

0901592 [2009] RRTA 472 (13 May 2009)

DECISION RECORD

RRT CASE NUMBER:	0901592
COUNTRY OF REFERENCE:	Bangladesh
TRIBUNAL MEMBER:	Kira Raif
DATE:	13 May 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 Bangladesh, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. 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.
4. The applicant applied to the Tribunal for review of the delegate's decision. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

5. 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.
6. 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).
7. 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'

8. 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.
9. 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.

10. 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.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

17. 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

18. 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.
19. The applicant is a citizen of Bangladesh. He was granted an Electronic Travel Authority (ETA). According to the information on the Department's file, the applicant travelled from Bangladesh to another country and then to Australia. The visa held by the applicant was found to be fraudulent.
20. The applicant was interviewed at the airport ('the airport interview') and is recorded to have stated the following in the course of that interview:
- He was married.
 - He began to plan / think about leaving Bangladesh when he had a conflict with his partner and his partner tried to kill him. That is when he decided to leave.
 - His partner took a loan from him of 50 lakh and did not want to return it and tried to kill him. He then decided to leave the country.
 - He has many reasons not to go back. The main reason is that his partner had hired killers to kill him. Also he had no money and due to the national elections being held soon, nobody is giving him protection. He was not involved with any election process but because of the elections, nobody will assist him
 - He had been hiding from everyone for the past three months, including his wife.
21. About a week later the applicant was interviewed by the Department and he stated that he was married. He stated that he wished to engage a lawyer. When asked about his intentions, the applicant stated that he wished to think about it and to give his answer in one or two days.

Primary application

22. The applicant applied for the protection visa. According to the Protection visa application, the applicant is a male born in Bangladesh. He is of Bengali ethnic group and Muslim religion. He stated that he never married. The applicant had completed nine years of schooling and had worked with his family between the mid 1990s and his departure from Bangladesh. He gave one residential address where he lived from birth until 6 months before he departed and an address in Dhaka where he lived for 6 months after that. The applicant's father and several siblings remain in Bangladesh.
23. Included with the application was a brief statement from the applicant in which he made the following claims:
- He first had sex with boys when he was studying at school. Later he had sex with boys in different places in their country. Few people of his region know that he is gay.

- His country is a Muslim country and it is not acceptable in his country for people of the same gender to have sex with each other.
 - He cannot give up having sex with boys because he likes boys and had never been attracted to girls. He liked boys from his childhood. When he became an adult, he discovered that he was gay. He never felt attraction towards girls. At first he had sex with boys when he was studying at school. He has not had sex here.
 - He was gay when he was in his country. He does not like girls and it is impossible for him to marry a girl. Everyone knows that he is gay.
 - His family knows. His elder brother knows everything about him. If he returns home, everyone will beat him because they hate gays. The country people know that if he returns home, they would beat him.
24. The applicant's representative provided a submission to the delegate. In it, the representative states that the applicant is a Muslim person of homosexual orientation and fears persecution in Bangladesh, which is a conservative society where homosexuals are not allowed to be open about their sexual identity. It is stated that the applicant fears that his family will ostracise him if he does not conform to their requirements and marry and that his homosexuality will come to the attention of the Islamic groups and he will be particularly vulnerable, so that he should not be forced to return to Bangladesh where he will have to hide his homosexuality and enter into marriage against his will. He also fears persecution because of his long term relationship with a Hindu sexual partner Partner A if it becomes public.
25. The representative cites independent country information relating to homosexuality and human rights in Bangladesh. The representative argues that homosexuals constitute a social group in Bangladesh that faces discrimination and persecution. It is submitted that the current government does not only fail to protect its homosexual citizens, but carries out activities that lead to the persecution of such citizens. The representative refers to the country information relating to the treatment of homosexuals. The representative argues that the applicant has a right to his sexual identity which is an intrinsic part of his make up as an individual. The Bangladesh Criminal Code contains provisions criminalising homosexuality and there are onerous criminal sanctions against persons involved in performing any form of homosexual activity in Bangladesh and although breaches of the law may rarely be enforced, this does not allow the conclusion that homosexuality is permitted in Bangladesh. The representative submits that there is no organised homosexual community in Bangladesh to enable the applicant to live a meaningful life there with a same sex partner of his choice in a homosexual relationship.
26. The representative submits that there is a further element to the applicant's argument as he fears that his family will force him into marriage which will be impossible for him as he identifies as a homosexual. His relationship with a Hindu male made him even more vulnerable. It is submitted that the pressure to marry a woman and further deny his identity is a serious consideration for the applicant, more so because of the 'serial marriage' tradition. In the conservative religious society, cultural traditions dominate and there is massive pressure placed by the family to marry and reproduce. As the power of fundamentalist Islamic groups is increasing, there is an increasing threats to homosexuals in Bangladesh. It is stated that the power of fundamentalist groups surrounding Jamaat, in power from October 2001 to October 2006, in coalition with the BNP, cannot be underestimated. The representative refers to various sources that address the issues of extremism in Bangladesh The representative refers

to the High Court’s judgment in *S395 v MIMA* and *S396 v MIMA*, addressing the issue of discreet behaviour, and quotes a number of decisions of the Tribunal in which these principles were applied. The representative sets out various provisions from the international law, including the ICCPR and ICESCR and refers to a number of decisions concerning homosexual applicants in Bangladesh and relating to human right violations in that country.

27. With respect to relocation, the representative refers to comments made in 1993 indicating that internal relocation is not available in Bangladesh. The representative argues that it is not reasonable to expect the applicant to relocate within Bangladesh given the persecution homosexuals face throughout the country and given his unwillingness to hide his sexual identity and his belief that he cannot hide indefinitely. The representative submits that the law proscribing homosexual activity applies throughout the country and the growing instability in Bangladesh is not confined to one locality or region in Bangladesh and it should not be assumed, if the applicant’s claims are accepted, that his well founded fear of persecution pertains only to a specific region of Bangladesh.
28. The representative argues that the veracity of the applicant’s claims to be a homosexual should be accepted and his fears should be assessed accordingly and that the applicant does not have a burden of proving his case beyond a reasonable doubt.
29. In a further submission from the applicant’s representative, the representative stated that the applicant’s mother died in the mid 1990s. The applicant has many siblings, five of whom are married. It is stated that there is pressure on the applicant to marry and his younger siblings cannot marry until he is married. He does not wish to marry because he is gay. He first had sex with a Hindu friend Partner A, who lived in the same area, when he was in his last year of school. They continued their sexual relationship secretly and the applicant also secretly ‘played’ occasionally with other male friends in the area. People became suspicious in his area and his elder brother found out about the applicant’s relationship with Partner A, which led to increasing pressure from his family for him to marry. Partner A, who unlike the applicant had completed his HSC, moved to Dhaka where he works in a clerical job. About six months before coming to Australia, the applicant moved to Dhaka because it was too difficult for him to continue to stay in the village with the gossip about himself and the pressure to marry. Although he was not reported to the police, he was subjected to mistreatment because of his sexual orientation and relationship with Partner A who also experienced similar harassment. His family advised him that they will not accept him unless he marries and ‘leads a straight existence’. He is afraid to go back home because of persecution due to his sexual orientation.
30. The applicant provided to the delegate an affidavit from his brother who states that the applicant is the fourth among the brothers and that from his boyhood, the applicant was a homosexual by nature and due to his homosexuality he refused to marry a woman in spite of repeated requests. The writer states that due to his homosexual activities he had been physically and mentally harassed on several occasions in Bangladesh and they suffered a lot socially and due to that a visa was arranged for him to go to Australia and also due to his homosexual activities.
31. The applicant was interviewed by the delegate. He made the following statements in that interview:
 - The applicant stated that he was born in a village with about 10,000 inhabitants.

- The applicant confirmed when he left Bangladesh and that from the mid 1990s until about 6 months before he left he worked with his family in Bangladesh. He then said that he had not been involved in work. He said that his work for his family was not continuous. He did family work, helping out in a business. The applicant said that he did not have a specific role in the business but he would carry things or do something like that. He was not otherwise employed in Bangladesh. He did not work after he came to Dhaka and he was supported by his elder brother and a friend.
- The applicant confirmed that he lived in Dhaka for about 6 months prior to his departure from Bangladesh and before that he was living in home town. He moved to Dhaka from his village about 6 months before his departure because he had some personal problems in the village.
- The delegate referred the applicant to the affidavit from his brother. The delegate also referred to the applicant's claim made in his protection visa application in which he stated that he never married. The applicant's representative confirmed that the statement provided with the application was the translation of the statement presented by the applicant.
- The delegate noted that it appeared that the applicant had the intention of coming to Australia prior to entering Australia. The applicant said that he tried to come. The delegate asked the applicant why he tried to come to Australia in particular. The applicant said that if he came here, his wish would be fulfilled. He wanted to come to Australia and that is why he came. The applicant said that he did not know of other opportunities and this is the advice he was given. The delegate again asked the applicant how he learned that it was possible for him to engage a lawyer in Australia. The applicant said that he was told by his elder brother, who has helped him in every matter and who knew much about him. The delegate asked the applicant how his brother, who resided in Bangladesh, knew about these issues. The applicant said that his brother used to live abroad but not in Australia. The delegate again asked the applicant how his brother became aware of specific legal issues in Australia. The applicant said that he did not know. The applicant said that his brother gave him that information after his arrival in Australia.
- The delegate referred the applicant to the airport interview, noting that the interview was conducted with the services of a Bengali interpreter and that the applicant was warned to give truthful information and that any inconsistencies could raise doubts about his credibility. The applicant also stated at that interview that he understood the questions. The applicant said that at the time he did not realise that his visa was false. He was afraid that he would not be allowed to stay in Australia. He had never encountered such a situation before and he was afraid. The delegate noted that the applicant claimed in that interview that he was married and gave the name of his wife. The applicant said that it was to stay here. The delegate asked the applicant why he would lie about being married and about his wife's residence. The applicant said that at the time they asked him and he did not realise that there would be so many questions and it would drag for so long. The delegate referred to the applicant's comments as to why he did not wish to return to Bangladesh. The applicant said that he lied at the time because he did not realise what he was supposed to say. He did not disclose the real reasons why he did not wish to return to his country.
- The delegate asked the applicant whether his brother helped him leave Bangladesh because of the problems relating to his homosexuality. The applicant agreed. The applicant also

confirmed that he left Bangladesh because of the problems he experienced with his homosexuality.

- The delegate referred to the second interview in which the applicant claimed that he was married. The applicant stated that he had not provided truthful information in that application.
 - The delegate noted that there were two main considerations. Firstly, there were cultural considerations which must be considered but it was also necessary to consider the applicant's claims that he had a wife and whether the applicant was lying about being a homosexual. The delegate noted that the applicant put forward detailed claims about his wife and reasons for leaving Bangladesh in the airport interview and this brings into question his reliability and credibility. The applicant said that he lied about some information. He said that some people were open and people like him were secretive. He said that whatever he said in the past was a lie to protect himself and when he realised that he had to tell the truth, then he said everything to his lawyer.
 - The applicant's representative submitted that the applicant spoke to his brother and his brother undertook to arrange a lawyer to represent him and a lawyer has been retained through the brother's friends. The representative stated that the visa on which the applicant entered Australia was obtained through a broker and the applicant was unaware of details as to how it was obtained. The applicant confirmed that he was not married and had never been married. The representative also noted that if the applicant was found to be untruthful, any future visas he may hold may be cancelled. The representative noted that refugees do not often disclose full information immediately after arrival but it should be noted that the applicant has done so as soon as he was given a reasonable opportunity. The possible consequences of the applicant being dishonest are that his visa may be cancelled.
 - The applicant said that he sometimes did not understand the interpreter during the airport interview and he was very afraid. The delegate noted that the applicant informed the DIAC officer at that interview that he understood the interpreter. The delegate asked the applicant to give a specific example of his misunderstanding of the interpreter at the airport interview. The applicant said that at the time he was speaking on the phone, he did not comprehend and it was the first interview. The delegate again noted that when asked about his marital status, the applicant claimed that he was married and he stated earlier that he lied in response to that question and this was suggestive that the applicant did not have any difficulty understanding that question. The applicant said that he did state that he was married but he did not think. The delegate also noted that the applicant gave the name of his wife. The applicant said that he gave an imaginary name. The applicant said that it was his first interview and he was not used to it at that time. The applicant's representative noted that the misunderstanding may have been cultural, rather than linguistic. He was nervous and did not appreciate it.
32. The delegate decided to refuse to grant the visa to the applicant. The delegate accepted that homosexuals in Bangladesh may constitute a particular social group and that independent information refers to the persecution of homosexuals in Bangladesh. However, the delegate disbelieved that the applicant was a homosexual, noting the significant inconsistencies in the statements made by the applicant in the airport interview and in his subsequent interview and the delegate was of the view that the applicant had not adequately accounted for these discrepancies. The delegate did not accept the reasons put forward by the applicant for what

he claimed was false information given at the airport. The delegate did not accept that the applicant was a homosexual.

Application for review

33. The applicant sought review of the delegate's decision. The Tribunal wrote to the applicant inviting his comments on, and response to, the information which the Tribunal considered may be a reason or part of the reason for affirming the decision under review. The Tribunal referred to the applicant's evidence at the airport interview and the second interview, particularly his claims that he was married and that he departed Bangladesh because he was fearful of his wife. The Tribunal also referred to the applicant's protection visa interview in which he claimed that the information he previously provided was false. This was said to be relevant to the assessment of the applicant's credibility. The Tribunal also referred to the delay in the applicant's departure from Bangladesh following the grant of the Australian visa to him, which was also said to be relevant to the assessment of his credibility and to the determination of whether he had a genuine fear of persecution.
34. The Tribunal received from DIAC a copy of the applicant's Bangladeshi passport and a copy of a Country A passport issued to the applicant a couple of years ago. It shows that the applicant is a national of the Country A and that he had travelled to Bangladesh as a holder of that passport after it was issued.
35. On the same day the Tribunal wrote to the applicant pursuant to s. 424A of the Act inviting his comments on, and response to, the information which the Tribunal considered may be a reason or part of the reason for affirming the decision under review. The Tribunal referred to the information which indicated that the applicant was a national of the Country A and that he had not disclosed this fact at any time throughout the processing of his protection visa application, stating on the application form that he was not a citizen of any other country. This was said to be relevant to the assessment of the applicant's credibility. The Tribunal also referred to the fact that the applicant returned to Bangladesh as a holder of the Country A passport, which suggested that he did not have a genuine fear of persecution in that country.
36. The applicant replied by stating that at no stage did he have a Country A passport and he denies that the passport was his document and he knows nothing about it. He has not travelled to Country A. With respect to the inconsistencies at different interviews, the applicant stated that the information given to DIAC at the protection interview was correct while the answers provided at the airport interview, to the extent they were inconsistent, were not correct. The applicant denied having ever been married and states that his claims are those stated in his protection visa application.
37. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages. The applicant was represented in relation to the review by his registered migration agent. The oral evidence before the Tribunal is summarised below.
38. Immediately prior to the hearing the applicant presented to the Tribunal two typewritten statements in English from Partner B and from Partner A. Both claim to have had a relationship with the applicant and state that the applicant had some problems as a gay person. Partner A states in his statement that the people of the locality did not like them and abused them in bad language and that the fundamentalists, some family members and people

from the suburbs chased them and ‘make them away from them’ and that many times they [threatened] to kill them.

39. The applicant confirmed that the information he provided with his protection visa application was correct and that he did not wish to change anything. He confirmed that the information he provided in the airport interview was not correct.
40. The applicant said that he entered Australia as a holder of a Tourist visa. He obtained that visa through a broker, whom he paid, and the broker organised the visa. He said that he had used the Bangladeshi passport and never held any other passport. He had never travelled outside Bangladesh before coming to Australia. The Tribunal pointed out that his Bangladeshi passport showed that he travelled to two other countries in the preceding year. The applicant said that he did not travel. He said that the Bangladeshi passport was a genuine one. The Tribunal asked the applicant why his passport showed that he travelled to the other two countries. He said that he obtained the passport himself and gave it to the broker. Maybe the broker stamped the visas.
41. The Tribunal referred to the Country A passport which was held by DIAC and which was issued in the applicant’s name. The applicant said that it is not his passport. The Tribunal noted that the passport had his photograph, his name and his date of birth. The applicant said that he never travelled outside of his country and had never seen that passport. The Tribunal asked the applicant why his name, date of birth and photograph appeared on that passport. The applicant said that he did not know who did it. The Tribunal pointed out that this passport was used to obtain the ETA as he was not entitled to the ETA on his Bangladeshi passport. The applicant said that there was a visa in his Bangladeshi passport. He said that he did not know how the Country A passport came about. The broker took a photo of him. He had no idea what was done with it.
42. The Tribunal noted that it was concerned that it had two passports for the applicant and both had his details. Both also showed overseas travel, which he denied. The applicant said that he never travelled outside of his country. The Tribunal noted that it needed to consider whether he was telling the truth. The applicant said that he had no idea about the passport or visas.
43. The applicant said that he decided to leave Bangladesh in the middle of the year before he actually departed. He approached the broker in the middle of the year before he departed and it took five to six months to obtain the visa. He was given the passport with the visa on the evening of the same day when he flew out. The Tribunal noted that the visa was granted about 5 months before he departed. The applicant said that he did not know.
44. The Tribunal asked the applicant whether he planned to seek protection in Australia when he left Bangladesh. He said that it was in his mind that when he comes to Australia, he would apply for protection. He did not know much about seeking protection in Australia. The Tribunal noted that the applicant claimed that his brother spoke to him about obtaining a private lawyer. The applicant said that he did not know what happened, maybe his broker spoke to his brother. Before he came to Australia, his broker told him that everything would be fine because the visa was arranged. The representative noted that a few pages of the Bangladeshi passport were missing and that the applicant remembers having an Australian visa in the Bangladeshi passport.
45. The applicant noted that the photographs in the two passports were different, that the signature on the Country A passport was not his and that both passports had the same

departure dates, which was inexplicable. The Tribunal noted that his signature on the Country A passport and the protection visa were similar. The applicant said that his signature is easy, anybody can copy it. The Tribunal pointed out that it was not only the signature, but the fact that the passport was issued in his name, had his date of birth and photograph, the signature, as well as the same date of departure from Bangladesh which was recorded on both the Country A and the Bangladeshi passport. This all suggested that he was at least aware of the existence of the Country A passport, even if he had not used it in the past. The applicant said that he thought the broker organised it. Australia was a new country and he had no money, the broker told him that somebody would contact him once he came to Australia, he did not know for what purpose. He did not have money and did not know about Australia and somebody would help him. The applicant said that his elder brother paid for the broker.

46. The Tribunal subsequently obtained a full copy of the applicant's passport which it presented to the applicant. The Tribunal noted that it did not have an Australian visa. The applicant said that he was not sure what the visa looks like but he saw that there was a paper placed in his passport referring to the Australian government. He did not know about the Country A passport and never put his signature there. The Tribunal asked the applicant which passport he presented at the airport in Dhaka He said that he only had one passport and he presented his Bangladeshi passport. The Tribunal noted that this passport does not have the visa and he would not be allowed to board the plane without the visa. He said that the visa was in the passport. The Tribunal asked the applicant what he thought happened to the visa, as it was no longer there. The applicant said that they showed him the visa. The Tribunal noted that the ETA was obtained on the basis of his Country A passport and if there is no visa in his Bangladeshi passport, he would not be allowed to board the plane. The applicant said there was a visa in his Bangladeshi passport and that is this passport he presented. The Tribunal noted that there is no record of a visa being granted on his Bangladeshi passport. He said that it is the truth. There was a visa in his Bangladeshi passport. He had no Country A passport and he never held one. There was a page on his Bangladeshi passport which had the visa.
47. The applicant confirmed that before he came to Australia, he did not know about protection. It was his first trip outside of Bangladesh and he did not know about other countries. The Tribunal asked the applicant why his Bangladeshi passport had visas and entry and exist stamps for other countries. He said that when he gave his passport to his broker, there were no visas at the time. Shortly before he flew to Australia, the broker gave the passport to the applicant and he saw that there were visas in his passport and he did not know what to do. The broker assured him that there was an Australian visa in his Bangladeshi passport and he would be allowed to stay for three months.
48. The Tribunal noted that the applicant did not know about protection visas before leaving Bangladesh and also that he intended to seek protection. The Tribunal asked the applicant how he intended to do that. The applicant said that at the beginning he did not intend to apply as he had a three months visa. The broker told him that somebody would meet him and help him.
49. The Tribunal noted that the applicant was interviewed at the airport and there was a discussion about the validity of his tourist visa and that the visa may be cancelled. The Tribunal noted that at that interview the applicant claimed that he was married and that he had problems because his partner hired someone to kill him. The Tribunal sought comments from the applicant. The applicant said that at the time his passport was taken and he was asked to go inside. He was nervous and he was not feeling well physically. It was a long journey. He was questioned as to why he came to Australia and he told them that he had

many reasons. They told him that the interview would be recorded and asked for his permission. The applicant asked why they wanted the interview to be recorded and he was told that they wanted to publish it in the media. The applicant agreed to a recording but told him that they could not show his face but they took a photograph of his face. There was an interpreter who spoke Bengali and the applicant did not want to speak in front of the interpreter, so he did not tell him. He thought at the time was that he did not want his interview to be published in the Bangladeshi media. The Tribunal noted that it has never been a practice of DIAC to publish interviews, particularly as the applicants may seek protection, and there is no suggestion in any of the interview records that any recording would be 'published' in the media. The applicant said that he had never experienced such an interview before. His family is popular in the area and faced many problems because of him and he thought that if his family would face another humiliation because of the interview. His father is sick and his mother had passed away. He came to Australia to maintain his father's honour. In his village, people were not encouraged to tell them anything because of the family history. His father and brother told him that he was different to other family members from childhood. His family wanted him to get married.

50. The Tribunal noted that there is a record of the introduction he was given before the interview, which is a standard introduction, and there was no mention of any records being published in the media. The Tribunal again noted that this is not the practice of the Australian government. The applicant was also asked whether he understood the interpreter and he stated that he did. The applicant said that at the time he had no idea what the interpreter's role was. This was the first time he experienced such an interview.
51. The Tribunal noted that the applicant mentioned in that interview that he was married and that he had problems with his partner. He stated his wife's name and place of her residence. He stated that he had been in hiding from everyone, including his wife. The Tribunal asked the applicant if all of that information was untrue. The applicant said that it was. He was never married. When he grew older, people pressured him to get married and his family told others that he was married but nobody saw his wife. To protect his family, they stated that he was married. In his country, people do not take it easily religiously and socially.
52. The Tribunal asked the applicant to explain why, when faced with the cancellation of his visa and with being deported back to Bangladesh, he came up with a completely false story rather than state the truth, which would form the basis of his protection visa, particularly as he left Bangladesh with the intention of seeking protection. The applicant said that it was not in his plan. He thought that he would stay for three months and see what he could do. The Tribunal noted that the applicant claimed that he wanted to seek protection eventually, even if not straight away. The applicant agreed. The Tribunal noted that when faced with the possibility of being removed to Bangladesh, this was a good opportunity for him to tell the truth. He said that he did not understand that the information would not be published and also what the role of the interpreter was.
53. The Tribunal noted that it needed to consider whether the evidence he gave at the airport interview or subsequently in his protection visa application was the truth. He said that he was physically and mentally upset. He did not know that his visa was not genuine and he was very upset. He will have problems in all sectors, financially and socially, if he returns to Bangladesh. He left the country because of his fear of the fundamentalists and if he returns, he would face death. When he met his representative, he mentioned the airport interview but his representative told him that the information would not be published and he should tell the

truth. The Tribunal explained to the applicant the application of the legal professional privilege to his communication with his representative.

54. The Tribunal referred the applicant to the second interview. The applicant said that at that interview he was asked about his statement at the airport interview that he stated that he was married and he agreed. He never married and that is the truth. He did not understand what to do. He told everyone in his country that he was married and if he was married, his wife should have a genuine address but he did not give a genuine address. He made up his wife's mobile number.
55. The Tribunal noted that at that time the applicant said that he would engage a private lawyer. He said that at the time he contacted his elder brother who told him that he had a friend in Australia and advised him to get a private lawyer. The Tribunal asked him if he decided to apply for protection at that time. The applicant said that he did. The Tribunal asked the applicant why he then continued to give false information to DIAC about his marriage. The applicant said that before the interview he did not know if he could make contact with a private lawyer. He told the interviewing officer that he could not be interviewed at that time and asked to be interviewed later. The Tribunal again asked the applicant why, if the applicant decided by the time of the second interview to seek protection, he did not 'come clean' and why he continued to talk about his marriage in Bangladesh. The applicant said that when anyone asks him whether he was married, he always says yes. They would not understand his situation. He had no idea that if he told these things to the Immigration officer that it would have an effect later. He had no idea what happens outside of Bangladesh. Now he understands that he should tell the truth and that it would be confidential. When he came to Australia, he still relied on the situation in Bangladesh.
56. The Tribunal asked the applicant on what basis he intended to seek protection in Australia in mid-December, when he was interviewed at the airport and by the Department. He said that it was in his mind that he was supposed to apply on his personal matter but he did not know what information was needed for the protection visa. He was sure that a person from his broker would help him when he comes to Australia. He had no idea that he would face that kind of situation. The Tribunal noted that it was odd, given that the applicant intended to apply on the basis of his personal situation, that he continued to make false claims in both interviews and made no mention of his personal situation. The applicant said that because there was a Bangladeshi interpreter, he did not want to speak in front of him and he did not know what would happen next. If he could speak in English, he would speak about his personal situation.
57. The applicant said that he completed nine years of schooling. In terms of employment, he did not do anything suitable but his father was involved in a business and if he needed help, the applicant would help his father. He was not working there regularly but from time to time. He was involved with his father's business from the early 2000s until the mid 2000s when his family business closed. After that he did not do anything but stayed with friends. His friend Partner A supported him before he came to Australia. The Tribunal noted that in his protection visa application the applicant claimed that between the mid 1990s up until the year before he departed he worked with his family. The applicant said that he worked with his father. The Tribunal noted that the applicant informed the Tribunal he started work in the early 2000s and that since the mid 2000s he did not work as his father closed the business. The applicant said that nobody asked him when his father closed the business. The Tribunal asked the applicant why he stated on the form that he worked with his family until the year before he departed if his father closed the business a few years earlier and he has not worked

with the family since then The applicant said that he was asked what he did and he could not explain because he did not do anything and was supported by his family and friends. His father is now sick. The Tribunal noted that this did not explain why he stated on the application form that he worked with the family until the year before he departed. He said that they asked him what he did in Australia and he said that he was with the family and he did small things in the business, the business did not depend on him. The Tribunal noted that the applicant also claimed in his protection interview that he worked for the family business between the mid 1990s and the year before his departure, which was the same as the information he put in his protection visa application. The applicant said that when he was asked what he did, he thought it related to him but it was not his business but his father's business and he also helped.

58. The applicant said that before coming to Australia, he lived in Dhaka, where he moved six months before he came to Australia. Before then, he sometimes lived in Dhaka and sometimes in his village. His friend had a room in the area near the village and he sometimes stayed there and he also had bachelor quarters in Dhaka and he sometimes stayed there too.
59. The Tribunal asked the applicant why he was fearful of returning to Bangladesh. He said that it was because of his social and religious problem and he fears the religious problem most. The Tribunal invited the applicant to speak of those. The applicant said that he fears the JMB [Jamayetul Mujahideen of Bangladesh], the Islamic fundamentalists, who cannot tolerate that situation He is concerned about his family, who are in big trouble because of his situation. Already some people came to his village to get information about him but he had no idea who came His family was in an embarrassing situation and he never thought that because of his problem, his family would face that situation.
60. The Tribunal asked the applicant when he started having relations with other men. He said that it was when he was in high school, in the mid 1990s.
61. The Tribunal asked the applicant to describe his relationships at the time. He said that at the time he had a relationship with Partner A. He knew Partner A from the previous years, his father had a shop. Often he did not go to school but went to Partner A's place and stayed with him. They both stopped going to school. He would go to his shop and stay with him and share food with him and sometimes he would wash his clothes. The applicant liked him and liked his behaviour and they formed a deep relationship. The applicant said that later he formed other relationships, he could not remember in what year. He had a relationship with Partner B but he could not remember when he had that relationship. He believed it was in the early 2000s. He cannot remember many things. The applicant said that he had sexual relationships with a couple of others. He used to meet with Partner A by visiting the room in his shop and also in Dhaka and they went to visit another place once. He met Partner B in Dhaka as he lived in bachelor quarters and they also went to visit another place together
62. The applicant said that he lived with both Partner A and Partner B on a continuous basis. When he met with Partner A, he started living with him. At first they did not live together on a daily basis but later they started living together continuously. After the mid 1990s they were living together continuously. In the six months before he came to Australia, he no longer lived with Partner A but he lived with Partner B. Before that he also stayed with Partner B when he came to Dhaka. He sometimes stayed in Dhaka and sometimes he visited his village.
63. The applicant said that he could not remember the year or the date when his relationship with Partner B started. The Tribunal noted that the applicant claims to have only two deep

relationships, one with Partner A and one with Partner B. The applicant agreed. The Tribunal noted that it was odd that he could not remember at least the year when he formed the relationship with Partner B. The applicant said that he never thought he would have to talk about it. The Tribunal pointed out that he would have known at least in the last four months since he applied for the protection visa that he would have to talk about it. The applicant said that he now talks about the relationship easily but in his country he never felt free to talk about the relationship. It was always in his mind that if someone knew about the relationship, they would be in big trouble physically, religiously and mentally and nobody would support them in his country. He could not tell anyone about the relationship. The Tribunal noted that this did not explain why he could not recall when he started the relationship with Partner B. He said that he could not remember when that relationship started.

64. The Tribunal asked the applicant whether he had the relationship with Partner A and Partner B at the same time. He said that when people started knowing about the relationship, nobody could speak directly with him but they gave him hints that they had a bad relationship. From that time he met Partner B and started forming a relationship with him. The relationship did not build in one day. Sometimes they met and gradually the relationship built up.
65. The Tribunal asked the applicant if anyone knew about his relationship with Partner A and Partner B. He said that his family and also a few people from the area. People guessed because they were always together and did activities together. The applicant said that people guessed a few days after they started living together, after the mid 1990s He did not know when people found out but he understood that people looked at him differently and spoke to him differently. At the beginning, they teased him behind his back and later a few people would tease him in front of him. Later he found out that people knew about his relationship. He was not like other boys and did not go to play with other boys, his days are different from other boys'.
66. The Tribunal asked the applicant if he had experienced any other difficulties as a result of his relationship, other than teasing. The applicant said that there was a Madrasa in the area. He never prayed and people sometimes asked him why he did not pray. Sometimes people threatened him that if he did not marry, he would be in trouble. He never told them that he had a relationship with a man and later he told them that he was married. His elder brother did not accept the relationship and always threatened him. After his mother died, his father always tried to explain about the situation He has a cousin and people from the village were so upset about the relationship that they threatened him. There was a big family and nobody liked this relationship as it brought dishonour to the family
67. The Tribunal asked the applicant about the threats he received. The applicant said that his family members kept telling him that if he continued the relationship with the man, it is a big problem for them and he must stop the relationship and if he did not, they would take other action and sometimes they threatened to kill him. This was done by his brother, his relative and members of his village. The threats started to occur from the 2000s and the threats gradually increased. In the beginning nobody knew about the relationship and later more people found out.
68. The Tribunal noted that the applicant claims to have started the relationship with Partner A in the mid 1990s and that he lived with Partner A in his place near the village or in Dhaka. The Tribunal asked the applicant how the others could not know about the relationship for several years. The applicant said that he did not live there continuously. Because he was young at the time, people did not notice. He did not know when people noticed the relationship. He did not

stay there continuously, he sometimes visited his shop and also his place. When people started realising about the relationship, they started following the activities. He does not know when they started knowing about the relationship.

69. The Tribunal asked the applicant if he had experienced any harm from the family or villagers between the early 2000s, when he started to receive threats, and when he left the country. The applicant said that in the beginning he received threats from his family who tried to restrict his movements but he did not follow their restrictions. The situation built up gradually and he did not think he had to explain his situation. The Tribunal asked the applicant if he had experienced any harm between the early 2000s and the year he departed. He said that once his brother and other people physically hit him. Sometimes his brother and relative tortured him physically and mentally. He believed that in the year before he departed the JMB knew about the relationship and were not happy about it. They targeted him and could hit him at any time. If someone is killed in Bangladesh, nobody would do anything about it. The Tribunal asked the applicant how he avoided being harmed by them from that time until his departure from Bangladesh. He said that after that period he did not go to his village. If he went anywhere, it was confidential. The Tribunal noted that the applicant lived at or near his village first and later he spent six months in Dhaka. The Tribunal asked the applicant how he was able to avoid harm. He said that they did not know that he stayed in Dhaka. Before Dhaka he stayed at his place or the shop and when he tried not to let anybody know that he was visiting. He felt that he could not visit his village as it was not safe, so he did not return to the village.
70. The Tribunal noted that despite people knowing about his situation since the early 2000s, the only harm he claims to have suffered was one attack by his brother and threats from the villagers and being threatened by JMB The applicant agreed.
71. The Tribunal asked the applicant why he had not mentioned the attack by his brother in his protection visa application. He said that he was asked whether there was any physical sign on his body and he said that there was not. The Tribunal noted that he had not mentioned the specific attack by his brother in his statement. The applicant said that he was not asked that specific question. The Tribunal noted that it did not ask the applicant that specific question either and he did mention the attack. The applicant said that he was not asked before and he now thought that he had to mention the specific threat. The applicant said that maybe there was a misunderstanding before and now he thought that he should answer that question. He has not discussed his relationship with anyone and never faced this kind of interview before, it was not easy for him. He has never spoken to anyone for so long. He cannot explain his situation properly. The applicant said that maybe that time he did not understand the question or the interpreter properly. He cannot explain why he did not mention it properly.
72. The Tribunal asked the applicant if he made any attempt to leave Bangladesh before his actual departure. He said that he never tried. The Tribunal asked the applicant why he decided to do so when he did. He said that the fundamentalists were upset with him and his family was pressuring him, so he decided to leave the country. His family was facing a problem because of him. The Tribunal asked the applicant whether the fundamentalists did anything specific in the year he departed for him to decide to leave the country. The applicant said that the fundamentalists never attacked him but kept pressure on him and kept telling him that he should not have that relationship A few members of the JMB lived in his area and talked to him and advised him to pray and work with them but he always ignored him. He was afraid that they may attack him. From that time he was afraid of them and tried to stay away from them. They never attacked him and he did not know that they were preparing to

attack him but they threatened him. When he understood that they were unhappy with him, he decided to leave the country. The Tribunal pointed out that they had been threatening him for a number of years. The Tribunal asked the applicant what happened in the year of his departure that made him decide to leave the country. The applicant said that the villagers were upset with him but when he found that the JMB were upset with him, that is when he decided to leave the country.

73. The Tribunal asked the applicant when and how he found out that the JMB was upset with him. He said that it was early in the year of his departure (he departed at the end of that year). They never tried to hit him but sometimes they talked to him and tried to explain the situation. The Tribunal asked the applicant how he found out that the JMB was upset with him. He said that they never support that kind of relationship and they came to talk to him. The Tribunal noted that they never supported that kind of relationships and asked him why they became particularly interested in him in the year he departed. The applicant said that he did not know if they knew about his situation in the past or how they found out at that time. There is a big Madrassa near the village and there are many people there who may have found out.
74. The Tribunal noted that it had a number of concerns with the applicant's evidence. He appeared vague about the details or when describing the events that happened to him. The applicant said that if they tried to shoot him or stab him, he could tell. The Tribunal noted that he was vague about stating when others found out or how they found out about his relationships, whether or not others knew about the relationships before and, if they did not know, how they found out in the year of his departure or, if they did, why he has not suffered any serious harm for many years. The Tribunal noted that the applicant could not provide a satisfactory explanation as to why he decided to leave at the time he did and not at any time before. The applicant said that he has no ability to explain. He was not open about his relationship but some people are open to others but he tried to keep it confidential. Naturally, people would know about his situation gradually and not straight away. Nobody could explain why his relationship started in the mid 1990s and he decided to leave in the latter 2000s. He tried to keep it quiet and confidential and not let people know about the relationship, that is why it took time for people to know about the relationship. He came to Australia and many people from his village knew that he came to Australia and would kill him if he goes back.
75. The Tribunal asked the applicant if he thought there was any other place in Bangladesh where he could live safely. The applicant said that he could not live anywhere for a long time. He had to live with somebody. In the future, he could not return to his village or meet with his family members.
76. The Tribunal noted that the applicant presented two statements which contained no contact details and there is no way to verify when, by whom or for what purpose they were prepared. The Tribunal noted that it may not give much weight to these statements. The applicant said that they were written in Bangladesh and if somebody visited these people to ask about the relationship, they would be in trouble. The Tribunal again noted that there was no way to ascertain who wrote the statements. The applicant said that they know about the relationship. The Tribunal reiterated its concerns about this evidence. The applicant said that the situation in Bangladesh was different, it was not free like Australia. If any person came to the village, people would ask questions. The Tribunal noted that putting the phone number on the statements did not require people coming to the village. The applicant said that already somebody came to the village asking questions about him. The Tribunal noted that it also

needed to consider how much weight to give to his brother's statement. The applicant said that he did not know what to say. He requested the Tribunal to consider his situation. He stated that if he made a mistake, he could not explain things properly because of his education. It is an awkward situation and he could not explain his situation to anyone. He has a problem in his country and his family has a problem because of him. He cannot go back to his country.

77. The applicant stated that at the airport, because there was a Bengali interpreter present, he could not tell his situation in front of him. He always told people in his country that he was married and that is why he continued to say that. He stated his wife's address but could not give a specific address. If he was really married, he would have given the address. He could not give the wife's mobile number. He never married. He is sorry for stating those things at the airport. He did not understand the questions properly and answered wrongly. It is his fault that he could not explain properly and he is telling the truth. It is impossible for him to return to his country. He would have many problems and would be killed if he goes back.
78. The applicant's representative stated that Partner A was Hindu. The Tribunal noted that it would accept that. The representative stated that the applicant was asked to participate in religious activities and that the applicant does not consider himself to be a religious Muslim. He does not practice at all and does not fast during Ramadan. The applicant said that both of his brothers pray. The applicant said that his claim of religious persecution is separate to his claim of fear for homosexuality. He said that the fundamentalists believe that he works against their religion and if they kill him, they would go to heaven. The Tribunal asked the applicant why the fundamentalists believe that he works against their religion. He said that they believe that he is against religion because homosexuality was against religion and there was no other reason.
79. The applicant's representative stated that the applicant is adamant that he is not a Country A citizen and if he was a Country A citizen, he would not come to Australia and even now he would travel to the Country A to solve his problems. This raises a reasonable belief that what the applicant stated was correct. With respect to the two statements, these were only received recently and there was no opportunity to obtain further information. The representative submitted that the ability to produce false documents is often used as a ground for refusal, while lack of evidence is also used against an applicant. The Tribunal noted that the existence of the passport is also problematic because the applicant denies any knowledge of the document even though it has his photograph, signature and other details. The representative referred to the UNHCR handbook and Professor Hathaway on the assessment of credibility and also the fact that applicants often put forward different claims at the initial interview while full claims emerge later.
80. The representative noted, with respect to the applicant's employment, that the application form states 'n/a' and then provides the dates of employment. He stated that the intention was to show that the applicant did not work for the entire period but that he worked from the time he left school until his departure from the country. The representative submitted that the applicant's statement is brief due to difficulty in arranging an interpreter and other difficulties, that is the reason the statement was brief and the applicant was not given the opportunity to expand on his claims at the interview with the delegate.
81. About a week after the hearing the Tribunal received further submissions from the applicant through his representative. The representative has provided further statements with contact details to enable the Tribunal to obtain further information from the witnesses. With respect

to the documents used by the applicant to enter Australia, the representative states that the applicant believed that he was entering Australia using a Bangladeshi passport with a visa. He travelled to Australia via another country and would have had to produce this document to the immigration authorities to board the plane. The representative notes that the Country A travel document was not located on the applicant when he entered Australia. The representative submits that notwithstanding the Tribunal's concerns relating to the manner in which the applicant entered Australia, this should not impact on the Tribunal's general considerations of the applicant's credibility. The representative states that the fact that the applicant's claims in the original interview were different to his subsequent claims should not of themselves be a reason for dismissing the claims made by the applicant and reference is made to paragraph 4.6 of the Tribunal's guidelines on credibility. The representative emphasises the importance of considering cultural sensitivities. The representative submits that the applicant's general account should be seen as credible and consistent with the known country information and the applicant should be given the benefit of the doubt. The representative refers to the difficulty of an applicant being able to prove his case, especially where his claims relate to the issue of sexual orientation. The representative states that if the applicant was a Country A citizen, then he could have travelled to that country and the fact that he does not do so should be seen as indicative that the document is not genuine and the applicant has no authority to travel to the Country A, which is corroborative of the applicant's claims in relation to the documentation.

82. The applicant enclosed a statement from Partner A, which contained his address and mobile number and was similar to the statement he previously provided to the Tribunal. The applicant also enclosed a statement from Partner B with his contact details. In that statement, Partner B states that he has known the applicant for four years and that the applicant and Partner A were a good couple and lived together in a room and he visited them often. Partner B states that the applicant is gay and had problems with his family and in the country and he escaped from Bangladesh. The applicant also included a statement from a Chairman of a local organisation stating that the applicant is not married, that he was not seen in the area for a long time and that he belongs to a 'unique moral character'. The applicant also presented a statement from his high school referring to the applicant's studies at that school.
83. The Tribunal invited the applicant to again appear before it to give oral evidence and present arguments and to enable the Tribunal to take oral evidence from the two witnesses nominated by the applicant. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages. The applicant was represented in relation to the review by his registered migration agent. The oral evidence before the Tribunal is summarised below.
84. The applicant said that he did not wish to comment on his previous evidence, nor to add anything to the evidence given at the first hearing.
85. The representative requested the Tribunal to obtain a copy of the applicant's itinerary as it would indicate that the applicant travelled to Australia through another country and that he did not intend to travel to the Country A but within Australia. The Tribunal noted that it was prepared to accept that the applicant was not a Country A citizen but was of the view that the applicant must have used the Country A passport to board a plane. The applicant said that he did not.
86. The applicant said that his two witnesses did not speak English and could not write in English on their own. The Tribunal pointed out that the two statements were provided in English. The applicant said that he could not explain that, he did not know if they received assistance. The

Tribunal asked the applicant how it could be satisfied that the writers had written the statements, given that there were no original documents. The applicant said that he was not sure but maybe they received assistance from a person who can write in English and maybe they told the person what to write and that person wrote the statements.

87. The Tribunal referred the applicant to the statement from Partner B and noted that the applicant claimed to have a relationship with him. The applicant agreed. The Tribunal noted that in his statement Partner B refers to the applicant's relationship with Partner A, but not to his own relationship with the applicant. The applicant said that he had a relationship with Partner B in the past six months and also before. The Tribunal asked the applicant why Partner B would not mention that in his statement. The applicant said that they did not know what to write or what would help but it is true that they had a relationship.
88. The Tribunal noted that in the first hearing the applicant had difficulty remembering when his relationship with Partner B started and asked him if he could recall that now. The applicant said that they initially met in the early 2000s. They would meet up and see each other and talk to each other but they engaged in a deeper relationship after that. The Tribunal asked the applicant when he engaged in a relationship with Partner B. The applicant said that the initial three or four years passed for nothing, but he could not recall. The Tribunal noted that in his statement, Partner B stated that he had known the applicant for four years, not since the early 2000s as the applicant claims. The applicant said that he met him in the early 2000s but Partner B refers to the relationship time. The Tribunal noted that in his statement Partner B states that he has known the applicant for four years, not that they have a relationship for four years. The applicant said that they did not understand what to write or what details they needed to give. The Tribunal pointed out that Partner B gave very specific information in his statement, that he has known the applicant for four years and he makes no reference to the relationship, while the applicant claims to have known Partner B since the early 2000s and to be in a relationship with him for six months before his arrival in Australia. The applicant said that they only lived together for six months. The Tribunal noted that this did not explain the other inconsistencies. The applicant said that if the Tribunal spoke to him, he would be able to explain it.
89. The applicant said that he lived with Partner B continuously for six months before he came to Australia and before then he sometimes stayed with him. In the past six months, while he stayed with Partner B, he did not see Partner A all the time.
90. The Tribunal asked the applicant to describe the place where he lived with Partner B. He said that there was a two room house, it had one toilet and one kitchen. Other service people used to live in the next room. The Tribunal asked the applicant to name these people. The applicant named person one and person two. He said that in between there were many people staying for two to three months, such as person three, person four and person five and there were too many other people who came and went. They were bachelors who used to rent there.
91. The applicant said that Partner B also rented but he did not know how much rent he was paying. The Tribunal pointed out that they lived together for six months. The applicant said that this was a rented flat and other people who occupied the flat contributed and all the rent was collected and paid together. The Tribunal pointed out that it was asking specifically about Partner B, with whom he had lived for six months before coming to Australia and with whom he had a relationship. The applicant said that he was not sure about the rent, it could be 7000 or 8000 taka a month, including the bills.

92. The applicant said there were two rooms and he and Partner B used to occupy one of the rooms. They did not have a single room on a continuous basis, it was a bachelor establishment and sometimes there were others in the same room. The Tribunal questioned the applicant about their living arrangements. The applicant said that in the morning Partner B went to the office while he stayed at home watching TV. He would return at around 12 noon and he again left for the office at 2 pm and they used to do it at lunchtime. He left for the office at 9.30 in the morning and sometimes he would return at 12 or 12.30. He would leave again at 2 pm and return in the evening. Sometimes if he was busy, he did not come home. The applicant said that Partner B worked in an office of a company as a service person. The Tribunal asked the applicant what Partner B's income was. He said that he did not know, he did not ask. The Tribunal noted that they were living together in a relationship. The applicant said that he did not ask how much he earned.

93. The Tribunal asked the applicant who did the shopping in the household. The applicant said that most of the time it was the maidservant. The Tribunal asked the applicant to describe what he and Partner B did together as a couple. He said that they sometimes went to other places. The Tribunal asked him if he did anything else. He said that when he had holidays, they went to other locations. The Tribunal asked the applicant if they did anything together on a daily basis. The applicant said 'what do you mean'. The Tribunal noted that the applicant claimed to have been in a relationship for at least six months, yet he did not know much about his partner's financial arrangements and the information he gave about Partner B appeared to be the information he could give as if he was renting from Partner B, rather than in a relationship with him. The applicant said that he used to stay at home and sometimes in the evenings they would go out together. He said that they used to go out to the market and other centres but not on many occasions because he was tired. The applicant said that he did not realise that he had to answer questions such as these. The Tribunal pointed out that he claims to have been in a relationship with this person and the Tribunal was asking him basic questions about the nature of such a relationship. The applicant said that he could not remember many things.

94. The Tribunal asked the applicant if he and Partner B used to go out on weekends. He said that they did sometimes. In Dhaka they would go to the market and sometimes he used to come to the applicant's village and in the last few months they went to Kumilla on several occasions. The Tribunal asked the applicant about Partner B's family. He said that he did not have family in Kumilla but his elder brother lives in another place. He has never spoken to his elder brother. The applicant said that Partner B keeps contact with his family, he has contact with his elder brother and he sometimes used to visit his brother's place. Partner B also has parents and other siblings and he also maintains contact with them but the applicant had never spoken to them. The Tribunal asked the applicant if Partner B's family was aware of the relationship. He applicant said that Partner B's family knows his name. The Tribunal asked him if they know about the relationship. The applicant said that they know that the applicant is his bosom friend but they do not know that they were in a relationship. The Tribunal asked the applicant if any of his or Partner B's friends were aware of the relationship. He said that maybe some of Partner B's friends guessed about the relationship, for example the other roommates.

95. The Tribunal asked the applicant if he had contributed to the budget while living with Partner B. He said that at that time he did not mix with many people and did not have much money. Partner A used to give him some money and he also received money from his elder brother. The Tribunal asked the applicant if Partner A was giving him money while he lived with

Partner B. The applicant said that he met Partner B through Partner A. The Tribunal repeated its question. He said that Partner A was giving him money. The Tribunal asked the applicant if he contributed any money while living with Partner B. He said that Partner B used to pay his rent and when they lived together he would also buy things for him. For example, he bought him the shirt he was wearing. He did not give any money to Partner B.

96. The Tribunal questioned the applicant about the last year of his relationship with Partner A. The Tribunal asked the applicant where they lived. He said that Partner A had his own house at a market. He had a room next to a shop where they used to live together and there was nobody else living there. The Tribunal asked the applicant to describe that room where he lived with Partner A. He said that there was a small room, it was not a flat. The Tribunal asked the applicant if he could state anything more about the room. He said there is nothing to describe about the room. The Tribunal asked the applicant to describe the furniture in the room. The applicant said that there was not much furniture, there was only the sleeping arrangement, only one bed. There was also a toilet. He then said that there was also a wall stand. The Tribunal asked the applicant if there was anything in the room apart from the bed and the wall stand. The applicant did not respond. The Tribunal pointed out that the applicant appeared to have great difficulty remembering the room where he stayed for at least several months. The applicant said that there was nothing memorable. Sometimes they used to watch TV, there was nothing memorable. The Tribunal asked the applicant if there was also a TV in the room. He said that Partner A sometimes used to arrange the TV. The Tribunal noted that the applicant initially stated that there was only a bed while he now claims that there were other articles of furniture. The Tribunal noted that it would ask similar questions of Partner A and if there were any inconsistencies, these may suggest that the applicant is not being truthful in his evidence, so that it was important for the applicant to provide as complete a description as he could. The applicant said that they were not prominent there. The Tribunal noted that it asked the applicant to describe the room and whether or not they were prominent in the area would not alter that. The applicant agreed. The Tribunal again asked the applicant to describe the furniture in the room where they lived in the last 12 months of the relationship. The applicant said that there was nothing mentionable.
97. The Tribunal asked the applicant to talk about the nature of his relationship with Partner A in the past six months of their relationship. He said that they went for outings, attended programs and sometimes to the cinema. There were different programs such as drama theatres and musical concerts in the area. The Tribunal asked the applicant what outings they went to. He said that he would go to the bazaar and in the area they would enjoy programs or visit people.
98. The Tribunal asked the applicant if Partner A used to pay rent. The applicant said that he did, but he did not know how much. He used to take money from the shop, so he did not know how much. He was paying rent monthly. The applicant said that he did not know how much Partner A was making in the shop. The Tribunal asked the applicant if he knew anything about Partner A's financial affairs. The applicant said that he did not, but Partner A was a well off person. The Tribunal asked the applicant why he did not know anything about Partner A's financial arrangements if they lived together for some time. The applicant said that he did not know how much Partner A made in the shop. The Tribunal asked the applicant if he ever helped Partner A in the shop. He said that there was nothing memorable, sometimes he would come to the shop to sit there to pass the time but there was nothing to help. It was only a small shop which Partner A acquired from his family.

99. The Tribunal asked the applicant if he had met Partner A's family. He said that he never went to his house. He met them because they were from the next village but he was not curious to learn about them. From childhood he does not mix with people. The Tribunal asked the applicant if he could remember the names of Partner A's family members. The applicant said that he knows the father's name but not the mother's name. He said that Partner A had siblings but he did not know how many. The Tribunal asked the applicant why he was unfamiliar with his partner's family composition, given that they had a relationship for a long time. The applicant said that it is hard to explain, he is like that. If he knew that he had to attend an interview he would acquire the information. The Tribunal noted that it did not want the applicant to acquire information for the purpose of the interview, but if he claims to be in a relationship for a number of years, it may be reasonable for him to be aware of his partner's personal matters, financial arrangements and family composition. The applicant said that he was always like that.
100. The Tribunal noted that the information the applicant provided about his relationship with Partner A and Partner B was vague with little detail and this information was inconsistent with his claim that he had a deep and meaningful relationship with both men and that his relationship with Partner A had existed for a number of years. The applicant asked who else would he have a relationship with. He said that it was true that he had a relationship with them. It is not possible that a man would not have a relationship. The Tribunal pointed out that he did mention before that he was married. The applicant said that he had explained why he had stated that. The Tribunal noted that this was a finding that it needed to make. The applicant noted that when he said that he was married, it was accepted, so why should his claim about his relationship with Partner A and Partner B not be accepted. The Tribunal noted that the applicant had a great deal of difficulty describing his relationship with Partner A and Partner B. The applicant said that he was not prepared that he had to answer. He is not curious to learn about things and cannot answer even the simplest things. He was raised in a way that he was not taught to be curious. The Tribunal noted that it was not asking the applicant about the surrounding world that he could or could not be curious about, rather its questions were about his own personal relationship with another person. The applicant said that he never thought or discussed that he had not know these things. He only knew that Partner A had brothers but he did not ask how many, he was not curious to know about his partner's brother.
101. The applicant's representative stated that there was a cultural issue. The applicant is an uneducated person, who lived an ordinary and mundane existence in the village. He claims to be gay and had two relationships, both of which had to be concealed. He had a mundane existence and nothing much happened in his daily life. The applicant had not met his partner's family as it was not relevant to the relationship and it is not uncommon for people not to know the names of relatives or dates of birth.
102. The Tribunal asked the applicant whether he contributed any funds to his household. He said that he did not and that Partner A paid for everything. The Tribunal asked the applicant about the household chores. He said that Partner A was the sole person who did all these things because Partner A was in the shop and had no other engagements. The applicant agreed that he also had no other engagements. He said that did not do the housework because that is his personality. He did not do anything at all, most of the work was done by Partner A. The applicant said that Partner A spent 7 days a week in the shop, which was located close to home. Partner A used to go to the shop in the morning and return at night. There was no fixed timetable when the shop opened. He would go around 9 or 10 in the morning and return at 8

or 10 at night. The applicant said that he did not know when Partner A went out to the shop or came back, he did not realise that he had to notice his coming and going time. The applicant said there were no cooking arrangements, the food used to arrive from home in Partner A's village. The village was about two kilometres away and they used to bring food every day and sometimes he got food from the hotel in the market. He said that there was no specific person to bring the food but people used to travel between the shop and the village often and carried the food. The situation is such is that it is a remote area and if someone was coming to the market, someone from home would hand him the food.

103. The Tribunal took evidence from Partner B. The Tribunal asked Partner B whether he could write in English and how he was able to write the statement. He said that he could write in English but he was not an expert. He said that he has written the statement himself in English.
104. Partner B said that he had a relationship with the applicant for the past four years but he has known him for longer. Then their relationship became closer. He met the applicant through a friend and initially they did not have a strong relationship, they went out and said hello but later it became strong. The Tribunal asked Partner B to describe that relationship. He said that initially they talked and later he found that the applicant was a good man and later they started a relationship. Partner B said that he and the applicant lived together 'most probably' for six or seven months in Dhaka. They had not lived anywhere else. The Tribunal asked Partner B to speak about their living arrangements. He said that they stayed in a house. They occupied a room and lived together. They sometimes went for outings. The Tribunal asked Partner B if he could state anything else about the relationship. He said that he had a relationship and they are homosexuals.
105. The Tribunal asked Partner B if anybody else lived in the room. He said that before there were other friends occupying the room but later there were only two of them. The Tribunal asked Partner B to describe the names of the people who used to live there. He said person six and person seven, person eight. He cannot recall other names now. The Tribunal asked Partner B if he had to pay rent. He said that he paid 3000 – 4000 taka a month. The applicant had not contributed to the rent or to any other expenses. He said that the applicant used to receive some money from his brothers and he sometimes borrowed money from friends.
106. Partner B said that he used to work in service. He would leave the house at about 9 or 10 in the morning and he would return at 4 or 5 pm. He would return for lunch at about 2 or 2.30 pm and spend an hour at home. He said that while he worked, the applicant would be watching TV. Partner B said that they did the housework together. The cooking was done by the maidservant and he and the applicant did the shopping. He said that they have not met each other's families formally. The Tribunal asked Partner B what he and the applicant did on weekends. He said that they used to go out to different locations, such as the bazaar, nearby towns, the local areas and he also travelled to the applicant's village. The Tribunal asked Partner B if there was anything else he could state about the relationship. He said that the relationship happened through a friend, Partner A. He has a deep relationship with the applicant and still talks with him. They stayed together in the last months. Early in the year the applicant departed he received some threats and told him about these and they started to live together.
107. At the suggestion of the applicant's representative, the Tribunal asked Partner B if he knew anyone by the name of person one and person two. Partner B said that there was a boy named person two with whom he used to have a relationship and who used to run a shop. He said that person two never lived in the same unit as him but they had a good relationship. Partner

B said that person one was a friend who sometimes used to live at his house but he could not recall when. He said that person one used to live in his house before 2008 and he met the applicant. Partner B said that person five used to live in the room as well. Partner B said that the applicant had never married. He confirmed that he bought a shirt for the applicant.

108. The Tribunal took evidence from Partner A. Partner A stated that he wrote the statement through a lawyer who translated it for him. The Tribunal asked Partner A if he had any difficulty disclosing his relationship with the applicant to the lawyer and the notary. He said that he did not.
109. Partner A said that he had a relationship with the applicant since school, maybe since the mid 1990s. They started living together after school, most probably since the late 1990s. In the past 12 months of the relationship they lived together. He had a bachelor house and the applicant used to come and stay with him. The Tribunal asked the witness to describe the house. He said that he could not recall the house but the structure of these houses is common. He no longer lives there. The Tribunal asked the witness how many rooms there were in the house. Partner A said that he could not recall. The Tribunal asked him how long he had been living there. He said that they had been in another place and then changed to another place and he could not recall how long they spent there but it was almost a year. The Tribunal referred Partner A to the place where he and the applicant lived for the last 12 months of the relationship. He said that they lived at his house. He said that he could not recall the details of the house because he is upset and has become very weak thinking about these things. The Tribunal noted that it was hard to believe that he could not recall how many rooms there were in the house where he spent at least several months. Partner A said that there two to three rooms and other bachelors were living there. The house was owned by an old town resident and he paid different rent, from 800 to 1000 taka. He said that the applicant did not know about the rent and did not contribute. Partner A said that he and the applicant had their own room. The Tribunal invited the applicant to describe the room. He said that this room did not contain anything as they used to live a bachelor life. He said that the room had the bed and the pillows. There was nothing else mentionable.
110. Partner A said that the applicant did not support himself financially but he supported the applicant. The Tribunal asked Partner A if they had a TV in the room. He said that they had one initially but it became out of order and he threw it out. The Tribunal asked Partner A how many days a week he used to spend in the shop. He said that he spent the whole week in the shop. The applicant was unemployed at the time and he used to pass his time going here and there. He did not help him in the shop. The witness said that they lived in a nearby village and the applicant met his family but later he was scared and they did not meet at all. The Tribunal questioned Partner A about their social activities. He said that they went to different functions and programs and also to the cinema. He did the housework but the applicant may have helped, he could not recall.
111. The Tribunal asked the witness why the applicant had to leave the country due to his homosexuality and why he thought he was able to remain. Partner A said that he was hiding now and he is upset He is not financially supporting himself and whenever he thinks about the applicant, it makes him feel terrible. His shop is shut down. The Tribunal asked Partner A if he knew how the applicant made arrangements to leave the country. He said that the applicant's brother made arrangements and he did not know how these were made. The Tribunal asked Partner A when his relationship with the applicant ended. He said that his elder brother used to treat him badly and used to be rude and wanting to split them up. He

said the relationship ended in the year the applicant departed. Partner A stated that the applicant has never been married.

112. The Tribunal pointed out to the applicant that there were a number of inconsistencies between his evidence and evidence of his partners and if it was to rely on such inconsistencies, the Tribunal would give him the opportunity to comment on these on writing. The Tribunal asked the applicant if he wished to provide any comments with respect to these. The applicant said that when Partner B speaks, he is an educated person and he is okay but Partner A is not an educated person and is here and there. If he cannot convince the Tribunal, he did not know what he could do about that. He is different from others and what he said is true. He lacks the skills of presenting himself properly and in a well supported way and as he is unable to do it, it is not possible to overcome what is naturally in him. What is said is true, he would not tell a lie and there is nothing he would hide.
113. The applicant's representative stated, with respect to the inconsistencies, that the substance of the evidence was essentially the same, despite the inconsistencies, and when two people are asked questions, there would be differences in their observations and comments. The thrust of what was said was that there was an essential commonality of responses. The evidence should be considered in the broader sense and should not be gone through with a fine toothcomb. There were problems in the initial interviews but the evidence is broadly consistent and it is also consistent with the available country information. The representative submitted that the applicant should be given the benefit of the doubt and he deserves protection.
114. On 29 April 2009 the Tribunal again wrote to the applicant pursuant to s. 424A of the Act inviting his comments on, and response to, the information the Tribunal considered may be a reason or part of the reason for affirming the decision under review. The Tribunal set out the inconsistencies in the oral evidence of the applicant, Partner A and Partner B. These were said to be relevant as it may cause the Tribunal to reject the applicant's claim that he had a relationship with Partner A or Partner B or that he lived with them in a relationship. It was also said to be relevant to the assessment of the applicant's credibility and to the weight to be given to the other evidence he presented.
115. The applicant replied on 8 May 2009 through his representative. The representative notes that the application is not an application for an interdependency visa and a different test applies in relation to consistency of evidence between the applicant and his witnesses. The applicant repeatedly explained his personal approach to life, which must be considered in assessing his evidence and each person has different recollections. The representative argues that the Tribunal should look at the totality of evidence and not isolated inconsistencies and this would indicate commonality of responses. The representative addressed each of the inconsistencies set out in the Tribunal's correspondence. The representative referred to the Tribunal's credibility guidelines and a number of decisions of various courts relating to the assessment of credibility and suggested that the applicant should be given the benefit of the doubt.

FINDINGS AND REASONS

116. The applicant claims to be a national of Bangladesh and he entered Australia as a holder of a passport issued in Bangladesh. The Tribunal has been provided with a copy of a Country A passport in the applicant's name, that is held electronically on a DIAC database. The applicant denies that he holds Country A nationality or that he had any knowledge of that

passport. The applicant's representative submits that if the applicant was a national of the Country A, he would have travelled to that country. While that submission has some force, the Tribunal is of the view that the mere fact that the applicant remains in Australia does not indicate that he is not a national of the Country A. Nevertheless, the Tribunal has not had the opportunity to examine the Country A passport, as only electronic copy is available, nor to ascertain its validity. It is not apparent that this passport or any other Country A travel document is presently available to the applicant. Having regard to the totality of evidence presented with respect to the applicant's nationality, the Tribunal has formed the view that, on balance, the applicant is not a Country A national and that he does not have a current legally enforceable right to enter and reside in the Country A. The Tribunal finds that the applicant is a national of Bangladesh and has assessed his claims against Bangladesh as his country of nationality.

117. The Tribunal accepts that, as Beaumont J observed in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 451, 'in the proof of refugeehood, a liberal attitude on the part of the decision-maker is called for' However this should not lead to 'an uncritical acceptance of any and all allegations made by suppliants'. As the Full Court of the Federal Court (von Doussa, Moore and Sackville JJ) observed in *Chand v Minister for Immigration and Ethnic Affairs* (unreported, 7 November 1997):

'Where there is conflicting evidence from different sources, questions of credit of witnesses may have to be resolved. The RRT is also entitled to attribute greater weight to one piece of evidence as against another, and to act on its opinion that one version of the facts is more probable than another' (citing *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 281-282)

118. As the Full Court noted in that case, this statement of principle is subject to the qualification explained by the High Court in *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 576 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ where they observed that:

'in determining whether there is a real chance that an event will occur, or will occur for a particular reason, the degree of probability that similar events have or have not occurred for particular reasons in the past is relevant in determining the chance that the event or the reason will occur in the future.'

119. If, however, the Tribunal has 'no real doubt' that the claimed events did not occur, it will not be necessary for it to consider the possibility that its findings might be wrong: *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220 per Sackville J (with whom North J agreed) at 241. Furthermore, as the Full Court of the Federal Court (O'Connor, Branson and Marshall JJ) observed in *Kopalapillai v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 at 558-9, there is no rule that a decision-maker concerned to evaluate the testimony of a person who claims to be a refugee in Australia may not reject an applicant's testimony on credibility grounds unless there are no possible explanations for any delay in the making of claims or for any evidentiary inconsistencies. Nor is there a rule that a decision-maker must hold a 'positive state of disbelief' before making an adverse credibility assessment in a refugee case.
120. The applicant claims that he is fearful of persecution as a result of his homosexuality. The Tribunal accepts that homosexuals in Bangladesh are identifiable by a characteristic or attribute common to all members of the group, namely their sexual orientation, and that this characteristic or attribute distinguishes the group from society at large in Bangladesh. The

Tribunal accepts, therefore, that homosexuals form a particular social group in Bangladesh for the purposes of the Convention. However the question remains whether the applicant is a member of this particular social group, as he claims.

121. As the Tribunal explained to the applicant during the hearing and in various correspondence, it had a number of concerns with his evidence, which have led the Tribunal to find the applicant not to be a person of credibility and to reject his claims. These are outlined below.

- The applicant denied that he held the Country A passport or that he was even aware of the existence of such document. The applicant argues that he paid a broker to obtain the Australian visa and gave the broker his Bangladeshi passport and that the passport was returned with the Australian visa. However, DIAC has provided information to the Tribunal which indicates that the Country A passport was used to apply for the ETA, which the applicant used to enter Australia

The applicant confirmed in his oral evidence to the Tribunal that his Bangladeshi passport has no evidence of an Australian visa, which would be required for him to depart Bangladesh and travel to Australia. The Tribunal is of the view that the applicant would have used his Country A passport to depart Bangladesh as it is unlikely that he would have been allowed to board the plane in Dhaka without an Australian visa. The applicant argues that he did have the Australia visa in his Bangladeshi passport but he was unable to offer a meaningful explanation as to why the passport no longer contains that visa (the applicant was provided with a full copy of his passport in the course of the hearing).

Thus, the Tribunal does not accept the applicant's claim that he is unaware of the existence of the Country A passport. The Tribunal finds that the applicant has been untruthful in his evidence and the Tribunal considers this to be of significance

- In his airport and Departmental interviews the applicant stated that he was married. He further stated in his airport interview that the reason he fled Bangladesh was because his partner tried to kill him and that he had been in hiding for a few months before his departure, including from his wife. The applicant explained to the delegate and the Tribunal that he has provided false information in those interviews because he was physically and emotionally tired, because he was afraid that the information would be published in the media and because he was giving evidence through a Bengali interpreter and he did not wish to disclose the information to the interpreter. The applicant also argues that he was unable to provide his spouse's full address and mobile number and this indicates that he has not provided truthful information. The Tribunal does not accept these explanations.

The Tribunal is mindful that the applicant may have been tired and nervous at the interviews and also that he may have been reluctant to disclose his information in the presence of a Bengali interpreter. The Tribunal also acknowledges the submission of the applicant's representative, who referred to the UNHCR Handbook, which provides that applicants may be reluctant to disclose full information at the initial interview. Despite this, the applicant confirmed in his oral evidence to the Tribunal that when he was interviewed in the airport, he was informed that his visa was a 'duplicate', so the applicant may have been aware of the possibility that he would not be allowed to remain in Australia. More importantly, in his interview a few days later, the applicant was informed that he may be removed from Australia if he had no unfinished appeals and does not depart Australia voluntarily. The applicant has not suggested to the Tribunal that he was

afraid of his information being released to the media in Bangladesh at the time of the Departmental interview. Yet, despite the possibility of being returned to Bangladesh, the applicant has not disclosed his reasons for seeking protection in either interview while repeating in the second interview that he was married.

The Tribunal is of the view that if the applicant was genuinely fearful of being returned to Bangladesh, he would have disclosed and discussed his circumstances, despite any reservation he may have had at the time, because his failure to do so may have resulted in him being removed from Australia to Bangladesh and, as he claims, being subjected to serious harm. This is particularly so as the applicant confirmed in his oral evidence to the Tribunal that he travelled to Australia with the intention of seeking protection, albeit at a later date, and that at least by the time of the second interview he had already decided to seek protection.

The applicant claims that he was unfamiliar with the situation in Australia, he relied on the situation in Bangladesh and he told anyone who asked him about marriage that he was married. The applicant also argues that due to his cultural characteristics, he was reluctant to disclose, and discuss, his homosexuality. Again, the Tribunal does not consider these to be reasonable explanations, given that by the time of this interview the applicant had decided to seek protection and that the basis of his protection application would be his sexuality. The applicant's failure to make any mention of his homosexuality and of his fear of persecution on that basis until the application for the protection visa was made, a month after applicant's entry to Australia, as well as the applicant's repeated references to being married in his interviews with Immigration officials, cause the Tribunal to question the authenticity of the applicant's claims put forward in his protection visa.

- The Tribunal also found the applicant's claims about his homosexuality to be vague and lacking in details. He provided only a rudimentary statement with his protection visa application, in which he stated little more than that he liked boys and felt no attraction to girls, that he was gay and that his family and some others knew about it. The applicant has offered very few details of his life or his activities in Bangladesh in the primary application. The Tribunal acknowledges the submission from the applicant's representative that at the time the application was made there were difficulties associated with obtaining the interpreter, however, more than three months have now passed since the application was made and little more information has been provided by the applicant. The Tribunal does not accept that the limited information the applicant presented is due to his inability to express himself, his natural reticence, his limited education or the applicant's cultural characteristics. The Tribunal is of the view that despite his personality or any deficiencies in his education, the applicant had ample time and opportunity to prepare a more detailed description of his life in Bangladesh, which he had not done.
- The applicant could not recall in his oral evidence to the Tribunal the time or even the year when his relationship with Partner B started, despite the fact that he claimed that he only had two long-term relationships, one with Partner B and one with Partner A. He claimed that his relationship with Partner B started after 2000 while Partner B states in his statement that he has known the applicant 'from the last four years'.
- The applicant initially claimed in his oral evidence that before the mid 1990s he stayed with Partner A occasionally and that from the mid 1990s he lived with Partner A continuously. He claimed that he lived with Partner A until about six months before his departure from Bangladesh, when he was living with Partner B. The applicant initially

claimed that people knew about the relationship a few days after it started in the mid 1990s. However, he later stated that he did not live with Partner A continuously until much later and that people did not know about the relationship until the early 2000s. The applicant stated that he was young and people did not notice the relationship. This appears to be inconsistent with his earlier claims that he lived with Partner A continuously since the mid 1990s and that people knew about the relationship since a few days after they started living together.

- The applicant provided in a submission references to extensive country information concerning the treatment of homosexuals in Bangladesh. He also claims that people knew about his relationships either since the mid 1990s or since the early 2000s and that the fundamentalists knew about his relationships since the year before he came to Australia. Despite that, the applicant claims that the only harm he feared were the threats and one attack by his brother, to which he had not referred in his previous submissions. The applicant's claims of having been threatened and attacked once in more than five years of being known to be, or being perceived as, a homosexual by others and of the fundamentalists being aware of his situation, appear to be inconsistent with the country information provided by the applicant.
- The applicant was unable to present a meaningful explanation as to why no other action was taken against him while he was in Bangladesh. He stated that they did not know where he lived in Dhaka and also that he did not return to his village. However, the applicant claimed earlier that he moved to Dhaka about six months before his departure from Bangladesh and that before then he sometimes lived in his village and sometimes in Dhaka. As the applicant had not left Bangladesh until late [year of departure], he would have moved to Dhaka in mid [year of departure], while he claims that the fundamentalists found out about the relationship in [year before departure]. The Tribunal has formed the view that the applicant has been untruthful in his evidence.
- The Tribunal found the applicant's information about the reasons for his departure from Bangladesh to be confused. He claims that the fundamentalists found out about his relationship and he was worried that they may kill him. However he claimed earlier that they knew about the relationship for over a year before his departure. He could not explain satisfactorily what happened in [year of departure] that caused him to decide to leave the country and why he made that decision in [year of departure] and not at any time earlier, either in [year before departure] when he claims the JMB found out about the relationship and had spoken to him, or earlier when others learned about the relationship, or at the time when his brother attacked him. The Tribunal does not accept that the applicant's inability to explain these matters is due to his lack of education or his reserve. The Tribunal is of the view that the applicant has been untruthful in his evidence.

122. Immediately prior to the first hearing the applicant presented two statements, one from Partner A and one from Partner B. Both were in English and typewritten. While they contain signatures, there were no contact details or other information to ascertain the identity of the writers or to verify their content. The Tribunal considers these to be of no probative value and gives these no weight. The Tribunal has also considered the statement by the applicant's brother. The Tribunal finds this statement to be vague and unhelpful. It refers to the applicant being a 'homosexual by nature' and refusing to marry women and states that due to his homosexual activities the applicant had been physically and mentally harassed on several occasions. It offers no details of the applicant's 'homosexual nature' or activities, nor a

description of the physical and mental harassment that the applicant suffered on several occasions. The Tribunal is also mindful that the statement was prepared by the applicant's brother, who is likely to have prepared it at the applicant's behest. The Tribunal considers the statement from his brother to be of no probative value and gives it no weight.

123. The applicant has subsequently presented the statements from Partner A and Partner B which contained their contact details and the Tribunal took oral evidence from these witnesses at the request of the applicant. The Tribunal found that there were numerous inconsistencies in the evidence of the applicant, Partner A and Partner B and that much of their evidence concerning the relationship was vague and lacking in detail. The Tribunal's concerns are noted below:

- The applicant stated in oral evidence that he had known Partner B since the early 2000s and that he had a relationship for about six months before his departure from Bangladesh. Partner B stated in his statement to the Tribunal that he has known the applicant for the past four years. In his subsequent statement to the Tribunal the applicant noted that Partner B explained in his oral evidence that he has known the applicant for a longer period. Partner B did state in his oral evidence that he has known the applicant for a longer period and that he and the applicant were in a relationship for four years and that later the relationship became closer. However this also appears to be inconsistent with the applicant's evidence that he and Partner B were in a relationship for about six months before the applicant's departure from Bangladesh.
- The Tribunal asked the applicant to name the persons who used to live in the apartment where he lived with Partner B. He named person one and person two. He said that there were others staying for two to three months, such as person three, person four and person five and that other people used to come and go. Partner B stated in his oral evidence to the Tribunal that people who used to live in the room were person six, person seven and person eight. He said that he used to have a relationship with person two but person two never stayed in the same apartment. He said that person one did stay in the same apartment but it was before [year of departure] and that he and the applicant started living together in [year of departure]. The applicant subsequently claimed that both he and Partner B referred to other people living at the premises and the fact that they named some of the same people indicates that their evidence was consistent. The Tribunal does not accept that argument. While the Tribunal would not expect the applicant and Partner B to be able to name every person who lived at the premises, the Tribunal does expect a degree of consistency. In this case, however, the applicant stated, for example, that person two resided at the premises while Partner B said that he never resided in the apartment. The applicant also stated that person one resided at the apartment at the same time when he was living there but he claims to have lived there in [year of departure] while Partner B stated that person one lived at the apartment before [year of departure]. Thus, while the applicant and Partner B provided some names which were the same, these inconsistencies do not enable the Tribunal to find that the applicant did live at the premises for the period, and in the circumstances, claimed.
- The applicant could not state how much rent Partner A and Partner B paid or what their income was. He stated that Partner B's rent was about 7000 – 8000 BDT a month, including bills. Partner B stated that he paid rent of 3000 – 4000 BDT a

month. The applicant argues that he made it clear that he did not know the amount and that the figure he quoted included bills. The Tribunal notes, however, that both the applicant and Partner B were questioned specifically about the rent that was paid. The applicant had only limited knowledge about Partner A's and Partner B's financial affairs. He did not know what their income was. The applicant stated in oral evidence that he was financially supported by Partner A, Partner B and his elder brother. Partner B stated to the Tribunal that his brothers used to send money to the applicant and he also borrowed money from friends. The applicant's lack of knowledge about Partner B's financial affairs causes the Tribunal to question the nature of their relationship.

- The applicant stated in oral evidence to the Tribunal that in the period when they lived together, Partner B would leave for the office at 9.30 am and sometimes he would return at 12 or 12.30 before going back to the office at 2 pm. He said that sometimes if he was busy, he did not come home. Partner B stated that he used to leave home at about 9 or 10 in the morning and he would return at 4 or 5 pm. He would return for lunch at about 2 or 2.30 pm and spend an hour at home. The applicant later claimed that Partner B must have made an error in his evidence, possibly due to the time when his evidence was given. The Tribunal finds it odd that this was the only aspect of Partner B's claims in which he would err due to the early hour of questioning. Further, the Tribunal does not consider it inherently implausible, as the applicant suggests, that if Partner B took lunch around 2 or 2.30, he would return from work at 4 or 5. The Tribunal is of the view that this aspect of the evidence was inconsistent, rather than erroneous.
- The applicant stated that while he was living with Partner B, the shopping was done by a housemaid. Partner B stated that he and the applicant did the shopping together but the housemaid was responsible for the cooking.
- The applicant stated in that in the past 12 months of his relationship with Partner A, the applicant used to live in Partner A's place. He stated that they lived in a room near the shop and nobody else was living there. Partner A stated in that period they lived in a house with two to three rooms and there were other bachelors living there.
- The applicant stated that while he lived with Partner A, he used to watch TV which Partner A 'used to arrange sometimes'. Partner A stated in his oral evidence to the Tribunal that they had a TV at first but later it broke and he threw it out. The applicant subsequently stated that Partner A's evidence relating to cohabitation in the last period was confused and that he and Partner A referred to different places of residence. The Tribunal notes, however, that on several occasions it reminded both the applicant and his witnesses about the period to which its questions were directed and, further, the Tribunal is mindful that the applicant had not indicated during the hearing that Partner A was referring to a different place of residence.
- The applicant had difficulty providing any meaningful description of his living arrangements with Partner B and Partner A. When asked what he did on a daily basis with Partner B, the applicant stated that he 'went out'. He had difficulty recalling the premises where he lived with Partner A, as did Partner A himself. While the Tribunal accepts the representative's submission that life in a village in Bangladesh would be different, the Tribunal does not expect the applicant to have engaged in any particular type of activities or conduct. Rather, the Tribunal expects the applicant to be able to

describe the activities he and his partner undertook while living in a village in Bangladesh The Tribunal questioned the applicant about his personal experiences and the applicant’s responses were vague and uninformative.

124. The applicant’s representative argues that the substance of the evidence was essentially the same and that there were commonalities and any discrepancies were due to differences in perception and memory, as well as cultural considerations and educational limitations. The Tribunal does not accept that argument. The Tribunal does not accept that the applicant’s inability to provide details of his relationship and that the inconsistencies about such significant matters as the duration of the relationship, the nature of the household and the description of the living arrangements were minor, that they may be dismissed due to differences in perception, nor that such differences justify a finding that there was a commonality of evidence. The Tribunal does not accept that these inconsistencies must be overlooked – as the applicant effectively suggests – because there was also some consistent evidence. The Tribunal does not accept that it is the applicant’s or the witnesses’ lack of education that caused the applicant and the witness to recall the names of their flatmates or refer to different house chores and other arrangements. While the Tribunal acknowledges that cultural and other considerations are significant, the Tribunal’s concern is not with the nature of activities the applicant and his partner engaged in while living in Bangladesh but, rather, with their inability to consistently recall such activities.
125. The applicant argues that he was naturally uninquisitive and that he could not recall many details. The applicant also stated that he was unaware that he would be required to answer such questions and was unprepared for it. The Tribunal does not accept these claims. In the Tribunal’s view, a description of genuine events that the applicant experienced would not require any special preparation or level of inquisitiveness. The Tribunal also does not accept that such questioning is only relevant with respect to an application for an interdependent visa and not in this case. The applicant claims that he had homosexual relationships with two partners in Bangladesh and it is appropriate for the Tribunal to test the applicant’s claim and to question the nature of such relationships.
126. For these reasons, the Tribunal considers the difference in the applicant’s and witnesses’ evidence to be significant. The inconsistencies in the oral evidence of the applicant and his witnesses and the applicant’s general vagueness about the specific aspects of his relationship cause the Tribunal to conclude that the applicant, Partner A and Partner B had not been truthful in their evidence to the Tribunal, in particular, with respect to their evidence concerning their relationship.
127. Some of the concerns outlined above may not be significant on their own, while the Tribunal considers that others go to the heart of the applicant’s claims. The combination of these concerns, however, causes the Tribunal to find that the applicant has been untruthful in his claims made in his protection visa application. The Tribunal finds that the applicant’s claims contained in his protection visa application had been fabricated to further his protection application The Tribunal does not accept these claims. In particular, the Tribunal does not accept that the applicant is, or has ever been perceived to be, a homosexual or that he has ever engaged in homosexual activities. The Tribunal does not accept that the applicant has ever formed relationships with other men, that he ever lived, or had relationships with, Partner A or Partner B or with any other men. The Tribunal does not accept that the applicant had ever experienced any discrimination or pressure from his family, his brother or cousin, the villagers, the fundamentalists, the students at the Madrassa or from anybody else, either as a result of his homosexuality, of his relationship with a Hindu, or as a result of his religious

practices and beliefs. Importantly, the Tribunal notes that the applicant claims to have been harassed due to his religious beliefs because of his homosexuality and not for any other reason. The Tribunal does not accept that this was the case. The Tribunal does not accept that the applicant had been pressured into marriage by his family against his wish, indeed, the Tribunal prefers the applicant's evidence in the Departmental interviews that he was married, despite the fact that the applicant was apparently unable to state his wife's address and telephone number. The Tribunal does not accept that the applicant has ever been attacked, physically harmed or threatened because of his homosexuality or his religious beliefs or activities. The Tribunal does not accept that the fundamentalists or the students from the Madrassa or others spoke to the applicant either about his homosexuality or his religion. The Tribunal does not accept that the applicant's family had been placed in an embarrassing situation either because of the applicant's homosexuality or his religious beliefs and practices. The Tribunal does not accept that the applicant has decided to depart Bangladesh because of any harm he experienced in Bangladesh arising from his sexuality or his religious beliefs and practices or because he feared such harm in the future. The Tribunal does not accept that anybody had visited the applicant's home to make inquiries about him.

128. The Tribunal accepts that the applicant may have lived at the same premises as Partner A and Partner B, however the Tribunal is of the view that he would have done so as a room mate and that the applicant's friendship with Partner A and Partner B would be of the nature of the friendship between Partner A and Partner B and others who also shared accommodation. The Tribunal does not accept that they have even been in a relationship. The Tribunal makes this finding, having considered the totality of evidence before it.
129. The Tribunal finds that there is no real chance that the applicant will be persecuted for the reason of his homosexuality if he were to return to Bangladesh now or in the reasonably foreseeable future.
130. The applicant claims that he does not consider himself to be a practising Muslim and that his brothers are. The applicant claims that he is fearful of religious persecution because the fundamentalists believe that he is against their religion. When asked why the fundamentalists believed that, the applicant said that homosexuality is against religion. The Tribunal has rejected the applicant's claim that he is a homosexual. The Tribunal does not accept that the fundamentalists or any other religious person or group would wish to harm the applicant because of his claimed homosexuality. The applicant stated that there is no other reason why the fundamentalists would believe that he is against their religion. However, to the extent that the applicant may have made a separate claim that he is fearful of persecution because of his refusal to engage in religious practices, the Tribunal notes that the applicant has not suggested that he had experienced any persecution, or even harassment, for that reason in the past, despite his claim that there was a big Madrassa in the area where he lived and his claim that students from the Madrassa came to talk to him. Again, the applicant's claim that the fundamentalists or the JMB were planning to attack him relates solely to his claimed homosexuality. Thus, the Tribunal does not accept that there is a real chance that the applicant will be persecuted for the reason of his religion if he were to return to Bangladesh now or in the reasonably foreseeable future.
131. Having considered the applicant's claims singularly and cumulatively, the Tribunal finds that there is no real chance that the applicant will be persecuted for a Convention reason if he were to return to Bangladesh now or in the reasonably foreseeable future.

CONCLUSIONS

132. 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

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

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 *Migration Act* 1958.

Sealing Officers ID: PMRT01