so the applicant made a good profit. However, terrorism in the country started. The Maoists started to commit murder, destruction and looting in villages and as a result, the number of foreign tourists to Nepal substantially fell, which caused a decline in the profit of his business
21. The applicant further states that he had an opportunity to learn about Christianity because many of the tourists who used his business were foreigners and asked the applicant about his religion. He told them that his country is Hindu and that he follows the Hindu religion as the royal family had been governing the country from the beginning. An American tourist gave the applicant a Bible and advised him to read it so that he could understand about Christianity. However, the Hindu religion dominated the Nepalese society. It has been a few years since the applicant converted to Christianity but his family follow the Hindu religion. The applicant and his immediate family follow Christianity and the applicant converted from Hinduism to evangelical Christianity to which he is committed. He will be persecuted for reasons of his religion because the Nepalese law bans proselytising. The applicant fears harm and ostracism as a result of his conversion to Christianity from Hindu extremists and the authorities will not or cannot protect him in such a situation. The applicant has been ostracised by his parents, relatives and neighbours and the authorities and the Maoists because of his conversion to Christianity. He fears ostracism and persecution due to his religion if he returns to Nepal.
22. The applicant provided the Department with a submission and information regarding the treatment of Christians in Nepal, the treatment of Christians in India, the political situation in Nepal post and prior to the royal coup of 1 February 2005, and Amnesty International articles and reports on Nepal.
23. The submission states that the applicant has a well founded fear of persecution in Nepal for three reasons:
  - He is an evangelical Christian who is committed to sharing his faith and sharing the Gospel with non-Christians.
  - Secondly, because of his imputed political opinion: as a Christian the applicant would be perceived by Maoists as belonging to a foreign NGO.
  - Thirdly, because of his membership of a particular social group that is, persons who have returned from a Western country.
24. It is submitted that the recent changes in Nepal, which are summarised in the submission, have led to an increase in the persecution of Christians in Nepal, especially converts who were actively involved in sharing their faith. The Maoists in Nepal are also opposed to churches,

Christianity and persons who share the Christian faith. Proselytising is prohibited and it is submitted that article 19 of the Nepalese constitution is not a law of general application and that the law prohibiting proselytising is persecutory and not prosecutory. The 2005 US Department of State report on International Religious Freedom notes that those who choose to convert to other religions, in particular Hindu citizens, who convert to Islam or Christianity, sometimes are ostracised socially. It is also submitted that there is clear evidence of the inability of the current government to protect its citizens and internal relocation is not an option in Nepal, which is geographically small; the presence of an outsider would immediately create notice and the dominant role played by caste is particularly significant.

25. It is further submitted that relocation to India is not an option for evangelical Christians who believe that proselytising is an essential part of practising their Christian faith. There are anti-conversion rules throughout the country in various States and wider societal hostility towards people who convert from the Hindu faith to other religions, including Christianity.
26. In a letter, a Senior Pastor, advises that the applicant has become an active member of his Church. The applicant has recently come to Australia from Nepal where he became a Christian and was an active Christian. He was involved in sharing the Gospel message in location Z, Nepal. Because of the lack of a church in his home district, he had a limited opportunity to grow in the Christian faith but it is clear to the Pastor that the applicant is sharing his faith with his friends and acquaintances, some of whom he has brought to the church. The Pastor states that the amount of knowledge a person has about Christianity has little bearing on their effectiveness in reaching “the lost”. The real issue is the person's willingness to share what they have experienced and learnt.
27. The Department conducted an interview with the applicant, which can be summarised as follows.
28. He first became interested in Christianity some time ago He was attracted to Christianity because he used to run a business for tourists. An American guest asked the applicant what religion he believed in and the applicant said he believed in his religion (Hinduism) but the American gave him a bible, which he didn't understand. He went to a bookshop and got a Nepalese bible and he read it and believed in Christianity. In the bible it is written that unlike Hinduism or Buddhism, where you have to give money, Christianity only requires faith, not money. He has been baptised in Australia but there was no church in Nepal and it was problematic to be baptised. He was baptised a few weeks earlier. Baptism involved descending into water and to forget past beliefs and from that day, the baptised person is the son of Jesus and a Christian. Two pastors also went into the water. In Nepal, he lived in a village where there was no church. Sometimes he went to City A and then he would go to church. He went once in another area and once in City A He didn't belong to any particular church or join any Christian organisations. He can't name any of the major Christian organisations in Nepal.
29. When asked by the delegate why he decided to become an evangelist, the applicant stated that it's been written in the bible that Jesus died 2000 years ago but his blood is still alive and he has told us to believe in him. If we all believe in him then everyone can get what they want. When asked why he wants to share Christianity with others, the applicant stated that it is not enough for only him to follow, as it is written in the bible that once you believe you have to spread and convince others. The applicant stated that he did some evangelising in Nepal but not very actively. He would ask people who did not look in a good or normal way if they knew anything about Jesus and if they said that they don't know, he would tell them. When asked who in particular he asked about Christianity, the applicant said the younger generations, with

a family, in his village. When asked of their reaction when he talked about Christianity, the applicant stated that in Nepal, they follow the Hindu religion and know nothing of Jesus. Some were positive and some were negative in their reaction. When asked if any converted, the applicant stated that he could not evangelise in an active way and the situation in Nepal is not appropriate so probably no one became Christian due to him. When asked if he had problems with authorities, the applicant stated that he had a business and authorities asked for a donation and he gave a little but not as much as was requested. When asked if he had problems with authorities due to religion, the applicant stated that believing in the religion was not problematic but spreading the religion was. There is a group of rebel army called Shiva Sena and they threatened him that it would not be good if he spread religion around. They threatened him with 6 or 10 years in jail. He thinks that they were operated by the government but not directly.

30. When asked if he is familiar with the bible, the applicant stated that it is difficult to understand the bible. When asked what the first book of the bible is, the applicant stated that he does not know. When asked if he is familiar with the Old Testament the applicant stated that in Nepal he did not get a chance to become familiar but here he did. When asked to name any of the people in the Old Testament the applicant said that he could not. He had not heard of Moses. Once he came to Australia he heard from pastors of Adam and Eve but he does not know who they are. When asked if he is familiar with the New Testament the applicant stated that he is just learning now. When asked if he knows the difference between the Old Testament and the New Testament the applicant stated that he has one old and one new Nepalese bible. When asked whereabouts in the bible Jesus appears the applicant stated in the New Testament. The applicant could not name any books of the New Testament. The applicant did not know which books are the Gospels. When asked what is the message of the Gospels the applicant said that everything is in English and he does not understand English. The applicant stated that Jesus died for us 2000 years ago. When asked if he is familiar with Jesus and what he did in his life, the applicant stated that he is learning now. The applicant stated that he is learning a little bit about Jesus now but doesn't know much in depth. When asked if he can name any of the miracles Jesus performed the applicant said he could not. He could not name any of the stories in the New Testament. He had not heard of the story of the Good Samaritan or Mary Magdalene. When asked where Jesus was born the applicant stated that Jesus was born in America and the applicant does not know where he died. When asked how many disciples Jesus had, the applicant said he did not know.
31. The delegate put to the applicant that he claims to have talked to people in Nepal about Christianity but he has little basic information so what did he tell people when he evangelised; what did he say was good about Christianity? The applicant stated that he said that Jesus died and he left a message to do good work and not to lie to anyone, to love each other and if you know any skills then share with others. When asked what happened after Jesus died, the applicant said that he did not know. He has not heard of the resurrection or rising from the dead. When asked if he knows that Jesus rose from the dead, the applicant stated that he did not know.
32. The delegate asked the applicant if he fears anything else if he returns to Nepal (apart from due to him being a Christian). The applicant stated that he used to run a business in his village and to survive, he had to give a little money to Maoists, just what he could afford and not what they asked. When asked if he had been harmed the applicant said that they would stop him running his business. They asked for money and if he didn't give money they would shut the business down. They sent a letter every month and he had to give money every month and if

not, they would send a warning. When asked what they would do to shut the business down the applicant said he couldn't give the money requested. The applicant stated that his business has been shut down by Maoists and also due to his own problems. The applicant said it was difficult to run the business and he had to give money and there were no tourists in his area. When asked if the Maoists were targeting him in particular, the applicant stated that the Maoists asked tourists for donations too. His business shut down one year ago and he did not realise that he had to put this in his statement.

33. When asked where his wife is, the applicant stated that she is in Nepal. His wife does not work. She used to work in the village
34. The Tribunal wrote to the applicant and invited the applicant to comment on information that might lead the Tribunal to refuse the application including information given by the applicant to the delegate at the interview. The applicant responded. The applicant stated that he believed that the record of interview with the delegate was inaccurate for a number of reasons including interpreting errors. The applicant stated that he is a sincere Christian whose proselytising activity is as much a part of his religious practices as prayer, worship and Bible study although he is still dependent on other Christians to share the gospel with non-Christians. He cannot practise his religion privately but must share his experiences with others and encourage them to convert to Christianity. The applicant submitted that his lack of basic knowledge of Christianity is not a reason to assume that he is not an evangelical Christian or that he is not involved in spreading the word of Jesus Christ. His knowledge should not be equated to that of a person with a Christian family background. The applicant is from a poor rural area with a non-Christian background and low-level of the education. It was unfair that the delegate did not refer to the applicant's ability to read the Bible but referred to the applicant's credibility based on lack of knowledge about Christianity. The questions used by the delegate to test the applicant's knowledge of Christianity and the birthplace of Jesus Christ were not fairly put.
35. The applicant also provided a letter, from a Senior Pastor, which stated that the Pastor cannot comment on whether the applicant was an evangelical Christian before he came to Australia as he did not know him before the applicant started to attend the Church. The Pastor stated that the applicant's lack of knowledge is consistent with his claim that prior to coming to Australia, he had only been to church twice and had no teacher. Also, he was reading the Bible in a foreign language. It is unrealistic to expect the applicant to have knowledge of the story of the resurrection of Jesus Christ. The applicant is likely to have begun reading the Bible from the beginning, he had only been a Christian for a short time, and has little English, and little instruction. The applicant acknowledged that he found the Bible difficult to understand. The Pastor guessed that if the applicant had been reading the Bible for a short time it is likely he would not have read much, if any, of the Gospels and would only have read the Old Testament so he would not know about the story of the resurrection or even the life of Jesus. The Old Testament and New Testament would have had no meaning for him and the names of people in the Bible would be difficult for him to understand, as he was reading the names in English not Nepalese. The applicant's lack of knowledge of the Gospels, the miracles and the New Testament stories is consistent with a person reading the Bible with no guidance.
36. In regard to the issue of what sort of message a person with such limited knowledge could present to be considered an evangelist Christian, the Pastor states that the delegate displayed a total lack of understanding of the religious knowledge of the common people in Nepal. Common people know very little about their faith and its teaching but they can still be strong in their faith and believe it is right even if they cannot explain it. The Pastor is impressed with the applicant's grasp of basic Christian values, displayed when he said the following: to do

good work, not lie, to love each other and to share skills with other people. These values may seem normal for us but not for a Nepalese Hindu world. The Pastor comments that the level of biblical understanding in the Nepalese church is very low. The Church has only existed for 50 years in Nepal and the Pastor's observation from travels in Nepal is that anyone who has been active in the Church for more than six months would have a greater biblical knowledge than the average village pastor.

37. The Pastor also writes that people rarely become Christians because they understand the message of the Christian faith. It is not the knowledge of the gospel but the demonstration of the gospel that attracts people. The Church has made evangelism its focus and the Centre has grown by 25% in last year. In the last six months over 150 people have visited the Church and 70% have become active members, most coming from non-Christian backgrounds. This shows that the Church knows how to evangelise. The Pastor states that the amount of knowledge a person has about Christianity has little bearing on their effectiveness in reaching the lost. The real issue is a person's willingness to share what they have experienced and learned.
38. In a further letter, the Pastor advises that the applicant has been attending the Church, both the Sunday services and the Nepalese fellowship when possible but his work commitments do not allow him to come every time. The applicant is also sharing his new faith with his friends and acquaintances in the Nepalese community. The applicant's English is poor but improving and he is limited in what he understands of the Sunday sermon. It will take a person from a non-English background a longer time to acquire biblical knowledge, as the Church encourages people to stay in the English medium. The applicant is not well educated and even with good English he would be slow to grasp the biblical concepts that a person from an educated background would grasp. The Pastor states that a person's ability to evangelise is not determined by the amount of knowledge a person has but by their willingness to share what they have experienced and the applicant is involved in this activity.
39. The applicant appeared before the Tribunal.
40. The applicant's evidence to the Tribunal can be summarised as follows. The applicant stated that he was given a bible by a person using his business and he had this translated into Nepali. The Tribunal asked the applicant about an answer he gave the delegate when he said that Jesus was born in America. The applicant stated that he did not understand the question, as there were a lot of questions and he mistakenly said America. He meant to say that he received the bible from the American person. The Tribunal indicated that it would ask the applicant similar questions to those asked by the delegate because the Pastor writes that the applicant has been doing study since he has been in Australia. When asked who is Moses or Adam and Eve the applicant stated that he did not know. When asked how Christ died the applicant stated that he died for our sins, hanging on the cross.
41. The Tribunal asked the applicant if he thought he had succeeded in having others believe in Christianity. The applicant stated that it depends on the person and if he has their trust. It is the same whether a Christian is in Nepal or Australia, or anywhere in the world. When asked if he had converted anyone in Nepal the applicant stated that he tried unsuccessfully to convert his neighbour. The applicant stated that he left Nepal as he had a problem living in the village. He used to have a business and Maoist villagers demanded donations and when he refused, they gave him warnings. When asked if he moved to City A the applicant said that he sold his house in the village, left his family in City A and came to Australia. The applicant stated that in Australia, he works. He does not work on Sunday. The Tribunal put to the applicant that the Pastor says that he does not attend Nepalese fellowship or Sunday services all the time,



because of work commitments. The applicant said that he had been sick for 3 or 4 weeks and that he told the Pastor but he probably did not know that the applicant was sick. The Tribunal put to the applicant that the Tribunal could not understand why the Pastor said the applicant was prevented from attending by work commitments if the applicant did not tell him this. The applicant stated that the Pastor may have guessed, as the applicant did not contact the Pastor at that time.

42. When asked if he has converted anyone in Australia the applicant said that he has not but he is thinking of it. When asked why he has not engaged in conversion activities to date the applicant stated that when he arrived in Australia, he did not have enough money and he tried to borrow money and he did not have enough time to do any activities.
43. The representative drew the Tribunal's attention to the letters of the Pastor about the applicant's education and level of knowledge required for conversion. The applicant has been baptised. The applicant stated that he has no freedom in Nepal and it is dangerous for him. The Tribunal put to the applicant that the letter from the Pastor says that the applicant is sharing his faith with others in the Nepalese community. The Tribunal asked the applicant what this means. The applicant stated that he converted to Christianity and he believes in God, and God says to have friendship with everyone and there are many Christians in the Nepalese community and he discusses (it) with them and joins them. The Tribunal told the applicant that there is evidence that evangelising Christians in Nepal face danger and to find that the applicant faces danger in Nepal the Tribunal has to find that the applicant is committed to evangelising. The Tribunal would expect someone so committed to their religion to be a strong church attendee but the Pastor says the applicant does not always come to church due to work commitments but the applicant said it was due to illness. The Tribunal said it did not find this very convincing and referred to the provisions of s.91R(3). The Tribunal stated that due to his concerns about the applicant's evidence and his serious concerns about the Pastor's letter, the Tribunal intended to write to the applicant.
44. The Tribunal wrote to the applicant. The applicant responded by stating that at the hearing he said he was sick on two Sundays and so failed to attend church and notify the Pastor but he did not say that he had been sick for three or four weeks. The Pastor would have referred to work commitments because he heard a rumour from other Nepalese members of the centre that a lot of Nepalese members work, even on Sundays. The applicant further stated that as he is new to the country and from non-Christian background with a low level of education, it would be unreasonable for him to try to convert anyone in Australia while he is still learning the religion. In order to live, he had to find a job and he has concentrated on employment but many Nepalese and non-Nepalese people know that he is committed to Christianity in spreading the word of Jesus Christ and sharing his faith that Jesus is God. Spreading the word of Jesus Christ in Nepal carries a huge risk of being harmed or killed by the Maoist and Hindu extremists. Maoists demanded money simply because the applicant was Christian and they made him sell his business to pay them and avoid harm.
45. The Pastor wrote to the Tribunal and advised the following His ability to communicate with the applicant is limited because of the applicant's low level of English. When the applicant had been absent from church for a couple of weeks the Pastor assumed that he was working, based on information provided by another Nepalese person. When the Pastor previously stated that the applicant is 'sharing his new faith with his friends and acquaintances' he meant that he had noticed that the applicant brought some Nepalese friends to the service on Sunday, which the Pastor considers to be part of sharing one's faith. However, the applicant did not consider inviting someone to church to be part of sharing his faith. The applicant sees sharing his faith

as the actual presentation of the Gospel message, which he is in the process of understanding. The Pastor and the applicant have a different, but not contradictory, understanding of 'sharing his faith'.

46. The applicant appeared again before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Nepali (Nepalese) and English languages.
47. The applicant was represented in relation to the review by his registered migration agent.
48. The applicant stated that he has continued to practise as a Christian since arriving in Australia. However, his English is weak and he has been making every attempt to understand what is written in the Bible. His Bible is in Nepalese. He attends a religious service once a week or once a fortnight on a Sunday. The service is conducted in English but there are a large number of Nepalese people and afterwards they sit together and try to understand what was said. Sometimes the pastor tries to explain to them in English what was said and other Nepalese persons who speak English also try to explain.
49. The applicant stated that he has borrowed a Nepalese Bible and he has purchased an English Bible. He reads the Nepalese bible alone. He does not attend any sort of Bible study class but he would if he had the opportunity to do so. He studies the Bible most often when he is at church. He attends church for one to two hours. Apart from about a 20 minute break for tea or coffee, the rest of the time is taken by the service. For about one to 1.5 hours they hear from the pastor and after this, they have tea and biscuits and talk about religion and God. The Tribunal asked the applicant if he has any other involvement with the Church apart from attending a service on Sunday. The applicant stated that on other days he is usually not involved with going to church unless the pastor calls him and tells him about other programs or activities. The Tribunal asked the applicant if he has participated in any other programs or activities and the applicant stated that he has not been invited to do so.
50. The Tribunal asked the applicant why he is afraid to return to Nepal. The applicant stated that he ran a business in Nepal and he was constantly harassed by Maoists who asked for donations and then he became involved in Christianity. He had a business and he met a person who was spreading the message of the Bible. The applicant confirmed that the person was an American to whom the applicant refers in his statement. When asked if the American spoke Nepalese, the applicant stated that there was another person who acted as a translator and helped the applicant understand what the American said. The American spoke about the Bible and its message, and about Jesus Christ, and he said that this religion was good. When asked what attracted him to Christianity, the applicant stated that was it was because of the honesty and it contains strong beliefs such as not hurting others and being good to other people.
51. When asked if he read the Bible in Nepal the applicant stated that he was given an English version by the guest but he could not read it so he purchased a Nepalese Bible which he did read. He met the American and he bought a Bible about two months after meeting him. When asked when he became a Christian, the applicant stated that after meeting the American he made every attempt to understand the Bible and it took him between one and three months before he made a commitment. When asked how he had gone about understanding the Bible, the applicant stated that it was very hard to understand and he is still trying to understand it.
52. The Tribunal asked the applicant if he had done anything else to become a Christian in Nepal. The applicant stated that there was a fear of Maoists at the time and it was frightening trying to

practise religion so he read the Bible in secret. The Tribunal asked the applicant which part of the Bible he first began reading. The applicant stated that there are many parts to the Bible but he started from the first part of the Bible which is about Jesus Christ. The Tribunal put to the applicant that in the English version of the Bible, the first part is the Old Testament, which is not about Jesus Christ but is about the creation of the world. The Tribunal asked the applicant if the Nepalese Bible is different and what is at the start of the Nepalese Bible. The applicant stated that he has not memorised it completely and he cannot remember.

53. The applicant stated that in his village there was no Church but he had attended church in City A. He was forced to close his business and he went to City A and stayed there until he came to Australia. He had attended church once. He had not attended more often as he was mostly preoccupied with finding accommodation for his family. The applicant stated that his extended family lives in the countryside and that he himself had not worked in City A.
54. When asked how he had obtained a visa to travel to Australia, the applicant stated that he was able to obtain a visa because he had a business through which he could obtain documents. He means the business in the countryside and he said that he was coming to Australia as a tourist. He travelled alone and he obtained the visa in India, as there is no embassy in Nepal. When asked why he had obtained a visa to come to Australia, the applicant stated that in the countryside, he had an intense fear of the Maoists and it was for this reason that he left the country. When asked why he feared the Maoists, the applicant stated that it was also because he took up the religion and because he could not give the donations that the Maoists sought. When asked why the Maoists wanted donations, the applicant stated that they were motivated by the applicant having a business and they thought that he must have made money. They asked the applicant for money numerous times but he could only give money twice. He could not afford to give them the amount they sought but he usually gave 25% or 50%. When asked why the business closed down, the applicant stated that it was a precaution, as he felt an intense fear and wanted to preserve the safety of his family.
55. The Tribunal asked the applicant if he had told anybody that he had become a Christian. The applicant stated that somehow the neighbours knew and there was no way that the applicant would have told the Maoists but he was afraid that the news would spread. When asked if anyone else in his family became a Christian, the applicant stated that there was his fear and so he did not have an opportunity to spread the message of God to his family, for example, his parents and siblings, so he only told his immediate family. When asked if his wife had converted to Christianity, the applicant stated that he is in Australia and she is in Nepal but she is studying a Nepalese Bible and trying to understand it.
56. When asked if he had spread the message of God in Nepal, the applicant stated that he did not get an opportunity to do so in the village or the countryside but in City A he spread the message of the Bible to two or three other friends with whom he discussed religion and its virtues. The Tribunal asked the applicant what was the message of the Bible that he was spreading. The applicant stated that the way he understood it, it is the true religion, there is no cheating, there is honesty and being truthful and this is the primary issue. The Tribunal put to the applicant that these are values about the way to live but could he explain about his beliefs based on the Bible. The applicant stated that he is still attempting to understand the Bible and he is weak when it comes to reading but he is trying to understand.
57. The Tribunal asked the applicant to explain his understanding of Christian beliefs. The applicant stated that other religions have statues and idols and tend to worship these things but in this religion, there is strong self conviction and deep faith and this is what attracted him. The

Tribunal asked the applicant what it is that he has deep faith in. The applicant stated that although what he has said does exist in the other religions, in his religion there is great emphasis on truthfulness. The Tribunal asked the applicant if he has developed much understanding of Jesus Christ. The applicant stated that he has. When asked to tell the Tribunal what he knows about Jesus Christ, the applicant stated that he is still trying to understand but he is also working, although he is making every attempt to understand. The Tribunal asked the applicant if he knows why Jesus Christ came to earth or why he was born. The applicant asked the Tribunal to repeat the question and then stated that he does not know. When asked if he knows why Jesus Christ died the applicant stated that he does not know.

58. The Tribunal put to the applicant that despite his claim that he has read the Bible for many years and that he has been going to church in Australia for some time, he still seems to have a very limited knowledge of Christian beliefs. The applicant did not respond. The Tribunal put to the applicant that although he lived in City A for some time where there are a number of Christian churches, he only went to church once. The Tribunal indicated to the applicant that the Tribunal has real concerns about whether the applicant was a Christian in Nepal.
59. The Tribunal asked the applicant how his neighbours found out that he was a Christian. The applicant stated that his neighbours came to his house once when the applicant was reading the Bible and then they had suspicions. The Tribunal asked the applicant if he had done anything else in Nepal apart from reading the Bible, speaking to his wife about Christianity and attending church once. The applicant stated that he left in great fear.
60. The applicant stated that he has not told his family that he is a Christian. [Information about the applicant's family composition & living arrangements deleted in accordance with section 431 of the *Migration Act* as it may identify the applicant.]
61. The Tribunal put to the applicant that the Tribunal has not found the applicant's evidence about his practice of Christianity in Nepal very persuasive. The Tribunal has to consider whether the applicant has primarily been practising Christianity in Australia in order to strengthen his claim that he is a refugee. If the Tribunal made such a finding it would have to disregard the applicant's practice of Christianity in Australia. The Tribunal indicated that during a short break the applicant could consider if he wants to respond to the concerns that the Tribunal has raised.
62. After a short break the Tribunal asked the applicant if he wanted to respond to the concerns raised by the Tribunal. The applicant asked the Tribunal to repeat its concerns, which the Tribunal did. The applicant stated that he has placed his entire life at the disposal of the Tribunal and it is up to the Tribunal to decide if the applicant and his family can live in peace and security. He has faced life-threatening situations in the past and this will occur again if he returns to Nepal.
63. When asked why he could not practise as a Christian in Nepal now, the applicant stated that there are people in the village and countryside who hold enmity and hostility towards him, they will be bitter and he will have no security. Because of this he would be unable to practise or study religion whereas in Australia, he can further his studies. When asked who would be hostile towards him the applicant stated that it would be the Maoists who still live in the countryside and who told him that he either gave money or he would be at risk.
64. The Tribunal asked the applicant if he could live in City A The applicant stated that the problem is that he has no income and he would have to pay rent and so survival would be very

hard. At least in the countryside, he has some land but there he would face certain death, as his life would be threatened, as he would be unable to provide money. The Tribunal put to the applicant that the political situation in Nepal has changed since he left. The applicant stated that the Maoists are now in government, which shows that they are running the country and have fooled the government but in the countryside, Maoists still harass ordinary people like him. The applicant stated that his family still live in the village where the applicant had a business. The applicant sold his house and went to live in City A. However, his family has given him some land although the income from the land is used by the applicant's family. The applicant stated that he continues to work in Australia and his wife manages on the money that the applicant sends her.

65. When asked why he could not live and work in City A, the applicant stated that it is because he is not well educated and his salary would not be much; he would have a family to support and it would be difficult. Also, people in the village would ask him for money once they found out that he was now back in the city. The village is located some distance from City A. The Tribunal asked the applicant why the Maoists would look for him when it has been many years since he left the village. The applicant stated that they have come to know that he is in Australia and if he returns, they would ask for money and make his life hell. He cannot imagine what they would do to him. They know that he went to Australia because his neighbours told them.
66. The Tribunal put to the applicant that the Tribunal was still having difficulty understanding why the Maoists would pursue the applicant if he lived in City A. The applicant stated that it would be because they had asked him for a donation and now that they know he has been in Australia, they will assume that he has more money and their demands will be higher. When asked when it was that the Maoists last demanded money of the applicant, the applicant stated that it was when he was living in the countryside. The Tribunal asked the applicant if the Maoists had demanded money from him when he was living in City A and he stated that they did not. He did not return to the village when he was in City A and at that time, the country had different rulers and the Maoists were scared of travelling to City A.
67. The Tribunal asked the applicant if there was any other reason that he could not live in City A apart from the Maoists asking him for money and him being unable to work. The applicant stated that his primary enemy is the Maoists, as it is they who he fears. He cannot return to the village, as certain Maoists will harm him, and now they are in government and everywhere.
68. The Tribunal put to the applicant that he has not said anything about religion being a reason why he could not live in City A. The applicant stated that he also would have no peace or security. If he returned to Nepal he would want to spread the word of God but this would be impossible. When asked how he would spread the word of God in Nepal, the applicant stated that there is no real possibility of doing this because of his fear that his life would be threatened. The Tribunal asked the applicant how he would spread the word of God if he was able to do so. The applicant stated that the primary criterion would be for him to have knowledge and a clear understanding of what is in the Bible and then he could go to the people and tell them what is in the Bible. The applicant stated that he has not spread the message of God in either Nepal or Australia.
69. The applicant confirmed that he has only told his wife of his Christianity and not his parents, as in Nepal he was afraid of being harmed. He has spoken to his parents since he came to Australia but not about his religion.

70. The Tribunal asked the applicant if he had had problems with anyone else in Nepal apart from the Maoists and he stated that he had not. The Tribunal asked the applicant if he feared anyone apart from the Maoists if he returned to Nepal and he stated that he did not fear any one apart from the Maoists.
71. The applicant stated that he was told of the Church through a friend and he began attending a few weeks after his arrival in Australia.
72. When asked if he wanted to say anything else, the applicant stated that he fears returning to Nepal and he fears for the safety of himself, and his family. The Tribunal asked the applicant if his wife has had any problems since the applicant has been in Australia The applicant stated that he speaks to his wife by phone and she has had problems finding food and accommodation.
73. The Tribunal put to the applicant that since the ceasefire and the elections this year independent information indicates that the human rights situation in Nepal has improved. The applicant stated that Maoists now run the government and the country but minor Maoists run the countryside.
74. The Tribunal asked the applicant if he could relocate to India. The applicant stated that he would not have security in India as he has little education and he would be restricted in his employment, as would his wife.
75. The Tribunal asked the applicant if he has anything else he wanted to say and the applicant stated that he has nothing further to say.
76. The Tribunal wrote to the applicant and the relevant part of the letter is as follows:

You are invited to comment on or respond to information that the Tribunal considers would, subject to any comments or response you make, be the reason, or a part of the reason, for affirming the decision that is under review.

The particulars of the information are:

- In your statement, which you provided to the Department, you stated that you have been ostracised by your parents, relatives and neighbours and the authorities and the Maoists because of your conversion to Christianity. However, you told the Tribunal that you have not told your parents that you converted to Christianity and that your [family] gave you some land in the village and you give [them] the income from this land. [Details about the applicant's family living arrangement's deleted in accordance with section 431 of the Migration Act as it may identify the applicant].

This information is relevant as it may lead the Tribunal to find that the information you gave to the Department about the treatment you have received from your family due to your religion, is inconsistent with the information you gave to the Tribunal. The Tribunal may find that your parents are not aware that you have converted to Christianity and that you have not been ostracised by your parents because of your religion.

- In a letter, dated [date], [the Pastor of the Church], advises that you have become an active member of [Church]. [The] Pastor also writes that you recently came to Australia from Nepal where you became a Christian and where you were an active Christian. He writes that you were involved in

sharing the Gospel message in [location Z], Nepal. However, in a letter, dated [date], [the Pastor] stated that he cannot comment on whether you were an evangelical Christian before you came to Australia as he did not know you before you started to attend the Church.

This information is relevant as it may lead the Tribunal to find that [the Pastor] does not have any knowledge of your Christian practice in Nepal other than what you have told him since you came to Australia. This may lead the Tribunal to not accept information provided by [the Pastor] about your practice as a Christian in Nepal.

- In a letter, dated [date], [the Pastor of the Church], advises that your lack of knowledge is consistent with that of a person who has read the Bible in a foreign language, and with that of a person who has only been reading the bible for one year. [The Pastor] also states that the Old Testament and New Testament would have had no meaning for you and the names of people in the Bible would be difficult for you to understand, as you were reading the names in English not Nepalese. However, you told this Tribunal and the Department, at an interview conducted on [date] that you purchased a Nepalese bible after speaking to a [person] when you ran a [business] in Nepal. You told the Tribunal that you spoke to this [person] called [name] in [year] and since then, you have been reading a Nepalese bible as well as an English bible.

This information is relevant as it may lead the Tribunal to find that as you claim to have been reading a bible in your own language since [year], [the Pastor's] explanation that your lack of knowledge is partly caused by you having been reading the bible in English and for a limited amount of time is inconsistent with your own evidence that you have been reading a Nepalese bible for some years. This in turn may lead the Tribunal to not give any weight to [the Pastor's] explanation of why you appear to have little knowledge of Christian beliefs or of the contents of the bible.

- At an interview with the Department conducted on [date] you stated that you first became interested in Christianity about a year earlier. In a letter dated [date] [the Pastor] writes that you had only been a Christian for one year prior to coming to Australia. You arrived in Australia in [month, year].
- However, you told the Tribunal that you became interested in Christianity in [year] and you became committed to Christianity a few months later.

This information is relevant as it may lead the Tribunal to find that your evidence about when you converted to Christianity is inconsistent. This information, combined with the other information in this letter and your oral evidence to the Tribunal, may lead the Tribunal to not accept that you converted to Christianity in Nepal.

- You told the Department at interview that you did some evangelising in Nepal but not very actively. You said that you would ask people who did not look in a good or normal way if they knew anything about Jesus and if they said that they don't know, you would tell them. You said that in particular, you spoke to the younger generations, with a family, in your village. You said that some had a positive reaction and some were negative. You also said that that in Nepal, you could not evangelise in an active way and so probably no one became Christian due to you.
- However, you told the Tribunal that did not get an opportunity to spread the message of God in the village or the countryside but in [City A], you spread the message of the Bible to two or three other friends with whom you

discussed religion and its virtues. You also told the Tribunal that you have not spread the word of God in Nepal or Australia.

This information is relevant as the inconsistent evidence about where and how you spread the Christian message may lead the Tribunal to not accept that you did any proselytising in Nepal.

- You told the Department that there is a group of rebel army called Shiva Sena and they threatened you that it would not be good if you spread religion around. They threatened you with 6 or 10 years in jail. However, you told the Tribunal that in Nepal, you were only ever threatened by the Maoists who asked you for money when you were living in a village running a [business]

This information is relevant as it may lead the Tribunal to find that you have given inconsistent evidence about the persecution you claim to have experienced in Nepal. This may lead the Tribunal to not accept that you were persecuted because of your religion in Nepal.

- At the interview with the Department you were asked a number of questions about your religious beliefs. When asked if you are familiar with the bible, you stated that it is difficult to understand the bible. You said that you did not know what the first book of the bible is. When asked if you are familiar with the Old Testament you stated that in Nepal you did not get a chance to become familiar but in Australia, you did. When asked to name any of the people in the Old Testament you said that you could not. You said that you had not heard of Moses and you only heard of Adam and Eve after you came to Australia but you do not know who they are. You said that you are just now learning about the New Testament. When asked if you know the difference between the Old Testament and the New Testament, you stated that you have one old and one new Nepalese bible. You could not name any books of the New Testament. You did not know which books are the Gospels. When asked what is the message of the Gospels you said that everything is in English and you do not understand English. When asked if you are familiar with Jesus and what he did in his life, you stated that you are learning now but you do not know much in depth. When asked if you can name any of the miracles Jesus performed you said that you could not. You could not name any of the stories in the New Testament. You said that you had not heard of the story of the Good Samaritan or Mary Magdalene. When asked where Jesus was born you said that Jesus was born in America and that you did not know where he died. When asked how many disciples Jesus had, you said that you did not know. You told the Department that you did not know what happened after Jesus died and you had not heard of the resurrection or the rising from the dead. When asked if you knew that Jesus rose from the dead, you said that you did not know.

The Tribunal has noted your letter, the letters of [the Pastor] and your oral evidence to the previous Tribunal in which you responded to information put to you about the interview with the delegate. However, the information detailed above is relevant, as it may lead the Tribunal to find that your knowledge of the bible is not commensurate with your claim that you have been reading a Nepali bible since [year].

- You told the Tribunal that you have been reading a Nepali bible and an English bible since [year] You said that the beginning of the English bible is about Jesus Christ. However, the beginning of the English bible is the Old Testament; specifically, the beginning of the bible is about the creation of the



world and Jesus Christ is not mentioned until the New Testament. You told the Tribunal that you could not recall what is at the start of the Nepali bible. However, independent information indicates that the Nepali bible is a translation of the English bible and it contains the same contents as the English bible.

This information is relevant, as it may lead the Tribunal to find that the Nepali Bible is not different in content or order from the English bible and that any difference in content or form does not account for your lack of knowledge about the bible. This in turn may lead the Tribunal to not accept that you have been reading a Nepali bible since [year] or that you converted to Christianity at that time.

The inconsistency between the information you provided to the Department and to the Tribunal, combined with other information detailed above, may lead the Tribunal to doubt your credibility as a witness and to conclude that you have not given a truthful account of your experiences in Nepal.

The above information combined with your oral evidence given to the Tribunal may lead the Tribunal to not accept that you converted to Christianity in Nepal or that you were persecuted in Nepal because of your religion. If the Tribunal decides that you only commenced practising Christianity since you arrived in Australia and if the Tribunal is not satisfied that that you attended Church in Australia otherwise than for the purpose of strengthening your claim to be a refugee then the Tribunal must disregard your conduct in Australia. If the Tribunal makes these findings it would not be satisfied that you have a well founded fear of persecution and that you are owed protection by Australia.

77. The applicant requested an extension of time to respond, which the Tribunal refused. The applicant wrote to the Tribunal and advised that:

- He converted to Christianity in Nepal and he is firmly committed to following the principles of Jesus Christ – Truth Benevolence and Forbearance;
- After he spread the message of Jesus to some friends in City A it was known to his parents and relatives that he was a Christian and he was ostracised by his parents and relatives because of his faith. His [family] gave him land before he knew that the applicant was a Christian;
- He cannot relocate within Nepal or live safely in another part of the country including City A, as he has a real fear of serious harm from the Maoists and anti Christians; he had to live discreetly without openly practising his faith. He tried to persuade some young people to follow the principles of Jesus Christ;
- From his initial contact with an American tourist he has developed a strong desire to follow his faith and he can practise openly in Australia He reads the bible and cultivates himself everyday and his mental and physical wellbeing has improved. He does not attach to his own interests and he maintains a compassionate heart, considers others and pursues his beliefs. He would suffer in Nepal for his beliefs and his life would be at risk. Christian practitioners are misunderstood and betrayed and persecuted;
- He is certain that some anti Christian Nepalese spies have become aware of his participation in group exercises and activities;

- After cultivating Christianity his attitude has changed from pessimism to optimism;
- He cannot return to Nepal as the Maoists control the government and abuse human rights. Genuine Christian practitioners are especially the target of persecution.

## Independent information

### US Department of State Country Reports on Human Rights Practices - 2007

Released by the Bureau of Democracy, Human Rights, and Labor  
March 11, 2008

Nepal, a country of approximately 28 million, is in a state of political transition. It is operating under an interim political system: a parliamentary democracy with a powerless constitutional monarchy. Prime Minister Girija Prasad Koirala heads a multiparty coalition government, which includes members of the Communist Party of Nepal–Maoist (CPN-M). The interim parliament of 329 members was sworn in January 15, the same day the interim constitution was promulgated. The interim constitution provides for the election of a Constituent Assembly; commits Nepal to become a federal republic after the Constituent Assembly meets; strips the king of all formal powers; and makes the prime minister both head of government and head of state. The interim government twice postponed elections for the Constituent Assembly. The November 2006 peace agreement between the then-Seven-Party alliance and the Maoists ended the decade-long insurgency and called for the Nepal Police (NP) and the Armed Police Force (APF) to enforce law and order across the country. Authorities reestablished many police posts, but Maoists, or their subsidiary organization, the Young Communist League (YCL), prevented some from being reestablished and subsequently forced others to close. Numerous armed groups, largely in the Terai region in the lowland area near the Indian border, formed and engaged in attacks against civilians, government officials, members of particular ethnic groups, each other, or against the Maoists. Lacking political backing, police were often reluctant to intervene, particularly against the Maoists or YCL members.

Members of the security forces committed some human rights abuses during the year, and the Maoists/YCL and members of other small, often ethnically based armed groups committed numerous grave human rights abuses. Members of the Nepal Army (NA) were confined to their barracks in accordance with the Comprehensive Peace Agreement of 2006. A local nongovernmental organization (NGO) filed one rape allegation against soldiers from Siraha District and another against police in Kanchanpur District. Other sources did not present any additional allegations of violations. Members of the NP and APF occasionally used excessive and lethal force in response to continued demonstrations throughout the country. Maoists frequently employed arbitrary and unlawful use of lethal force, including torture and abduction. Violence, extortion, and intimidation continued throughout the year. Impunity for human rights violators, threats against the media, arbitrary arrest, and lengthy pretrial detention were serious problems. The government also compromised the independence of the judiciary, and society continued to discriminate against persons with disabilities and lower castes. Violence against women and trafficking in persons, mainly women and girls, continued.

An article dated 11 February 2008 from *Time International Asia* reports that there are fears that if the political situation does not improve, the army may choose to step in:

Nepal's Maoists once tried to topple the state. Now they are leading the Himalayan nation's political transition from monarchy to republic. But old animosities threaten the country's rebirth.

... The security situation in a Nepal under cease-fire is dismal. During the civil war, both the Maoists and the Royal Nepalese Army held brutal sway over segments of the country, but now, as they wait in their camps, law and order has deteriorated. Reports filter in every week of kidnappings for ransom. Last December, a Swiss trekker was beaten up after refusing to pay money to a few rogue Maoists, a worrying sign for a country heavily reliant on the money brought in by foreign tourists. Many in Kathmandu blame the Youth Communist League (YCL), created by the Maoists less than a year ago, for much of the disorder. Red YCL banners around parts of Kathmandu urge Nepalis to report "suspicious, reactionary activity" to cell-phone numbers emblazoned on the cloth. As soon as night falls in the capital--which, as a

bastion for the King's army, had been safe during all of the years of the civil war--the usually teeming streets grow deserted. "The police have no motivation at all right now," complains Kanak Dixit, editor of Himal magazine and an outspoken advocate of democracy. "There is an alarming surge in crime."

... Continued discord only strengthens the hand of the weakened King. Though the throne has lost much of its credibility under Gyanendra, many Nepalis still look to the institution as a source of stability and unity. "You can't legislate away the emotional link of the people," says Thapa. Others, including journalist Dixit, fear further squabbling and political anarchy could lead to a more ominous "right-wing backlash .. where royalist elements in the army would step in on the pretext of stability." Further heightening tensions, Prachanda, the Maoist leader, made noises as recently as November about returning the people's war to the jungle if progress toward a republic wasn't made. "Either through [the Maoists] or through the army," warns royalist Thapa, "we are going to see some sort of authoritarian solution" (Tharoor, I. 2008, 'Rebels With a Cause', *Time International Asia*, ed. 34, vol. 171, issue 5, 11 February – [Attachment 28](#)).

An article dated 2 February 2008 from *BBC Monitoring South Asia* reports that there is a danger of a coup if the present security arrangements are not resolved soon:

Conflict experts have said that there is a danger of a coup taking place if both the armies of the state and the Maoists are not restructured soon.

"If the Nepal Army, police and the Maoist army are not brought under democratic control soon, it will be difficult to consolidate democracy", conflict expert Shiva Hari Aryal said while presenting a working paper at a talk programme held at the Nepal Bar Association International Law Committee on Friday [1 February], adding, "It is urgent that both the armies and the police be brought under democratic control. If these are not restructured there is danger of a coup".

Another conflict analyst Shovakar Budhathoki said that the problem has worsened as the state has not been able to work out a special security policy and added that the briefs of both armies should be spelled out and a long term security strategy developed. He said politicization of the armed police, the Nepal Army and the civil police has made conflict resolution difficult.

"Integrating the rebel army into the national structure will not itself bring the national security apparatus to its knees but integration is not the only option", Budhathoki said, "The state should provide financial and social security guarantees for the Maoist troops that could not be verified, could not meet the standards or did not want to be involved in the security sector. Otherwise there is a possibility that they will end up once again in war or take to crime for their own livelihood".

International law scholar and advocate Sunil Pokharel said the 12,000 Maoist troops who were not verified should be taken care of before the constituent assembly elections, otherwise it will have consequences ('Coup danger for Nepal if army restructuring delayed – experts' 2008, *BBC Monitoring South Asia*, source: *Rajdhani*, 2 February – [Attachment 33](#)).

[Country information deleted in accordance with section 431 as it may identify the applicant].

## **The treatment of Christians in Nepal**

An overview of the situation for Christians in Nepal is provided by Christian Solidarity Worldwide – UK's (CSW-UK) Nepal country profile (which was updated in April 2006). The

profile reports that the situation for Christians in Nepal has undergone significant improvements in recent years thanks to more tolerant government attitudes towards Christians and, in particular, the 1992 repeal of the legal prohibition on conversion. CSW-UK finds that “[o]n the whole Nepal allows non- Hindus to practice their religion and to maintain their places of worship” and that “[i]n practice, there is relative freedom for Christians to assemble and worship”. Nonetheless, CSW-UK also notes that this “does not mean that [Christians in Nepal] are everywhere tolerated and never persecuted” In addition to suffering daily discrimination and institutional marginalisation, it is reported that Christians in Nepal have suffered episodes of violent attack in recent years and that proselytising remains an offence punishable by three years imprisonment. The report notes an April 2003 mob attack on a church in Gorkha district; the suspected extrajudicial killing of a Christian in Pokhara as an imputed Maoist; and a 2003 incident in which three Christians “were arrested for allegedly preaching Christianity”. It is also noted that “the Government has recognised [Hindu fundamentalist] groups such as Shive Sena whose objective is to demolish churches and drive out Christians and Muslims”. According to CSW-UK, “Christians face pressure from three main sources”: “Christians can find themselves targeted by militant Hindu groups”; “Maoist rebels in some areas harass Christians, threatening them if they attend church and forcing young Christians to join them under threat of death”; “and some are targeted by the government as suspected Maoist rebels”.

## US State Report on Religion 2008

### International Religious Freedom Report 2008

Released by the Bureau of Democracy, Human Rights, and Labor

The interim Constitution, promulgated on January 15, 2007, provides for freedom of religion; however, the interim Constitution also specifically prohibits proselytizing.

The interim Government took few steps with respect to religious freedom during the period covered by this report, although government policy contributed to the generally free practice of religion. The Government generally did not interfere with the practice of religious groups, and religious tolerance was broadly observed; however, there were some restrictions. The interim Parliament, through the interim Constitution, officially declared the country a secular state in January 2007; however, the Prime Minister, in his dual capacity as head of government and head of state, attended major Hindu religious ceremonies previously presided over by the King. No laws specifically affecting freedom of religion were amended. Members of minority religious groups occasionally reported police harassment. Authorities limited the location of and otherwise restricted many public celebrations by the Tibetan community, especially those with political overtones.

Adherents of the country's many religious groups generally coexisted peacefully and respected places of worship, although there were reports of societal abuses and discrimination based on religious affiliation, belief, or practice. Those who converted to a different religious group occasionally faced violence and were ostracized socially, but generally did not fear admitting their affiliations in public.

....

Proselytizing is illegal.

The law prohibits proselytizing, which is punishable by fines, imprisonment, or, for foreigners, expulsion. Personal conversion is, however, allowed. Some Christian and Muslim groups were concerned that the ban on proselytism limited the expression of non-Hindu religious belief. NGOs or individuals were allowed to file reports that individuals or organizations were proselytizing, and the Government investigated these reports.

Section III. Societal Abuses and Discrimination

Adherents of the country's many religious groups generally coexisted peacefully and respected places of worship. Hindus generally respected the many Buddhist shrines located throughout the country; Buddhists accorded Hindu shrines the same respect. Buddha's birthplace at Lumbini, in the southern part of the country, is an important pilgrimage site, and his birthday is a national holiday.

Some Christian groups reported that Hindu extremism increased in recent years, especially since the 2006 Parliamentary declaration of the country as a "secular state" instead of a "Hindu Kingdom." Of particular concern were the local affiliates of the India-based Hindu political party Shiv Sena, locally known as Pashupati Sena, Shiv Sena Nepal, and Nepal Shivsena. This group was accused of playing a role in the violence during the period covered by this report in the Terai, the southern area of the country along the border with India. Another Hindu fundamentalist organization, Ranbir Sena, set off small socket bombs twice during the reporting period. The first was outside the Maoist party headquarters; the second was at a park in downtown Kathmandu, located outside the International Convention Center, on the day the Constituent Assembly met there to formally declare the country a republic.

Some citizens were wary of proselytizing and conversion by Christians and viewed the growth of Christianity with concern.

Those who chose to convert to other religious groups, in particular Hindu citizens who converted to Islam or Christianity, were sometimes ostracized. They occasionally faced isolated incidents of hostility or discrimination from Hindu extremist groups. Some reportedly were forced to leave their villages. While this prejudice was not systematic, it was occasionally violent. Nevertheless, converts generally were not afraid to publicly state their new religious affiliations.

Nepal is apparently home to a plethora of Christian groups and has become, to quote one source, "a mission tourist center" (Stephen, A. 2000, 'The Church at the top of the world', *Christianity Today*, Volume 44, Issue 4, 3 April – [Attachment 18](#))

According to Marc Gaborieau, "there are about 200 protestant churches of various denominations in Kathmandu" alone. Furthermore:

[n]ow that preaching is done openly, it is possible to locate the large variety of Protestant denominations who are active all over the country: Lutherians, Baptists, Presbyterians, Methodists, Anglicans, Evangelicals, Adventists of the seventh day, Mormons, Witnesses of Jehovah, Pentecostists etc. There does not seem to be a common umbrella organisation uniting all these denominations: but three organisations which are actively engaged in uniting several of them, are The United Mission to Nepal (the oldest one established from the 1950s), The Nepal Christian Fellowship and the Nepal Bible Society (Gaborieau, M. 2002, 'Christian Minorities in the Hindu Kingdom of Nepal', in M. Hussain and L. Ghosh eds., *Religious Minorities in South Asia: Selected Essays on Post-Colonial Situations*, Volume 1, Bangladesh, Pakistan, Nepal, Sri Lanka, Manak Publications, New Delhi, pp. 101-103 – Attachment 16).

According to *Christianity Today*:

From 15,000 in 1970 to an estimated 400,000 Christians today, Nepal has one of the fastest-growing Christian populations among the 3.6 billion people throughout Asia's 51 countries, according to scholars in Christian missions...

...Today, more than a dozen American mission groups have more than 100 personnel in Nepal. In most cases, the Nepali government requires outside agencies to agree not to proselytize...

...Christians are encouraged to join small groups after their baptism. Nearly 300 such fellowships have mushroomed in Kathmandu. But over the years, those fellowships have led to denominational association (which was unknown before 1990) and, in a few cases, splintered congregations... (Stephen, A. 2000, 'The Church at the top of the world', *Christianity Today*, Volume 44, Issue 4, 3 April – [Attachment 18](#)).

Proselytising is expressly prohibited under Nepalese law. Clause 1 of the 1990 Constitution states, in part, that “no person shall be entitled to convert another person from one religion to another”. Likewise, section 3(A)(1) of 1992 Civil Code provides that “[n]o person shall propagate any religion in a manner likely to undermine another religion, or convert any one into another religion”. Section 3(A)(1) of the Civil Code also provides that:

In case he [the offender] has only made an attempt to do so, he will be punished with imprisonment not more than three years. In case he has already converted any one into another religion, he shall be punished with imprisonment for not more than six years. If he is a foreign national, he shall be deported from Nepal after completing such sentence (Regional Centre for Strategic Studies 1999, *New Evangelical Movements and Conflicts in South Asia, Sri Lanka and Nepal in Perspective*, ‘Christianity in Nepal: A Brief Historical Outline’, December [http://www.rcss.org/policy\\_studies/ps\\_5\\_4.html](http://www.rcss.org/policy_studies/ps_5_4.html) - Accessed 4 April 2003 – Attachment 4).

While laws such as these are on the books, it would appear that the state does not normally initiate and conduct legal proceedings against people for proselytising on its own accord.

As indicated by the Asian Center for Theology and Mission in 2000:

...of the many Nepali citizens who have been converted to Christ and baptized, only a very few have been arrested, brought to trial, and given jail sentences. His Majesty's government has chosen to take an attitude of “benign neglect” toward the law. Conversion to Christ is considered a “non-cognizable” offense, and **arrest and prosecution will be made only if someone makes a definite and determined complaint and charge against the new Christian** (‘Nepal’ 2000, The Asian Center for Theology and Mission—Resource Centre website <http://www.acts.edu/oldmissions/nepalhist.html> - Accessed 24 August 2005 – Attachment 5).

Christian sources also report that conversion remains a courageous act in Nepal and that “Christians still face ostracism and isolation from family members, neighborhoods and even entire villages in many cases” (‘Where folks go to church on Saturday’ 2004, Global Ministries website, September <http://www.globalministries.org/missionaries/sa10-wr3.htm> - Accessed 31 August 2005 – Attachment 14). Christian sources also note that the repercussions of converting can “include...being killed” (‘Nepal’ 2000, Mission Review website [cache of http://missionreview.com/index.php?loc=ct&ct=NPL&](http://missionreview.com/index.php?loc=ct&ct=NPL&) – Accessed 31 August 2005 – Attachment 30).

## FINDINGS AND REASONS

78. On the basis of the evidence before it the Tribunal accepts that the applicant is a citizen of Nepal as he has claimed. In assessing the applicant’s claims, the Tribunal is required to consider whether his fear is well founded and whether the treatment he fears amounts to persecution for a Convention reason.
79. The applicant claims that he fears harm in Nepal for the following reasons. He is an evangelical Christian who is committed to sharing his faith and sharing the Gospel with non-Christians. He specifically fears harm from the Maoists, who forced him to close down his business as they demanded bribes. Secondly, he fears harm because of his imputed political opinion on the basis that as a Christian, the applicant would be perceived by Maoists as belonging to a foreign NGO. Thirdly, the applicant fears harm because of his membership of a particular social group that is, persons who have returned from a Western country.
80. The applicant claims that he was Hindu and he became a Christian. The applicant’s evidence is that his practice of Christianity in Nepal amounted to talking to an American person about Christianity, reading the bible, talking to his wife, attending church once or twice including once in City A, and talking to 2 or 3 friends in City A. The Tribunal accepts that the applicant may have spoken to guests at his business about religion. However, for the following reasons

the Tribunal does not accept that the applicant read a bible when he lived in Nepal, or that he practised Christianity or evangelised in Nepal.

81. The Tribunal finds that the applicant has little knowledge of basic Christian beliefs, and the Tribunal does not accept that the applicant read the bible in Nepal. The applicant has given evidence that he finds the bible difficult to read and understand and the Tribunal has taken into account that the applicant has a low level of education. The Pastor writes that the applicant's knowledge of the bible is understandably minimal as he has been studying the bible in English, and he had no mentor in Nepal and no background in Christianity. However, the applicant gave oral evidence to the Tribunal that he has been reading a Nepalese bible as well as an English bible since he was introduced to Christianity by a guest at his business. Although the applicant claims to have been reading a Nepalese bible for many years, the Tribunal finds that the applicant displayed minimal knowledge of the contents of the bible either when interviewed by the Department or when he appeared before the Tribunal.
82. Specifically, the applicant could not remember the start of the bible and he did not know what the first book of the bible was. The applicant said that the beginning of the English bible is about Jesus Christ. However, as the Tribunal put to the applicant, the beginning of the English bible is the Old Testament, which is about the beginning of the bible and the creation of the world, and Jesus Christ is not mentioned until the New Testament.
83. The applicant could not name any people in the Old Testament. The applicant said that he had not heard of Moses and he only heard of Adam and Eve after he came to Australia but he did not know who they were. The applicant told the Department that he was just learning about the New Testament now. The applicant could not name any books of the New Testament. The applicant did not know which books are the Gospels or what the message of the Gospels is. When asked by the Department if he is familiar with Jesus and what he did in his life, the applicant stated that he is learning now but he does not know much in depth. The applicant could not name any of the miracles Jesus performed and he could not name any of the stories in the New Testament. The applicant said that he had not heard of the story of the Good Samaritan or Mary Magdalene. When asked where Jesus was born the applicant said that Jesus was born in America and that he did not know where he died. The applicant said that he did not know how many disciples Jesus had. The applicant did not know what happened after Jesus died and he had not heard of the resurrection or the rising from the dead.
84. The Tribunal has given consideration to the applicant's claims and the advice of the Pastor that the applicant's understanding of the bible is limited as he has little command of English. The Tribunal has also considered the answers that the applicant gave to the previous Tribunal when asked about the bible. The Tribunal accepts that a non English speaking person would struggle to understand an English bible. However, the applicant claims to have been reading a Nepali bible. The Tribunal considered whether a Nepali bible might vary in form and content from an English bible. The Tribunal asked the applicant about the Nepali bible but the applicant stated that he could not recall what is at the start of the Nepali bible. The Tribunal is of the view that a person who has been reading the bible for many years would have some recall of the contents of the start of the bible.
85. The Tribunal has put to the applicant in its letter that independent information indicates that the Nepali bible is a translation of the English bible and it contains the same contents as the English bible. The applicant has not responded to this issue in his response received. The Tribunal is of the view that the Nepali Bible is not different in content or order from the English bible and that any difference in content or form does not account for the applicant's

lack of knowledge of the bible. The Tribunal finds that the applicant's knowledge of the bible is inconsistent with his claim that he has been reading a Nepali bible. The Tribunal finds that the applicant has minimal knowledge of the bible and the Tribunal does not accept that the applicant has been reading the bible. The Tribunal does not accept that the applicant read the bible when he lived in Nepal.

86. The Tribunal has also given consideration to the applicant's lack of education and cultural differences and claims that the Bible is complex, and to the Pastor's advice in his letter regarding the level of knowledge about Christianity that could be expected of a Nepalese person. The Pastor advises that the applicant's lack of knowledge is consistent with that of a person who has read the Bible in a foreign language, and with that of a person who has only been reading the bible for one year, although the Pastor also comments that the applicant has endeavoured to have the bible translated into English. The Pastor also states that the Old Testament and New Testament would have had no meaning for the applicant and the names of people in the Bible would be difficult for the applicant to understand, as the applicant was reading the names in English not Nepalese.
87. The Tribunal accepts that the applicant has had little education and that as a Nepalese person from a Hindu background, his exposure to Christianity is limited and that he would have difficulty understanding an English bible. The Tribunal accepts that the Pastor has considerable experience as a Christian pastor with a Nepalese congregation. The Tribunal has considered the explanations given by the Pastor about differences in understanding of Christianity of a person such as the applicant from a Nepalese background, and to the Pastor's belief that the applicant would have difficulty understanding words and stories in the bible. The Tribunal notes that nevertheless, the Pastor believes that the applicant has a grasp of Christian values. However, the Tribunal is not satisfied that the Pastor's comments take into account the applicant's claim that he has been reading a Nepalese bible and not just since he came to Australia or for a year earlier. The Pastor states in his letter that the applicant claims to have only been a Christian for one year prior to coming to Australia but the applicant claims to have become a Christian many years ago. The Tribunal finds that the applicant has given inconsistent information to the Tribunal and to the Pastor about when he became a Christian. The applicant did not address this inconsistency, which was raised with him in the Tribunal's letter.
88. As the Pastor's comments about the applicant's understanding of Christianity are based on the premise that the applicant had only become a Christian a year prior to his arrival in Australia and do not take into account the applicant's claim that he had been reading a Nepali bible prior, the Tribunal has given the Pastor's comments very limited weight.
89. The applicant's claim to the Tribunal is that he has read a Nepalese bible and that he understood Christianity sufficiently to convert to Christianity at this time. The Tribunal accepts that the applicant espouses some values that can broadly be described as Christian. However, the applicant was unable to enunciate his Christian beliefs beyond making broad statements of values which are not exclusively Christian. The Tribunal is also of the view that a person who has been practising Christianity for many years would have some basic knowledge about the life of Jesus Christ for example, the reasons why Jesus Christ was born or died. However, the applicant stated that he did not know why Jesus Christ was born or why he died.
90. The Tribunal invited the applicant to comment on his inability to answer questions about the bible and in his response, the applicant elaborates on his Christian beliefs. However, the



applicant's elaboration of his beliefs is consistently vague and general and is not clearly linked to the bible or to the life and teachings of Jesus Christ. The applicant has not given any explanation for his inability to respond to the questions put to him by the Department or the Tribunal regarding the bible, which he claims to have been reading for many years prior to coming to Australia. The Tribunal is not satisfied that the applicant was a Christian in Nepal.

91. The applicant claims that as well as being a Christian he also evangelised his religion. The US State Report on Religion for 2008 states that the interim Constitution of Nepal provides for freedom of religion and permits the religious practices of all groups including Christians; however, proselytizing is explicitly prohibited. The Tribunal accepts that in Nepal, "the law prohibits proselytizing, which is punishable by fines, imprisonment, or, for foreigners, expulsion. Personal conversion is, however, allowed." [International religious freedom report 2008]
92. The Tribunal also does not accept that the applicant engaged in proselytizing or that he attempted to convert others to Christianity in Nepal. The applicant has given inconsistent evidence about his proselytising activities in Nepal, as he told the Department that he evangelised in his local village but the applicant told the Tribunal that he had not spread the word of God in his village, as he did not get an opportunity to spread the message of God in the village or the countryside but he did discuss religion with two or three friends in City A. The applicant also told the Tribunal that he had not spread the word of God in Nepal or Australia, as his knowledge of the bible is insufficient but he discussed religion with his wife and some friends.
93. The Tribunal has considered the opinion of the Pastor that evangelical behaviour can include talking to friends and encouraging them to attend church. The Tribunal accepts that the applicant may have discussed religion with friends in Nepal. However, the Tribunal does not accept that the purpose of the discussion was to persuade others to attend a Christian church or convert to Christianity because the Tribunal does not accept that the applicant was a Christian in Nepal. The Tribunal finds that the applicant did not engage in proselytizing or that he attempted to convert others to Christianity in Nepal.
94. The Tribunal also does not accept that the applicant practised Christianity in Nepal because despite living in City A for some years, he only attended one or two church services in City A. The Tribunal accepts that the applicant may have attended a church service in City A and he may have discussed religion with friends. However, independent information indicates that Nepal is a secular state and there are many Christian churches in City A, which citizens are free to attend. The Tribunal is of the view that a person who had converted to Christianity would have attended church regularly. The applicant claims to have only attended church once or twice because he was preoccupied with finding accommodation. The Tribunal does not accept that looking for accommodation prevented the applicant from attending church more than once or twice in some years. The Tribunal is of the view that the applicant did not attend church more than once or twice in Nepal because he was not a Christian.
95. The applicant claims that he was threatened by the Maoists and by the Shiva Shena. On the basis of independent information the Tribunal accepts that converts, particularly Hindus who convert to Islam or Christianity, are sometimes ostracised and occasionally face isolated incidents of hostility or discrimination from Hindu extremist groups and Maoists but that converts are generally not afraid to admit their new religious affiliations in public (US State Department, International Religious Freedom Report 2006 in relation to Nepal).

96. However, the Tribunal does not accept that the applicant was warned or threatened by Maoists or any extremist groups such as the Shiva Sena because of his religion. The applicant has given inconsistent information about being threatened by the Shiva Sena. The applicant told the Department that there is a group of rebel army called Shiva Sena and they threatened the applicant that it would not be good if he spread religion around and they threatened the applicant with 6 or 10 years in jail. However, the applicant told the Tribunal that in Nepal, he was only ever threatened by the Maoists who asked for money when the applicant was living in a village running a business. The Tribunal put this inconsistent evidence to the applicant in its letter but the applicant has not addressed the inconsistent evidence. He has simply reiterated his claim to fear harm from the Maoists due to his Christianity.
97. The Tribunal has not accepted that the applicant was a Christian in Nepal. As the Tribunal does not accept that the applicant was a Christian in Nepal, the Tribunal also does not accept that the applicant was socially ostracised or targeted by the Maoists or any other extremist group for this reason or because he was perceived to be a member of an NGO. The applicant has made vague claims that he would be imputed with a political opinion because he would be perceived by Maoists or other extremist group as belonging to a foreign NGO. However, the Tribunal does not accept that the applicant was a Christian in Nepal or that he was perceived to be a Christian, and therefore the Tribunal does not accept that the applicant was perceived by anyone as belonging to a foreign NGO.
98. The applicant also claims to fear ostracism from his family. However, the Tribunal does not accept that the applicant has been ostracised by his family because of his religion. The applicant gave inconsistent information about whether he has told his family of his conversion to Christianity. He claims that that he has told his family but in his oral evidence, he stated that he had not told his family except his wife. The Tribunal is of the view that the applicant's evidence establishes that the applicant enjoys an ongoing relationship with his family. The applicant told the Tribunal that he diverts income from land his family have given him in his village, to his family This would indicate that the applicant has a positive relationship with his family and that he has not been socially ostracised for reasons of his religion. The Tribunal does not accept that the applicant has been socially ostracised by family in Nepal because of his religion.
99. The Tribunal has given consideration to the applicant's practice of Christianity in Australia. The Tribunal accepts that the applicant has been attending the Church every one to two weeks. However, despite his attendance over a few years the applicant is still unable to articulate any more than basic statements about values when asked about his beliefs as a Christian. The applicant has argued that the bible is complex, he has been trying to understand it and his perspective is not that of an educated western person. However, the Tribunal is of the view although the language of some versions of the bible may be complex, the message and stories in the bible are often not particularly complex and indeed the Bible was not written by sophisticated westerners and was written in order to convey a message to ordinary people from all walks of life.
100. The Tribunal is of the view that if the applicant had genuinely been a committed Christian in Nepal or had become a genuine Christian in Australia, he would be able to say something about the contents of the bible, particularly as he claims to have been reading the bible in Nepalese for many years and to have been studying the bible most weeks since coming to Australia. The Tribunal has also found that despite his claims that he converted to Christianity in Nepal, the applicant has little knowledge of the life of Jesus Christ. The Tribunal also does not accept that the applicant has engaged in proselytizing in Australia When asked if he has

any other involvement with the Church apart from attending a service on Sunday, which also includes bible study, the applicant stated that on other days he is usually not involved with going to church unless the pastor calls him and tells him about other programs or activities. The applicant also stated that he has not engaged in proselytising as he does not know enough to do so. The Tribunal is of the view that despite his claim to have converted to Christianity many years ago, and even allowing for cultural differences and language obstacles, the applicant's knowledge of Christianity is minimal. The Tribunal does not accept that the applicant was a Christian in Nepal or that he has become a Christian in Australia. The applicant has not satisfied the Tribunal that he attended church in Australia otherwise than for the purpose of strengthening his claims to be a refugee. The Tribunal therefore has disregarded the applicant's conduct in Australia.

101. The Tribunal does not accept that the applicant would practice evangelical Christianity on return to Nepal. Nor does the Tribunal accept that if the applicant returns to Nepal now or in the reasonably foreseeable future, that there is a real chance that the applicant will be persecuted for reasons of his religious beliefs.
102. The applicant also claims to have been threatened by Maoists and he told the Tribunal that it is the Maoists and their threats and demands for money that he most fears. Indeed, when he appeared before the Tribunal the applicant only made reference to fearing to return to Nepal because of his religion when prompted by the Tribunal. The Tribunal is of the view that the applicant departed Nepal in order to improve his financial situation, as he had had to give up the business he was running in a village and move to City A where he was unemployed. The Tribunal accepts that the applicant ran business in a village in Nepal and that he was approached by Maoists demanding money. The Tribunal accepts that the behaviour of the Maoists led to a decline in tourism and that as a result, the applicant had to close his business and move to City A. Country information indicates that the political situation in Nepal due to the behaviour of the Maoists, prior to the ceasefire in January 2006, had a devastating effect on tourism. Although country information also indicates that the situation in Nepal has improved considerably since the ceasefire, the installation of a caretaker government and then the elections in April 2008, the Tribunal accepts that independent country information also supports, in a general way, the applicant's claims that in Nepal sometimes there is persecution by Maoists of those who oppose them and that there is not always protection available against that harm.
103. The applicant claims that if he returned to Nepal, he could not live in the countryside as the same Maoists would demand money from him, particularly as he has been living in Australia and would be considered to have money. However, the applicant has not lived in the countryside for some years and his last place of residence was City A. He also claims that he could not live in City A as the Maoists would approach him there. However, the applicant lived in City A for a few years prior to coming to Australia and his evidence is that he was not approached by Maoists demanding money in this period. However, the applicant claims that now that the Maoists are part of the government, they no longer avoid coming to City A as they did in the past and therefore he may be approached for money. The Tribunal is of the view that this claim is largely speculative and there is little basis for the claim, as the applicant's own evidence is that he was not approached by Maoists for money when he lived in City A and he had only been approached for money when he ran a business in a village.
104. The Tribunal does not accept that the applicant would be persecuted for any convention reason if he returned to live in City A, which is where he lived for a few years prior to coming to Australia. The applicant's own evidence is that he was not approached by Maoists for money

when he lived in City A It is now some years since the applicant was approached for money and at that time, his evidence is that he was asked for money because he ran a business. Since he gave up the business, the applicant's own evidence is that he has not been approached for money. The Tribunal does not accept that the applicant is of any interest to the Maoists or that he would be approached for money because he ran a business some years ago, or because he has been living in a western country. In the submission the applicant has provided independent information regarding the poor state of human rights in Nepal. However, the applicant has not provided any evidence that Nepalese persons who have lived in a western country are targeted by Maoists for extortion. The Tribunal is of the view that the applicant's claim that he fears persecution, specifically extortion, because he would be viewed as a person who has returned from a western country, is largely speculative. The Tribunal therefore finds that there is not a real chance that the applicant would face extortion by Maoists because he will be perceived as a person who has been living in a Western country.

105. The Tribunal does not accept that there is a real chance that the applicant will suffer persecution from Maoists or anyone else in Nepal either now or in the reasonably foreseeable future because of his political opinion, his imputed political opinion, his membership of a particular social group, his religion or for any other Convention reason, if he returns to his country. Having regard to the above the Tribunal is not satisfied, on the evidence presently before it, that the applicant has a well-founded fear of persecution in Nepal within the meaning of the Convention.

## **CONCLUSIONS**

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

## **DECISION**

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

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act</i> 1958. Sealing Officers ID: PMRT01</p>
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