

1202788 [2012] RRTA 331 (18 May 2012)

DECISION RECORD

RRT CASE NUMBER:	1202788
DIAC REFERENCE(S):	CLF2011/187949
COUNTRY OF REFERENCE:	Cambodia
TRIBUNAL MEMBER:	Carolyn Wilson
DATE:	18 May 2012
PLACE OF DECISION:	Adelaide
DECISION:	The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

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

Member of the same family unit

19. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Regulations for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include a spouse.

CLAIMS AND EVIDENCE

20. The Tribunal has before it the Department's file relating to the applicants. 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.
21. The applicants are citizens of Cambodia and a married couple aged [age deleted: s.431(2)]. They arrived in Australia [in] October 2011 as holders of Subclass 676 Tourist visas valid [until] November 2011.

Protection visa application

22. [In] December 2011 the applicants applied for Protection visas. Only the first named applicant, hereafter referred to as 'the applicant', made claims to be a refugee. The second named applicant applied as a member of his family unit.
23. In his application the applicant made the following claims:
 - My religion is Buddhism. I was discriminated in my home country because of my religion. I do not like the current Cambodian government. I attended demonstrations against the current Cambodian government. There are so many government officials who accept bribes like money or houses. Normal people like me have no way to make money. I was tortured by local police because of this. I have to leave out of Cambodia. Otherwise the Cambodian government may put me into jail.
24. The applicants gave their current residential address as being in [City1], and their postal address as a PO Box in [a suburb in that city]. They answered 'no' to the question of whether they had received assistance in completing the form. They declared three children, a daughter [Ms A] in Australia and one son and one daughter in Cambodia. They gave an address in Phnom Penh as their last address in Cambodia. They provided no employment or education history but listed the applicant as 'retired'.
25. The delegate invited the applicants to attend an interview [in] February 2012 in [City1], but they did not attend.
26. The delegate refused the applications as the claims were so brief and unparticularised that the delegate could not be satisfied the applicant feared harm for a Convention reason. The delegate noted the majority of Cambodians practice the Buddhist faith and so did not accept the applicant had faced discrimination for reason of his religion. On the basis of the lack of information before him the delegate did not accept the applicant had participated in anti-government demonstrations or that he had been tortured by the police.

Application for review

27. The applicants provided a copy of the delegate's decision with their application to the Tribunal. They were represented in relation to the review by their registered migration agent.
28. [In] May 2012 the Tribunal received submissions from the representative including a statement from the applicant. The representative submitted the applicant fears persecution on the grounds of his religion and political persuasion which is against the [Military] General in Cambodia. In the past he has been tortured and persecuted by the [Military] General. He is unable to obtain state protection because he is Buddhist and because of his political opinion.
29. The applicant provided the following as his claims of past harm and his fears in Cambodia:
 - In 1981 [General B] sold soldiers' weapons to the Communist Party. The applicant reported him for this and in response [General B] had him condemned as a 'betrayal' and charged him with undermining relations with Vietnam.

- In 1983 [General B] sent him to the civil war. Another man pointed a gun at the applicant but before shooting him an explosion knocked both men to the ground. The man said he had been sent by [General B] to kill him, but he didn't want to do that. The applicant then fled to [Town 2].
 - In 1995 the applicant arrested an illegal trader group who were committing crimes selling illegal timber in [Town 2]. This group had connections with [General B] and [another man]. The illegal traders walked free without even being questioned by the police.
 - After those issues the applicant encountered 5 'killers' who were following him home. They beat him, but the applicant got away by running to a temple to seek the help of friends. He then got kicked out of the police office in [Town 2] and was relocated to [another town]. He worked in the police station there but he suffered discrimination and was under surveillance. The head officer beat him and threatened his life.
 - In 2005 he went back to [Town 2] to work as a police officer but was still under surveillance and had threats to his life.
 - In 2007 he discovered a drug dealer, who had strong connections with [senior military official] and [a minister of the government]. His life was in great danger as his friends who were monks attended peaceful protests against the government and the applicant helped them get out of that situation and was caught.
 - The applicant saw a gang of people who always followed him and were about to attack him. So he fled the country and asked his friend's daughter to invite him on a Tourist visa.
 - A friend who helped him lodge the application went back to Cambodia straight away. When he got the letter from Immigration he thought he could go to [City 3] so he asked his employer [Mr C] to drive him to [City 3].
30. The applicant's statement was translated by [Ms A] and she put in writing that she knows the applicant as he is a close friend of her family who had saved her parents during the civil war. She calls him 'father' because of this.
31. The applicants appeared before the Tribunal [in] May 2012 to give evidence and present arguments. The Tribunal also received oral evidence from [Ms A] who is said to be the applicants' god-daughter. The Tribunal hearing was conducted with the assistance of an interpreter in the Khmer and English languages.
32. The Tribunal asked the applicant who had helped him complete the forms for his Protection visa application. He said it had been a two stage process. First he got the refusal letter so on the second occasion he got assistance from his [migration agent]. The Tribunal asked him who had helped him apply the first time and he said the first time he wasn't aware of the law of how to apply. What he did was apply just to continue staying in Australia. The Tribunal asked him again who had completed and signed the forms and he said [his migration agent had].

33. The Tribunal put to the applicant that his failure to answer the question of who had completed the application forms might lead the Tribunal to conclude he was trying to hide something. He said on the first occasion a friend had taken him to the Immigration Department. That friend has already returned to Cambodia. The Tribunal asked what his friend's name was and he said [Mr D]. He knows him from Cambodia and his god-son introduced him to [Mr D] in Australia. The Tribunal asked did [Mr D] complete the forms for him. He said he only took him to Immigration, [Mr D] did not fill out the forms. He went to Immigration to extend his visa and he told them he wanted a further stay in Australia. The Tribunal asked him why he wouldn't answer the question of who had completed the forms. He said the first time he applied he did not fill out any forms. The Tribunal asked if he knew what was in the Protection visa application forms and he said [his migration agent] had asked him questions and then she filled everything out. He took the forms home and his friends assisted him.
34. The applicant's representative clarified that she had only assisted the applicants before the Tribunal and she did not complete the Protection visa application forms.
35. The Tribunal asked the applicant if he thought that when he was applying to the Department that he was just applying to extend his Tourist visa. The applicant said he just wanted to extend his stay in Australia. The Tribunal asked him why and he said there were a few reasons but he cannot return to Cambodia because he fears for his life.
36. The applicant said he had 14 years of education. He was working in the [military] up until the time he came to Australia. He joined the [military] in December 1979. When asked about his family in Cambodia he said most of his family members were killed by the Khmer Rouge. The Tribunal asked if he had any children and he said he had 6 children, one of whom was an orphan who he adopted, and they all lived in Cambodia. When asked if he had any children living in Australia he said he has a god-daughter called [Ms A]. He is in contact with his children in Cambodia.
37. The Tribunal asked the applicant about [Mr C] and how he knew him. He said he was the husband of his god-daughter. The Tribunal pointed out he had listed [Mr C] and [Ms A] as his 'employers' on his response to the Tribunal's hearing invitation. He said at the moment he is staying with them and they run their own business. The Tribunal put to him that it would have been more honest to describe them as his god-daughter and her husband rather than his 'employers'. He said he sometimes works with them and that's why he calls them his employers. The Tribunal asked how long [Ms A] had lived in Australia and he said he didn't know. He last saw her in Cambodia in 2010 when she came to visit her parents.
38. The Tribunal asked the applicant where he had lived in Cambodia. He said he lived in Phnom Penh. The Tribunal put to him the address he'd included in his Protection visa application in Phnom Penh and he said yes, that was the correct address. He had lived at that address for 23 years. Prior to that he lived in [another town] for 3 years and prior to that he lived in the [Town 2] province. He moved to the [Town 2] province when he joined the [military] in 1979. He was born in [Town 2], in the [village deleted: s.431(2)], but had been educated in Phnom Penh. The family had moved out of [Town 2] due to the war.
39. The Tribunal asked the applicant if he had ever travelled outside of Cambodia. He said he went to Vietnam and to [Thailand]. The Tribunal asked when was the last time that he travelled and he said it was when he went to Thailand in 2003. The Tribunal put to him that it appeared from his passport that he had travelled somewhere in 2008. He said he went to Vietnam then. He had gone for organised study. The Tribunal asked what kind of study and

he said it was for military training. His wife had travelled to Thailand more recently without him, when she went there with friends.

40. The Tribunal asked the applicant what he had been doing since he arrived in Australia. He said he hadn't been doing anything special, apart from last week when he went to Immigration to apply for a tax file number so he could do some casual work. The Tribunal asked where he had been staying and he said they have been staying with his god-daughter in [Town 4]. He confirmed that is the only place they have lived at in Australia. The Tribunal asked why he had put his residential address in his Protection visa application as [City1] and he did not know.
41. The Tribunal put to the applicant that he was being evasive every time a question was asked about his application forms, when he had been able to answer freely questions put to him about his life in Cambodia. The Tribunal put to him that his evasiveness might lead the Tribunal to think he is hiding something or that he is not a credible witness. The Tribunal reminded him he had given an oath to tell the truth and that if the Tribunal found he was not being truthful about smaller matters it might not believe his claims to fear persecution.
42. The Tribunal asked the applicant why there was a false address on his Protection visa application and he said he was telling the truth, and he did not know a [City1] address had been put on it. The Tribunal asked why his mailing address was a post office box in [City1] and he said he wasn't aware of that and he was telling the truth. The Tribunal put to him that he must have received a copy of the Department's decision to refuse his application or he would not have made an application for review to the Tribunal. The applicant said yes. The Tribunal asked him to explain how he had gotten the refusal if it had been sent to a post office box in [City1]. He said his god-daughter gave it to him. The Tribunal asked him how the refusal letter had gotten from the post office box in [City1] to his god-daughter and he said he did not know. All he knew was that he thought he had to come to [City 3] for an interview but later he got the refusal letter.
43. The Tribunal put to the applicant that he had claimed to fear harm because he was Buddhist. However, country information indicated 95% of the population of Cambodia were Buddhist. The Tribunal asked him to clarify how he would be harmed for his religion. He said he did not get the opportunity to answer such questions when he went to [City 3] and then they sent him a refusal. The Tribunal said this was his opportunity to answer such questions so could he tell the Tribunal now. He said he is a very religious person and he respects his religion. What he meant to say is that as a Buddhist he has been doing very good deeds. But the government in Cambodia aren't very good. They don't see that he has been serving his country. He agrees the country has to develop but they are still a bad government.
44. The Tribunal asked him what it was he feared if he returned to Cambodia. He said he has been serving his country since 1979. But they accused him of being a traitor. They did illegal logging and drug trafficking, just to name a few problems. On one occasion in 1981 he found out about corruption in the [military] when they were selling weapons to freedom fighters. He reported it and those higher up were not happy with him. The Tribunal put to him that he had remained in the [military] since that time, so could he explain what harm he claims to have suffered as a result. He said on the first occasion they planned to kill him but he escaped. The Tribunal put to him that he had remained in the [military], so if they wanted to kill or harm him, they've had 30 years to do so. He said people have assisted him whenever these situations arose.

45. The Tribunal asked him what threats he had received in recent years. He said he believes they could have killed him in the last 30 years if they wanted to. But amongst the elite there are also good people. Someone was sent to kill him but they didn't. The Tribunal asked if he could talk about threats he's had in the last 5 or 10 years. He said he was involved in arresting drug dealers who are involved with elite people. He collected information for a court case but soon after the hearing he saw the drug dealer walking free again. This is something he doesn't like.
46. The Tribunal asked why he hadn't tried to stay in Vietnam or Thailand if he feared for his life in Cambodia. He said he didn't believe it was life threatening at the time. He was visiting [Thailand] and when he went to Vietnam he was sent there for training. They had promised to promote him after the training in Vietnam but they didn't .
47. The Tribunal asked him whether his life had been threatened any time in 2011. He said there was an accident when he was on a motorbike and another motorbike pushed into him and knocked them off their bike. He doesn't know who sent the person to do this. Also on occasions people came to his house that he didn't know and they asked him questions. The accident with the motorbike happened about one month before he came to Australia. The Tribunal put to him that the incident with the motorbike could have just been an accident. The applicant said he believes it was intentional because the person just drove off.
48. The Tribunal asked the applicant if he was ever arrested or detained by the police or [military] in Cambodia. He said there was one occasion in 1995 when he lived in [Town 2] province when the authorities questioned him about dealings with business people. The Tribunal asked if he was tortured or harmed in any way. He said he went to court. He knew the judge and the judge knew he was just serving his country. He was reported to have been involved with the business people but the judge did not believe it.
49. The Tribunal asked the applicant if he had ever been detained or had any problems for being involved in a demonstration. He said no, he had never been involved in any political uprising or demonstration at all. He only worked within the government and did his role.
50. The Tribunal asked the applicant if there was anything else he wanted to tell the Tribunal. He said he wanted to add that whatever questions have been asked of him he has only been telling the truth. He wanted to add that when he visited Thailand and Vietnam he didn't stay there because at that time he thought he could still survive in Cambodia. Also those countries do not have human rights like Australia. In Australia there are rights to protect everybody and everyone respects the law. He has been telling the truth about the political situation in Cambodia. Perhaps he can survive there but living with fear is what he'll be doing if he returns there. The truth is he still has a job in Cambodia and by leaving he has sacrificed his job. But he believes in Buddhism and he cannot serve as a corrupted public servant. There are people in Cambodia in his situation and they could vanish for no reason. The government wouldn't even investigate it. He has seen many lives gone.
51. [The second named visa applicant], said she had been married to the review applicant since 1978. The Tribunal noted she had not made claims herself to be a refugee but was relying on her membership of her husband's family unit. She said yes. The Tribunal asked [the second named visa applicant] what evidence she wanted to give to the Tribunal. She said she would like to add that after living in Australia for 6 months her life has improved. She doesn't fear anything in Australia. Living in Cambodia she lived with fear. She also said she did not have a good memory after the accident but after living in Australia her memory is starting to

improve. The Tribunal asked her when she had the accident she was referring to and she said a month before they came to Australia. [The second named visa applicant] also said she would like to request the Tribunal to make a decision that would enable her to stay in Australia.

52. The Tribunal took oral evidence from [Ms A]. She said she lived in [Town 4] and had lived there for 8 years. She came to Australia in 1998. The Tribunal asked if she had ever returned to Cambodia and she said yes, twice in 2011 in May and December. She had not been there between 1998 and 2010. She went twice last year because she had not been in a long time and on the second trip she went there to marry her husband. He husband is from [another country], but they returned to Cambodia to marry.
53. [Ms A] said she knows the applicant because he has been good to her parents in Cambodia and has helped her family a lot.
54. The Tribunal asked [Ms A] if she knew who had helped the applicants apply for a Protection visa. She said was the Tribunal asking about his application to extend his stay in Australia. The Tribunal said no, it was asking about his Protection visa application. She said it was [the migration agent] who helped. The Tribunal explained [the migration agent] had told the Tribunal she has only assisted the applicants in their application before the Tribunal, but did [Ms A] know who helped them with the application they submitted to the Department. She said she thought it was a Chinese agent in [City1]. The Tribunal asked if she knew how the applicants had made contact with an agent in [City1] and she said it was through friends.
55. The Tribunal asked [Ms A] what it was she wanted to tell the Tribunal. She said she wanted to say the applicant was like a second father to her and that he has problems in Cambodia. The Tribunal asked if she had translated the applicant's submissions from Khmer into English and she said yes. The Tribunal asked her if she had any knowledge of the applicant's problems independent of what she had learnt from translating that submission. She said she knows about a few incidents involving [General B] and a few incidents about illegal logging in Cambodia. The Tribunal asked how she knew about this, if she had been living in Australia since 1998. She said they have been in contact and the applicant has told her about the situation.
56. The Tribunal asked the representative whether there were further questions or issues she wanted the Tribunal to explore with [Ms A] and she answered no.
57. The Tribunal attempted to telephone [Mr C] to take oral evidence from him but he did not answer his mobile phone.
58. The Tribunal asked [the applicant] if he had anything else he wanted to put to the Tribunal. He said he just wanted to say he was not aware of the law or process in Australia. So if he has answered something inappropriately, then please excuse him. He has been telling the truth about his situation in Cambodia. He is an old person so he is telling the truth. He considers himself a normal person even though he worked in the government. He asks the Tribunal to let him have his life and survive into the future.

Country Information

59. The US Department of State report on Human Rights Practices in Cambodia, released 8 April 2011, reported as follows on the issue of corruption:

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and officials frequently engaged in corrupt practices with impunity.

On January 20, the government promulgated a new penal code that defines various corrupt acts and specifies the applicable penalties for such acts. The penal code entered into full effect on December 21. On April 17, the government promulgated an anticorruption law, which provides the statutory basis for the establishment of a National Council against Corruption and an anticorruption unit to receive and investigate corruption complaints. Pursuant to the law, the government appointed 11 council members in June. Fourteen investigators for the anticorruption unit were appointed in August, and it began receiving complaints the same month.

Corruption was considered endemic and extended throughout all segments of society, including the executive, legislative, and judicial branches of government. There were reports that police, prosecutors, investigating judges, and presiding judges received bribes from owners of illegal businesses. Reported public experience with corruption was widespread, indicating many corrupt practices were not hidden. Meagre salaries contributed to "survival corruption" among low-level public servants, while a culture of impunity enabled corruption to flourish among senior officials. In April the Phnom Penh Municipal Court convicted and sentenced a Justice Ministry official to eight years in prison for accepting bribes.

60. The US Department of State report on Religious Freedom in Cambodia, released 13 September 2011, reported as follows:

The constitution and other laws and policies protect religious freedom and, in practice, the government generally enforced these protections. Buddhism is the state religion.

The government generally respected religious freedom in law and in practice. There was no change in the status of respect for religious freedom by the government during the reporting period.

There were few reports of societal abuses or discrimination based on religious affiliation, belief, or practice...

An estimated 93 per cent of the population is Theravada Buddhist. The Theravada Buddhist tradition is widespread and strong in all provinces, with an estimated 4,392 pagodas throughout the country. The vast majority of ethnic Khmer Cambodians are Buddhist, and there is a close association between Buddhism, Khmer cultural traditions, and daily life. Adherence to Buddhism generally is considered intrinsic to the country's ethnic and cultural identity. The Mahayana school of Buddhism claims more than 34,000 followers and has 105 temples throughout the country.

FINDINGS AND REASONS

61. The applicants travelled to Australia on Cambodian passport and claim to be a nationals of Cambodia. The Tribunal has assessed their claims against Cambodia as their country of nationality.
62. In the Protection visa application the applicant claims to fear harm based on his religion. It is claimed he suffered torture for assisting monks in a political demonstration. The applicant denied at the hearing ever participating in a demonstration. When asked if he had ever been tortured he said only that he had once gone to court and the judge had dismissed the charges. The Tribunal is not satisfied on the evidence before it that the applicant has ever suffered torture or any other serious harm for reason of his religion.
63. The applicant claimed in his written statement provided to the Tribunal that he had been persecuted by [General B] since 1981 because he had uncovered corruption and illegal activities. The Tribunal has considered whether the applicant has a real chance of being persecuted for an actual or imputed political opinion of being opposed to the [General B] in particular or the government in general.
64. The Tribunal is concerned about the erroneous and inconsistent information in the original Protection visa application form and the applicant's unwillingness to talk about how that application was completed and lodged. The Tribunal finds the applicant is not a credible witness and concludes that he has exaggerated or made up aspects of his claims, such as saying someone was sent to kill him in 1981, claiming people were coming to his house, or following him, or trying to knock him off his motorbike. The Tribunal finds the applicant's evidence in relation to claimed attempts on his life in the past and his claim to fear serious harm on return is not credible.
65. The Tribunal finds it plausible that in his time in the [military] the applicant has discovered instances of corruption. The Tribunal finds it plausible he has been so concerned and opposed to that corruption that he has made reports and complaints. The Tribunal accepts this may not always have gone in his favour and that he may have been harassed such as being questioned or not promoted as a result. The Tribunal accepts the evidence of [Ms A] that the applicant has told her of instances in Cambodia where he has been involved in reporting corruption. The Tribunal finds however that the applicant's ability to remain in the [military] since 1979, without being dismissed or suffering serious harm, indicates he has not suffered serious harm amounting to persecution for reason of political opinion in being a whistle blower or being anti-corrupt government.
66. The Tribunal does not accept that the motorbike accident in 2011 was anything more than an accident. The Tribunal is not satisfied on the evidence before it that the applicant was subjected to threats to his life or any other serious harm before he left Cambodia and does not accept he will be should he return in the reasonably foreseeable future.
67. The Tribunal finds that there is not a real chance that the applicant will be persecuted, for a Convention reason or any other reason, if he were to return to Cambodia now or in the reasonably foreseeable future. Therefore he does not satisfy the requirements of s.36(2)(a) of the Act.
68. The Tribunal has also considered the application of s.36(2)(aa) to the applicant's circumstances. In this regard, the Tribunal has considered whether there are substantial

grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, that is Cambodia, there is a real risk he will suffer significant harm. Based on the findings above in relation to his credibility and the genuineness of any perceived threat to him, the Tribunal does not accept he would face arbitrary deprivation of his life or the death penalty, or that he will be subjected to torture, or cruel or inhuman treatment, or degrading treatment or punishment. There is nothing before the Tribunal to make a finding that there are substantial grounds for believing that there is a real risk that the applicant would suffer significant harm in any of these forms.

69. The Tribunal is not satisfied that it has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's being removed from Australia to another country, that there is a real risk he will suffer significant harm. The applicant does not satisfy the requirements of s.36(2)(aa) of the Act.

CONCLUSIONS

70. The Tribunal is not satisfied that any of the applicants is a person to whom Australia has protection obligations. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) or (aa) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b) or (c). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

DECISION

71. The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.