

1404819 (Refugee) [2016] AATA 3531 (12 March 2016)

DECISION RECORD

DIVISION: Migration & Refugee Division
CASE NUMBER: 1404819
COUNTRY OF REFERENCE: Cambodia
MEMBER: Linda Symons
DATE: 12 March 2016
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 12 March 2016 at 5:54pm

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Cambodia, arrived in Australia [in] September 2009 as the holder of a [temporary] visa. This visa expired [in] March 2010. She thereafter remained in Australia as an unlawful non-citizen. [In] May 2013, she was granted a Bridging visa in association with her application for a Protection visa. She was issued a further Bridging visa [in] June 2013.
3. The applicant applied to the Department of Immigration and Border Protection (the Department) for the Protection visa [in] May 2013 and the delegate refused to grant the visa [in] February 2014. On 11 March 2014, she applied to the Tribunal for review of that decision.
4. The applicant appeared before the Tribunal, differently constituted, on 10 September 2014 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Khmer and English languages. As that Tribunal Member was thereafter unavailable this case was re-constituted to a different Tribunal Member and then to the current Tribunal Member.
5. The applicant appeared before this Tribunal on 16 October 2015 to give evidence and present arguments. The Tribunal also heard evidence from [Mr A]. The Tribunal hearing was conducted with the assistance of an interpreter in the Khmer and English languages.
6. The issues that arise on review are whether Australia has protection obligations to the applicant under the Refugees Convention or under the complementary protection criterion.

RELEVANT LAW

7. The criteria for a Protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a Protection visa of the same class.

Refugee criterion

8. Section 36(2)(a) provides that a criterion for a Protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

Complementary protection criterion

9. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations

because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

Section 499 Ministerial Direction

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

CONSIDERATION OF CLAIMS AND EVIDENCE AND FINDINGS

11. The applicant's claims in her visa application are summarised as follows:

- She left Cambodia because she feared for her safety. She felt she could have been murdered, beaten or sold into prostitution. This happens to many women.
- She had been raped once and felt it could happen again. She was raped by a group of men. They did not physically force her to have sex but carried guns and made threats. They were connected to local politicians and were known to be "untouchable". They could murder and rape and the Police would do nothing about it. She had heard stories of girls going missing. She was scared of these people.
- She was threatened by a local gangster/drug dealer.
- She was offered a way out of Cambodia by an Australian couple and took it. She left her family and friends behind because she felt there was no hope and no one to turn to for help.
- She was scared as she was pregnant and unmarried. This has a big stigma in Cambodia and she feared her family might abandon her. She would have no help and would not be able to work as she would have to look after her baby. She may even have to turn to prostitution to support her child. She fears for her life and that of her child.
- She fears that her family may harm or mistreat her if they find out she is pregnant to a Western man and unmarried. She fears the local gangster/drug dealer if she returns to her home town. He is rumoured to be ex-Khmer Rouge. His nickname is '[Mr B]'. Cambodia is well known for prostitution rings, gangsters, drug dealers etc. She has been talking to friends on Skype and [Mr B] has been asking about her. She is scared of him.
- She does not think the authorities will protect her as they are corrupt. The Police can be easily bought and they do not care about justice. Many rich people or politicians and their families are untouchable by the authorities. Many girls are forced into prostitution and many people disappear. Prostitution and crime are endemic in Cambodia and it will take many years and probably big political change for Cambodia to be as safe to live in as Australia.

12. The applicant provided to the Department two Statutory Declarations dated [in] May 2013 from [Mr C] and [Mrs C] in support of her application. They indicated that they met the applicant in a hotel in Cambodia and she helped them when [Mrs C] became ill. They indicated that they feared for her safety in Cambodia and assisted her to come to Australia. They stated that she overstayed her [temporary] visa because she was afraid to return to Cambodia and they fear for her safety if she does.
13. [In] November 2013, the applicant lodged a Form D – Application for a member of the family unit to include her [child], [Child D], in her application for a Protection visa. She provided the Department with a copy of a Birth Certificate which indicated that her [child] was born in Australia [in] 2013. It indicated that the father of this child is [Mr A]. [In] December 2013, the applicant filed a Notification of Withdrawal of Protection visa application on behalf of her [child].
14. The applicant was interviewed by the Department [in] December 2013. During the interview, she re-iterated and expanded on her claims. There were inconsistencies between her written and oral evidence which are referred to below.
15. The applicant has lodged with the Tribunal a copy of the Department's Decision Record dated [in] February 2014. During the hearing on 10 September 2014, the applicant re-iterated and expanded on her claims. Following the first hearing before the Tribunal on 10 September 2014, she was granted additional time until 31 October 2014 to lodge further evidence and submissions. On 23 September 2014, she lodged with the Tribunal a letter dated [in] September 2014 from [a welfare agency] and a Statutory Declaration dated [in] September 2014 from [Mr A].
16. The letter from the [welfare agency] indicates that the applicant is in receipt of assistance through [a program]. It stated that the applicant receives [financial assistance].
17. The Statutory Declaration dated [in] September 2014 from [Mr A] indicates that he is in an on and off relationship with the applicant. He stated that he is not willing or able to pay the sum of \$4,500.00 for a Partner visa for the applicant. He stated that he should not have to pay this as he did not bring her to Australia and he was not aware that she did not have a visa when they started their relationship. He is not willing to send money to look after his children if they move to Cambodia as he will not see them again. He will support them if they stay in Australia but cannot support them without their mother.
18. On 31 October 2014, the Tribunal received written submissions from the applicant's solicitor. On 12 October 2015, the Tribunal received further submissions and another copy of the Statutory Declaration dated [in] September 2014 from [Mr A]. On 16 October 2015, the Tribunal received another copy of the Birth Certificate for [Child D] and a copy of a Birth Certificate for [Child E] (born [after Child D]). This Birth Certificate indicates that the applicant and [Mr A] are the parents of this child.
19. The applicant was given additional time to provide additional material to the Tribunal following the hearing. On 23 October 2015, the Tribunal received a further submission from the applicant's migration agent.

Does Australia have protection obligations to the applicant under the Refugees Convention?

20. The Tribunal finds that the applicant is a citizen of Cambodia based on her passport which is before the Tribunal and will assess her claims on this basis. The Tribunal finds that the applicant is outside her country of nationality. There is no evidence before the Tribunal to suggest that the applicant has a right to enter and reside in any country other than her country of nationality.
21. During the hearing, the Tribunal discussed with the applicant her background, her family, her relationship with [Mr A], her reasons for leaving Cambodia and why she fears returning to Cambodia. The Tribunal found aspects of her evidence to be unconvincing. There were inconsistencies between her written and oral evidence. The Tribunal has concerns in relation to the applicant's credibility and the veracity of her claims for the following reasons.
22. The applicant gave evidence to the Tribunal that her application for a Protection visa was prepared by Mr and Mrs [C] and [Mr A]. She stated that the information she provided them to prepare her visa application was true and correct. She stated that she is satisfied that her application for a Protection visa is accurate and complete. She stated that she did not wish to make any changes to her application for a Protection visa.
23. In her application for a Protection visa, the applicant claimed that she was raped by a group of men in Cambodia and feared it could happen again. She was interviewed by the Department [in] December 2013 and stated that she had never been raped. During the hearing on 10 September 2014, she stated that she had never been assaulted or subjected to sexual violence in Cambodia. The Tribunal put this information to her, pursuant to s.424AA of the Act, and noted that these inconsistencies in her evidence raise concerns in relation to her credibility and the veracity of her claims. She responded that she and her sister were put in a car, they were touched, she and her sister freaked out and cried and they let them go. She stated that it all happened very quickly. She stated that she did not know that they had to have sex with her for it to be rape.
24. The Tribunal has serious doubts that the applicant did not know what rape means but, as English is not her mother tongue, the Tribunal is prepared to give her the benefit of the doubt. However, her account of this incident to the Tribunal is very different from her account of this incident to the Department. The Department's Decision Record dated [in] February 2014, which the applicant has filed with the Tribunal, indicates that during her interview with the Department [in] December 2013 she was asked about her claim that she was threatened by a gangster/drug dealer and stated that this incident occurred in 2005 when she was [age] years old. She stated that the threat involved verbal abuse directed at her sister. She stated that one morning she and her sister were leaving [a venue] at 6.00am when they saw the man who had verbally abused her sister sitting in a car. She made no mention of getting into the car or being touched by anyone in the car or being released after she and her sister started crying and "freaking out".
25. These inconsistencies in the evidence raised concerns for the Tribunal that the applicant has embellished this claim in her visa application and in her evidence to the Tribunal on 16 October 2015 for the purpose of enhancing her claims for protection.
26. In her application for a Protection visa, the applicant claimed that a local gangster/drug dealer nicknamed '[Mr B]', who was rumoured to be ex-Khmer Rouge, had threatened her and she is scared of him. She claimed that after she came to Australia he was asking her friends about her. During the last hearing on 10 September 2014, she was asked a number of times whether she had any problems in Cambodia. She referred to an incident when her sister was abused by a man who was later in a car with a group of men when the two of them were leaving [a venue] one morning in 2007 and that she reported that incident to the Police. When asked again if she had any other problems, she stated that she used to go out with a guy in Cambodia who used to sell [a drug]. She stated that about 5 or 6 months

before she left Cambodia he asked her and her sister whether they would speak to foreigners and ask them if they were interested in buying [the drug]. She made no mention of being threatened by an ex- Khmer gangster called '[Mr B]'.

27. At the hearing on 16 October 2015, she gave a different version and stated that she had a problem with an old man who was selling drugs to foreigners on the beach. She stated that she told foreigners that he was "no good" and he warned her that if she did that again he would hurt her. The Tribunal put this information to her, pursuant to s.424AA of the Act, and noted that these inconsistencies in her evidence raise concerns in relation to her credibility and the veracity of her claims. She responded that she was not going out with someone who was selling [drugs]. She stated that she knows a young man who sells [the drug]. She stated that the man nicknamed "[Mr B]" was selling different kinds of drugs. She stated that he asked her and her sister to sell drugs to foreigners including Mr and Mrs [C].
28. The applicant stated that tourists like children and speak to children. She stated that the man nicknamed "[Mr B]" asked them to ask tourists whether they wanted any drugs when the tourists spoke to them. She stated that he is an old man and is powerful. She stated that he has a uniform. She stated that they used to be scared of him because they did not know what he would do. She stated that they do not trust the Police as they do not receive help from the Police and they have seen what they do to people. The applicant's response does not address the reason for the inconsistencies in her evidence.
29. The applicant's migration agent made oral submissions that the man who had asked the applicant to ask tourists if they wanted drug was the same man who had verbally abused her sister. The Tribunal accepts that this was the case.
30. Despite her claims in her visa application that she was threatened by a gangster/drug dealer nicknamed "[Mr B]", that he was asking her friends about her after she came to Australia and that she feared harm from him if she returned to Cambodia, the applicant did not make these claims during her interview with the Department [in] December 2013 or the hearing on 10 September 2014 despite being given many opportunities to do so. This raises concerns for the Tribunal that the applicant has fabricated these claims in her visa application for the purpose of enhancing her claims for protection.
31. During the hearing on 10 September 2014, the applicant gave evidence that before she left Cambodia she decided to come to Australia and live here permanently. She came to Australia on a [temporary] visa. The records of the Department indicate that she arrived in Australia [in] September 2009 on a [temporary] visa which expired [in] March 2010. She thereafter remained in Australia as an unlawful non-citizen until she applied for a Protection visa [in] May 2013. Her application for a Protection visa was lodged more than 3 ½ years after she came to Australia. The Tribunal put this information to her, pursuant to s.424AA of the Act, and noted that this lengthy delay in lodging her application for a Protection visa raises concerns in relation to her credibility and the veracity of her claims.
32. The applicant responded that when she first got to Australia she tried to find out how to live here. She stated that she did not have any money after she stopped living with Mr and Mrs [C]. She stated that she consulted a lawyer in Sydney and was advised that the conditions of her [temporary] visa prevented her from applying for a Student visa. She was advised that she needed \$20,000.00 to apply for a Student visa. She was advised that the only way she could live here was to marry an Australian man and then apply to live in Australia. She stated that she did not know anyone so she decided to work and figure it out later. She stated that she was unaware that she could get help from [a welfare agency] or anyone else. She stated that it was difficult and she had to work illegally. She stated that she was paid \$[amount] per hour at a [workplace]. She stated that she was afraid to go to the Department and apply for a visa in case she was deported. She stated that she was told she would be

deported. She stated that she put it off for year after year. She stated that she got a job, worked, was able to pay rent and send money to her mother and sister. She stated that she kept doing that so she could support them.

33. When asked whether she explained her situation to the lawyer when she consulted her, the applicant responded that she spoke to her for a short time. She stated that she was advised to apply for an extension of her [temporary] visa. She stated that she did not return and instruct the lawyer to do so because she could not afford her fees. She stated that she looked for a job instead.
34. The Tribunal does not accept this explanation. The applicant befriended Mr and Mrs [C] in Cambodia, they invited her to come to Australia and supported her application for a [temporary] visa. After she arrived in Australia, she lived with them for the first six or seven months and they supported her financially. She lived with them again in 2012. When she eventually applied for a Protection visa 3 ½ years after her arrival in Australia, they provided her with supporting Statutory Declarations. She was therefore able to seek their guidance and financial assistance to obtain immigration advice soon after her arrival in Australia on her options for obtaining permanent residence in Australia. The Tribunal is of the view that if she genuinely feared for her safety on her return to Cambodia, she would have done so. Her failure to do so raises concerns in relation to her credibility and the veracity of her claims.
35. During the hearing on 16 October 2015, the Tribunal asked the applicant why she left Cambodia. She responded that Cambodia is not a safe country and she was sometimes fearful about living there because it is a dangerous place. She stated that she always wanted to go overseas where she would be able to live a much better life. When asked why Cambodia was dangerous for her, she responded that if someone had a problem they could not get help from the Police and were on their own. She stated that if you are from a rich family you are alright. She stated that if you are poor, do not have a good education and are a female it is not safe. She stated that lots of girls choose to work as sex workers as they are able to earn more money to support their families by doing that than working in a restaurant.
36. When asked whether she personally had any problems in Cambodia, the applicant responded that she had problems in her family and with people. When asked about the problems in her family, she responded that her father left when she was young and her mother has a limited education. She stated that she and her [siblings] were asked to work to look after [their younger siblings]. When asked about the problems she had with people, she responded that when she was working on the beach she had a problem with an old man who was selling drugs to foreigners. She stated that she told customers that he was not good and he got angry with her. When asked how he got angry with her, she responded that he yelled at her and asked why she told people he was not good. She stated that he threatened her that if she did it again, he would hurt her. She stated that she did it again but he did not see her doing it. She stated that he did not hurt her. When asked if there was any other reason why she left Cambodia, she responded that males are able to survive in Cambodia but it is more dangerous for women. She stated that some Cambodian men can be violent.
37. When asked why she did not want to return to Cambodia, the applicant responded that she has no career in Cambodia. She stated that she does not have a degree to get a job. She stated that there are more opportunities in Australia. She stated that life in Cambodia is difficult and dangerous. She stated that if she has to return to Cambodia she would have to take her baby with her as [Mr A] is working and is unable to care for the baby. She stated that she does not want to take her children to Cambodia. She stated that she does not have a house or a rich family to support her. She stated that she does not know what she would do if she returned with her children.

38. In her application for a Protection visa, the applicant claimed that if she returns to Cambodia with a child she would have no help and would not be able to work as she would have to look after her baby. She claimed that she may even have to turn to prostitution to support her child. She claimed that she feared for her life and that of her child.
39. In submissions made to the Tribunal, the applicant's migration agent submitted that the applicant is at risk of serious harm if returned to Cambodia because of her membership of the particular social group 'single mothers in Cambodia'. They submitted that this harm includes homelessness and destitution, that her limited education and status as a single mother limits her employment options, that she would have difficulty obtaining employment because of the pervasiveness of '*Chbap Srey*' (Cambodia's traditional Code of Women), that she would be unable to find work that pays sufficient wages for herself and her children, that she would be forced into sex-work to provide for her family where the risks of disease, violence and trafficking are significant, that she has a profile that makes her particularly vulnerable to exploitation, that her children would face significant hardships and be vulnerable to child labour and exploitation, that the difficulties faced by her are increased by having two children, that her children are susceptible to forced sex work and possibly trafficking, that the Cambodian authorities cannot protect her from harm and she cannot relocate safely to another part of Cambodia.
40. During the hearing on 16 October 2015, the Tribunal discussed with the applicant her relationship with [Mr A] in light of her claim that she would have no help if she returns to Cambodia. She gave evidence that she met [Mr A] in 2010 or 2011. She stated that they were initially friends and then commenced an intimate relationship in 2012. She stated that they were together for six months and he then had to return [overseas]. She stated that he returned to Australia in 2013 as a permanent resident. She stated that they started dating when he returned to Australia and she then fell pregnant. She stated that she did not know what to do and [Mr A] told her it was her decision as to whether she kept the baby. She stated that she moved back to live with Mr and Mrs [C] and lived with them for a while. She stated that they were not too happy about her circumstances.
41. The applicant stated that she then decided to move out of Mr and Mrs [C's] home and [Mr A] helped her to do so. She stated that she and [Mr A] moved in together and lived at [a suburb] until the birth of the [child]. She stated that after the birth of [her child] she lived with a Cambodian friend for a little while and then moved to her current [address] with [Mr A]. She stated that [Mr A] pays the rent and pays for utilities such as electricity and telephone services. She stated that he helps her to look after their two children, [Child D] (born [in] 2013) and [Child E] (born on [date]). She stated that he is a good father and he loves the children. She stated that he buys toys for the children. She stated that [Mr A's] family lives [overseas]. She stated that she has not met them in person but says "hello" when he is speaking to his mother on Skype. She stated that [Mr A's] mother has seen the children on Skype.
42. When asked whether she discussed with [Mr A] what would happen if she had to leave Australia and return to Cambodia, the applicant answered yes. She stated that he would prefer for her to stay in Australia with the children. She stated that he cannot look after the baby and if she had to return to Cambodia she would have to take the baby with her. When asked whether he would visit her in Cambodia, she responded that she did not know. When asked whether he would continue to support her financially, she responded that he said he would not because he would not be seeing his children.
43. During her interview with the Department [in] December 2013, the applicant stated that [Mr A] will pay her child support for [Child D] (the [Child E] was not born at that stage) if she returned to Cambodia. She subsequently provided the Tribunal with a Statutory Declaration dated [in] September 2014 from [Mr A] in which he stated that he would support the children

if they are in Australia but would not support them if they go to Cambodia. During the hearing on 16 October 2015, [Mr A] gave evidence that he would not pay child support for the children if they went to Cambodia as he would not be seeing them. When asked if he was aware that he had a legal obligation to support his children, he responded that he was not. He stated that if he had a legal obligation to do so, he would if they went to Cambodia.

44. The Tribunal put this information to the applicant, pursuant to s.424AA of the Act, and noted that in view of her evidence about [Mr A's] relationship with their children, his financial support of her and the children and the fact that he was looking after the children so that she could attend the Tribunal hearing, it had serious doubts about the veracity of his written evidence that he would not support the children if they went to Cambodia. She responded that she told the Department that [Mr A] was supporting her and [Child D] in Australia. She stated that she did not understand that she was being asked whether he would continue to support them if they went to Cambodia. She stated that she did not tell the Department that he was willing to support them if they went to Cambodia.
45. Following the hearing, the Tribunal received written submissions from the applicant's migration agent. In her submissions, she stated that [Mr A's] actions both while the applicant was pregnant and following the birth of [Child D] and [Child E] strongly suggest that he would not provide financial assistance to the applicant if she returned to Cambodia. She submitted that he has avoided his responsibilities to support his children and, whilst he currently appears to be supporting the applicant through paying the rent [per] fortnight, his behaviour for the 18 months of [Child D's] life suggests that he is highly unlikely to contribute his own money to support his children if the applicant returns to Cambodia with the children. She submitted that if the applicant applies for child support and [Mr A] does not pay, his wages can be garnisheed. She submitted that this was unlikely to happen as [Mr A] was likely to enter into a private agreement for the payment of child support with the applicant and she would not have the ability to seek assistance if he does not honour the agreement. She submitted that, based on his past behaviour, [Mr A's] support would be unreliable and insufficient to meet the needs of the children.
46. The Tribunal accepts that [Mr A's] past conduct has not been a shining example of responsible parenthood. However, he indicated during the hearing on 16 October 2015 that he was not aware that he had a legal responsibility to financially support his children and that if that was the case he would financially support them if they go to Cambodia. Even if the Tribunal were to accept the submission that [Mr A's] past conduct is a reliable indicator of his likely future conduct, the Tribunal has grave difficulty accepting that his parents would not support their grandchildren in the event that their son fails to do so.
47. In the event that [Mr A] and his family do not provide any financial support, or insufficient financial support, to the applicant if she returns to Cambodia with the children, the country information indicates that there are a number of government funded social assistance programmes. The Ministry of Social Affairs, Veterans and Youth Rehabilitation 'is the lead agency among line ministries for the administration of social welfare programmes'. Supplementary Ministries that provide benefits and services to the poor and vulnerable include the Ministry of Health, Education, Youth and Sports, the Ministry of Women's Affairs and the Ministry of Labour and Vocational Training.¹ The country information indicates that the National Social Protection Strategy for the Poor and Vulnerable (NSPS) was officially

¹ Royal Government of Cambodia 2011, *National Social Protection Strategy for the Poor and Vulnerable*, April, p.35
<http://www.unicef.org/cambodia/National_Social_Protection_Strategy_for_the_Poor_and_Vulnerable_Eng.pdf>
<CISD9559B12131>

launched in Cambodia in December 2011². It provides social protection to poor and vulnerable Cambodians including social protection for special vulnerable groups. Special vulnerable groups include 'single women with children'. The social protection offered includes income, in-kind and psychosocial support and adequate social care.³

48. The Tribunal discussed this country information with the applicant during the hearing on 16 October 2015. She responded that she never came across any help from the government or any charities and never received any help. When asked whether she sought help in Cambodia, she responded that she did not. She stated that it is not like Australia and you cannot get any help. She stated that she has spoken to her brother and sister who have told her that things are getting worse. She stated that there is corruption in Cambodia. She stated that the government is borrowing money from the West but nothing is getting better, the country looks the same and the money is not going to the poor. She stated that if you get sick you cannot go to hospital.
49. The applicant's evidence is that she did not seek any assistance from the government or charities in Cambodia. The Tribunal accepts that she may not have been aware that she could seek government assistance through various government Ministries. She came to Australia in September 2009 which was before the NSPS was launched in Cambodia in December 2011 and this explains why she is not aware of this government programme. The Tribunal does not accept that if you get sick in Cambodia you cannot go to hospital.
50. Following the hearing, the Tribunal received written submissions from the applicant's migration agent. In her submissions, she stated that although legislation has been implemented to assist single mothers in Cambodia, the effectiveness of this social policy is limited. She submitted that a 2015 paper by the United Nations Development Programme reports that spending on social protection initiatives accounted for 5.5% of Cambodian GDP in 2010 but only 1.79% in 2011.⁴ She submitted that the Asian Development Bank assessed Cambodia's social protection indicators as low and that its limited financial resources means that the scope for major improvements in social protection are reflected in immediate priorities such as food crises or natural disasters rather than a shared long term social protection intervention.⁵
51. The Tribunal accepts that, whilst the Cambodian government has recognized the special vulnerability of single mothers and has taken steps to assist them, the scope and effectiveness of this social policy is limited by the constraints of its limited financial resources.
52. The country information indicates that there are a large number of non-government organizations (NGOs) in Cambodia that would be able to assist the applicant and her children. A Human Rights Watch 2011 report lists 130 established international and local NGOs in Cambodia.⁶ Some of the NGOs that provide assistance particularly to woman and

² 'Cambodia launches social protection strategy for poor' 2011, *Xinhua*, 5 December <http://news.xinhuanet.com/english/world/2011-12/05/c_131288675.htm> <CXC3E63420848>

³ Royal Government of Cambodia 2011, *National Social Protection Strategy for the Poor and Vulnerable*, April, Preface <http://www.unicef.org/cambodia/National_Social_Protection_Strategy_for_the_Poor_and_Vulnerable_Eng.pdf> <CISD9559B12131>

⁴ UNDP (United Nations Development Programme) Report 2015 – Adaptive Social Protection in Cambodia, Strategy Paper.

⁵ The Social Protection Index: Assessing Results for Asia and the Pacific, Asian Development Bank, 2013.

⁶ Human Rights Watch 2011, *Statement on Cambodia's Proposed Law on Associations & Non-Governmental Organizations (LANGO)*, 23 August <<http://www.hrw.org/news/2011/08/23/statement->

children are Women's Health Cambodia, International Women's Development Agency, CARE Cambodia and Food for the Hungry. She would be able to seek financial and other assistance through these and other NGOs in Cambodia.

53. The Tribunal discussed this country information with the applicant during the hearing on 16 October 2015. She responded that her mother did not have any help. She stated that her mother is working in a factory and rents a room for herself and her [sister]. She stated that her mother is desperate and asks her for money. She stated that neither her mother nor her sister get any help from the government. When asked whether her mother has approached any of these NGOs to obtain assistance, she responded that her mother knows about organisations that help children with their education but was not aware of NGOs that provide assistance with food. She stated that her mother had never obtained assistance from NGOs.
54. The Tribunal received written submissions from the applicant's migration agent in which she stated that the government of Cambodia implemented the 'Law on Associations and Non-Governmental Organizations' (LANGO) in August 2015. She stated that the European Union is Cambodia's largest partner in terms of development assistance and they have reported that LANGO will severely affect grass roots level NGOs. She submitted that the European Parliament has forecast that with restrictions placed on Cambodia by LANGO the country is expected to lose \$600 - \$700 million in development projects annually and the laws will affect the ability of international NGOs to run cost effective projects. (No reference was provided for this information). She submitted that the requirement of LANGO for NGOs to be politically neutral makes it difficult for them to offer assistance to marginalised or politically unpalatable groups.
55. A search of the internet indicates that numerous international and national NGOs with a special focus on women and children such as UNIFEM, Red Cross Cambodia, Oxfam, the Cambodian Women's Crisis Centre, Cambodian Women's Development Association, Women's Health Cambodia, International Women's Development Agency, CARE Cambodia, Food for the Hungry, Hagar, NYEMO Cambodia Organization, Healthcare Center for Children to name a few are still registered in Cambodia and continue to operate there. The Tribunal does not accept that the applicant would not be able to access the services provided by these and other NGOs because of the effect of LANGO. The applicant has proved herself to be a very resourceful young woman. She has been able to find accommodation and employment in Australia. She has been able to organize financial support for herself and her children. She has been able to obtain legal advice and arrange for legal representation in relation to this visa application.
56. The applicant has already established a relationship with [a welfare agency] in Australia and is able to seek their assistance to contact [their agency] in Cambodia to make arrangements to assist her when she returns to Cambodia and put her in contact with organizations that would be able to offer different services and assistance to her. In view of the above, the Tribunal does not accept that the applicant would not be able to obtain the assistance of NGOs in Cambodia to assist her when she returns to Cambodia.
57. In her visa application, the applicant claimed that she would be stigmatised if she returns to Cambodia because she is an unmarried mother. When the Tribunal discussed this claim with the applicant, she stated that the culture in Cambodia is different to the west. She stated that married women are respected and unmarried mothers are not. She stated that people judge you and "talk bad about you" if you are an unmarried mother. She stated that people ask you if you are married and if you say no they ask you why not. She stated that it is difficult to find a job.

[cambodias-proposed-law-associations-non-governmental-organizations-lango](#)>
<CXBD6A0DE14192>

58. The Tribunal has had regard to the submissions made by the applicant's migration agent particularly in regard to the concept of *chbab srey* and the country information provided. The Tribunal accepts that the applicant is likely to face some discrimination for being an unmarried mother and that it may be difficult for her to find a job. However, the Tribunal is not satisfied that this discrimination would amount to serious harm.
59. In her visa application, the applicant claimed that she fears that her family may harm or mistreat her if they find out that she is pregnant to a Western man and unmarried and that her family might abandon her. She has since had two children. During the hearing on 16 October 2015, she gave evidence that she has contact with her mother on Skype, that her mother has seen her two children on Skype and that she is okay about being a grandmother. She applicant also gave evidence that she has sent money to her mother and sister from Australia. Her mother, and presumably the rest of her family, are aware that she is not married, has two children with a "Western man" and have not abandoned her. On the contrary, they have continued to have contact with her. The Tribunal is not satisfied, on the evidence before it, that the applicant's family may harm or mistreat her or her children or that they may abandon her if she returns to Cambodia now or in the reasonably foreseeable future.
60. The Department received information about the applicant from an anonymous source [in] August 2013. The informant stated that everything the applicant claimed was a lie. The informant stated that the person who she claimed was a boss of a gang and was going to kidnap and rape her was her ex-boyfriend. The informant stated that the applicant was living with her boyfriend at [suburb]. The informant stated that she had been working in Australia in [workplaces] in [suburb]. The Tribunal put this information to the applicant.
61. The applicant responded that she is aware of who reported her. She stated that it was the couple who brought her to Australia. She stated that they were angry that she left. She stated that they had a fight and she moved out with the help of [Mr A]. She stated that she could not stay with them any long and was going crazy. She stated that after she got pregnant she could not do any work in the house. She stated that they have a mother who has [a medical condition]. She stated that the couple gave her a large [toy]. She stated that she also had a small [toy]. She stated that when she left she took the little [toy] and left the large [one]. She stated that [Mr C] telephoned her and abused her. She stated that she also received text messages but did not respond. She stated that they threatened to report her to the Department and say everything she said was a lie. She stated that she has told her migration agent about this and also told the [welfare agency]. She stated that the [welfare agency] offered to help her and told her if she was threatened again they would help her.
62. As the Tribunal informed the applicant, the Tribunal does not place any weight on this information. It is from any anonymous informant, the source of the informant's knowledge is unknown and the motives of the informant are unknown. The Tribunal disregards this information.

Findings

63. Having considered all the evidence and the submissions, the Tribunal finds that the applicant is not a witness of truth and that she embellished some of her claims and fabricated others for the purpose of enhancing her prospects of obtaining a Protection visa.
64. The Tribunal accepts that a local gangster/drug dealer asked the applicant and her sister to ask tourists if they wanted drugs when they spoke to them. The Tribunal accepts that this man verbally abused the applicant's sister. The Tribunal does not accept that the applicant told tourists that he was "no good" and that he threatened to hurt her if she did that again. The Tribunal accepts that when the applicant and her sister were leaving work at 6.00am

one morning in 2005 or 2007, this same man was in a car outside, that the applicant and her sister became frightened and reported this man to the Police. The Tribunal does not accept that, after she came to Australia, this man asked her friends about her.

65. The Tribunal does not accept that the applicant was raped by a group of men. It follows that the Tribunal does not accept that she fears it could happen again. The Tribunal does not accept that she and her sister were taken into a car as they were leaving work at 6.00am one morning in 2005 or 2007, were touched and then released after they started crying and “freaking out”.
66. The incidents referred to in paragraph 64 above occurred in either 2005 or 2007 on the applicant’s evidence. The applicant continued to live and work in Cambodia until she left for Australia in September 2009 without any further incidents. The Tribunal is not satisfied that there is a real chance that the applicant would be at risk of persecution from the local gangster/drug dealer known as “[Mr B]” if she returns to Cambodia now or in the reasonably foreseeable future.
67. The Tribunal accepts that if the applicant returns to Cambodia it would be difficult for her to find employment or adequate employment because she has the care of two children and because of the concept of *chbap srey*. However, the Tribunal does not accept that she would not be able to find employment in Cambodia. She has previously been employed in Cambodia in the hospitality industry. Since then, she has obtained further work experience in Australia and her English language skills have significantly improved. This would improve her prospects of obtaining employment in Cambodia.⁷
68. The Tribunal does not accept that the applicant would not be able to receive any help or financial assistance if she returns to Cambodia with her children. [Mr A] has given evidence to the Tribunal that he was not aware that he had a legal obligation to financially support his children and that if he had a legal obligation to do so he was prepared to financially support his children if the applicant returned to Cambodia with the children. In the event that he is not true to his word and his parents do not provide any financial support for their grandchildren, the applicant is able to seek financial and other support from the Cambodian government and the numerous NGOs in Cambodia. The applicant, unlike her mother, is a very resourceful young woman who also has the support of the [welfare agency]. She has the contacts and the ability to make herself aware of the assistance available to her in Cambodia and to access it.
69. Accordingly, the Tribunal does not accept that the applicant would have to turn to sex work to support herself and her children or that she would be homeless and destitute if she returns to Cambodia. The Tribunal is not satisfied that there is a real chance that her children would be exploited, forced into child labour, forced into sex work and trafficked if they accompany their mother to Cambodia.
70. The Tribunal accepts that the applicant’s mother has not received any assistance from NGOs. The applicant’s evidence is that her mother was not aware that she could get assistance from NGOs other than in relation to children’s education. It is therefore unlikely that she sought any assistance from NGOs.
71. The Tribunal accepts that the concept of *chbap srey* may result in the applicant being subject to some discrimination for being an unmarried mother and that this may make it difficult for her to find a job. However, in view of the applicant’s own evidence, the Tribunal is not satisfied that this discrimination would amount to serious harm.

⁷ *Cambodia’s students flock to learn English*, The Phnom Penh Post, 14 September 2001.

72. The Tribunal does not accept that the applicant's family may harm or mistreat her or her children or that they may abandon her if she returns to Cambodia now or in the reasonably foreseeable future because she is an unmarried mother and the father of her children is a "Western man".
73. Having considered all of the applicant's claims, individually and cumulatively, and all the evidence and submissions the Tribunal finds that there is no real chance that the applicant would be at risk of persecution on the grounds of membership of a particular social group or any other Refugee Convention reason if she returns to Cambodia now or in the reasonably foreseeable future. Therefore, the Tribunal finds that the applicant does not have a well-founded fear of persecution for a Refugee Convention reason. Accordingly, the Tribunal finds that she does not satisfy the criterion in s.36(2)(a) of the Act.

Are there substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia, there is a real risk that she will suffer significant harm

74. The Tribunal has considered the applicant's claims under complementary protection.
75. In view of the above findings, the Tribunal is not satisfied that there is a real risk that the applicant will suffer significant harm for any of the reasons claimed if she returns to Cambodia now or in the reasonably foreseeable future.
76. Having considered all of the applicant's claims, individually and cumulatively, and all the evidence and submissions Tribunal is not satisfied that the applicant will be arbitrarily deprived of life, the death penalty will be carried out on her, she will be subjected to cruel or inhuman treatment or punishment or she will be subjected to degrading treatment or punishment if she returns to Cambodia now or in the reasonably foreseeable future.
77. Accordingly, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Cambodia there is a real risk that she will suffer significant harm as defined in s.36(2A) of the Act. Therefore, the Tribunal finds that the applicant does not satisfy the criterion in s.36(2)(aa) of the Act.

Ministerial intervention

78. In submissions to the Tribunal, the applicant's migration agent has requested that the Tribunal refer this case to the Minister for Ministerial intervention under s.417 of the Act in the event that the Tribunal finds that the applicant does not satisfy the criteria for a Protection visa.
79. This is a case in which the applicant is entitled to apply for a Partner visa. However, she does not have the financial resources to pay the application fee. Her partner, [Mr A], who is employed as a [professional occupation] has given evidence that he is not willing or able to pay the application fee.
80. The Tribunal considers that the circumstances of this case may raise the following matters:
- Strong compassionate circumstances such that a failure to recognize them would result in irreparable harm and continuing hardship to an Australian citizen or an Australian family unit (where at least one member of the family is an Australian citizen or Australian permanent resident).

- Circumstances that may bring Australia's obligations as a party to the Convention on the Rights of the Child into consideration.
81. The applicant is [an age] year old woman from Cambodia. She arrived in Australia [in] September 2009 as the holder of a [temporary] visa. This visa expired [in] March 2010 and she thereafter remained in Australia as an unlawful non-citizen. [In] May 2013, she applied to the Department for a Protection visa. This application was refused by the delegate [in] February 2014. On 11 March 2014, she applied to the Tribunal for review of that decision. The Tribunal has found that she does not satisfy the criteria for a Protection visa.
82. The applicant has been in a de facto relationship with [Mr A], a permanent resident of Australia, since approximately 2013. He is the father of her two children, [Child D] (born [in] 2013) and [Child E] (born on [date]). The children are therefore Australian citizens. The applicant has given evidence that the two children will have to accompany her if she returns to Cambodia as their father is unable or unwilling to care for them.
83. [Mr A] has given evidence to the Tribunal that he would not see his children again if they go to Cambodia (presumably because he is not prepared to travel to Cambodia to visit them). He has also given written evidence to the Tribunal that he is not prepared to continue to support his children financially if they go to Cambodia. During oral evidence to the Tribunal, he indicated that he was not aware that he had a legal obligation to support his children and if he had a legal obligation to do so he would. The applicant's evidence is that her family in Cambodia is unable to financially support her and the two children.

CONCLUSION

84. The Tribunal finds that the applicant does not satisfy the criterion in s.36(2)(aa) of the Act.
85. There is no suggestion that the applicant satisfies s.36(2) of the Act on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) of the Act and who holds a Protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) of the Act.

DECISION

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

Linda Symons
Member