

071626084 [2007] RRTA 304 (21 November 2007)

DECISION RECORD

RRT CASE NUMBER: 071626084
DIAC REFERENCE(S): CLF2000/33874 N98/002013
COUNTRY OF REFERENCE: Bhutan
TRIBUNAL MEMBER: Shahyar Roushan
DATE DECISION SIGNED: 21 November 2007
PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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 AZ) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be stateless and a former resident of Bhutan, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class AZ) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights. 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.

The matter is now before the Tribunal.

RELEVANT LAW

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.

Section 36(2) of the Act, as in force before 1 October 2001, provided that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia 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).

Further criteria for the grant of a Protection (Class AZ) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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.

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.

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. These provisions were

inserted on 1 October 2001 and apply to all protection visa applications not finalised before that date.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

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

The Tribunal has before it the Department's files relating to the applicant. The Tribunal, as currently constituted ("the Tribunal"), also has before it Tribunal files relating to the assessment of the applicant's review application on two previous occasions. The Tribunal has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

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 Nepali (Nepalese) and English languages.

Application for a Protection Visa

The applicant, who claims to be a national of Bhutan, arrived in Australia on a Nepalese passport issued in another person's name. The Australian entry stamps on that passport suggested that the bearer had entered Australia on another occasion prior to the applicant's arrival in Australia.

According to his application for a protection visa, he claimed to speak Nepali and English. He described his ethnic group as "Hagar" and his religion as "Chrischian". He lived in Bhutan from birth until the mid 1990s. He then went to Nepal and remained in that country until his departure for Australia.

In his application form, the applicant claimed that he was forced to leave Bhutan by the King and his forces. He claimed that he would face persecution if he were to return to Bhutan. He claimed that "the military took [him] in a van and left him on [location]".

According to Part B of his application form, the applicant was assisted by a registered migration agent, Person I in preparing his application for a protection visa.

In a separate statement attached to his application form, the applicant made the following claims:

I, [the applicant], was born in Bhutan in a simple peasant's family. My mother who was [age] years old... and I made our living in Bhutan working on the farm. Later I did some work for [industry] to make a living.

My country, Bhutan, is an autocratic monarchy where 70% of the population are of a Nepalese background and the other 30% are of Tibetan origin. It used to be that the Nepalese culture and language were dominant, but both the Nepalese and Bhutanese languages were spoken at home and in offices. But the King of Bhutan, worried about the Nepalese culture, changed the laws and brought in new laws which imposed the minority Bhutanese language and uniform upon all of the people. There was a lot of protest against this imposition and the government of Bhutan used the military forces to put down this revolt. It was then made compulsory to speak Bhutanese and wear the Bhutanese dress.

Nepalese people like myself were forced to eat beef, people were arrested and women were raped if these conditions were not obeyed. The people of Bhutan struggled against these changes but they were unable to do anything against the power of the King and the military.

Then the military started arresting and assassinating the people – later many people were forced to flee the country to avoid torture, detention and death. Often people were driven off and out of the country and then not allowed to return.

It was in an operation like this that my mother and myself were taken to [location] – never to be able to return to our country. After a week of starvation at this place, called [place], we were compelled to be stuffed in a refugee camp in [location], Nepal.

I had thought about seeking refuge in a democratic country as I was forced to live in misery in a refugee camp in Nepal, where there is no proper food or treatment, no rights and no future. To be able to get out of Nepal I obtained a passport with a passport broker this had an Australian visa in it and this is how I got to Australia. Now that I am in Australia I never want to leave. I would be able to start a new life in Australia but I could never do this in Nepal as in Nepal I have no rights or future – this is why I came to Australia on someone else's passport.

(sic)

In a separate submission, the applicant's then representative stated that the applicant was forced out of Bhutan and into a refugee camp in Nepal for the reasons of his ethnicity and nationality. He was not afforded protection or citizenship in Nepal and was denied the right to work. The applicant obtained his passport through a "passport broker" and his claims must be assessed against Bhutan.

As evidence of his "actual" identity, the applicant forwarded copies of the following documents to the Department:

- A Certificate of Nationality certifying that the applicant is a Bhutanese Refugee and a citizen of Bhutan. According to this document, the applicant's had lived at a address in Bhutan. The document is signed by the President of Bhutan Peoples' Party.
- A letter issued by Bhutan Peoples' Party certifying the applicant to be a national of Bhutan.
- An Identity Card issued by the Human Rights Organization of Bhutan.
- A letter issued by Human Rights Organization of Bhutan stating that the applicant is a Bhutanese citizen who was evicted from Bhutan after a night raid by the military.

Application for Review

Evidence before the first Tribunal

The applicant gave oral evidence to a differently constituted Tribunal ("the first Tribunal"). The Tribunal has listened to the tape recording of the hearing and the following is a summary of the applicant's oral evidence at that hearing:

He stated that he had never received any formal education, but worked in Country A on two occasions and he did farming work in Bhutan. He was born in Bhutan and when he was a teenager he went to Country A for several years. He then returned to Bhutan for many months before another period in Country A. He then returned to Bhutan and spent several months in Bhutan before going to Nepal in the mid 1990s. He went to Nepal because he was beaten by the police and was told to go away. So he went to Nepal. He was asked about his nationality. He said he was born in Bhutan and considered Nepalese, but he did not have a Nepalese citizenship. He said he lived in a refugee camp in Nepal for a period of time before he left for Australia. He stated that he purchased the passport which had an Australian visa stamped in it from someone in Nepal. He stated that his mother used to live in the camp, but she had subsequently moved to Kathmandu.

The first Tribunal put to him that there were discrepancies in his evidence regarding when he went to Nepal. It was put to him that in his application for a protection visa he had stated that he went to Nepal in the mid 1990s. His evidence at the hearing, however, indicated that he went to Nepal many months later. He said when he came to Australia he was given a friend's address and his friend helped him with his application, because he cannot read or write. It was put to him that his friend must have written down what he had told him to write. He said he had told his friend that he lived in Nepal for a period of time.

The first Tribunal put to him information from the World Refugee Survey to the effect that refugees from Bhutan began pouring into Nepal in mid 1991 and the influx was at its peak in 1992. According to the Survey the refugees were ethnic Nepali Hindus. It was put to him that in his application form he had identified his ethnicity as "Hagar" and his religion as Christian. The applicant appeared puzzled. The first Tribunal put to him that he had previously said that he was assisted by his friend who had relied on what he had told him. It was again put to him that he had identified his ethnic group as Hagar and his religion as Christian. He said his friend did not talk to him and he did not know about that. The first Tribunal then discussed with the applicant the country information before him regarding the situation of Bhutanese refugees in Nepal.

Following the hearing, the applicant provided to the first Tribunal originals of the documents he had submitted to the Department. The first Tribunal forwarded these documents to an authority for testing its authenticity

The report was sent to the applicant for comment, but no response was received by the first Tribunal.

Evidence before the Second Tribunal

Before the hearing, in a detailed submission to the second Tribunal the applicant's then representative elaborated on the applicant's claims as follows:

The applicant was born in Bhutan to parents of Nepalese ethnic origin. His family settled in Bhutan when his great grandfather came to Bhutan and established the family farm.

In the mid 1990s the Bhutanese army forcibly removed the applicant and his mother from their home possibly in order to resettle ethnic Bhutanese. The applicant and his mother were removed to a town. In this town the applicant and his mother met other persons of Nepali descent who told them of a refugee camp in India. The applicant and his mother travelled to the refugee camp where they remained for several months. Conditions in the camp were poor and people in the camp faced harassment by the local Indian police.

Several months later the applicant and his mother left the refugee camp and travelled to another refugee camp in Nepal. Conditions in the camp were poor and camp refugees were discriminated against by locals.

In the early 1990s, the Human Rights Organisation of Bhutan and Bhutan Peoples Party established an office in the camp. Camp people were invited to apply for identity documentation provided by these organisations. The applicant took advantage of this offer and supplied the office with passport size photos he had made up during his time in Country A. There was an error on his date of birth on the documentation. The documentation was in English and as the applicant could not speak or read English he did not notice the mistake.

During his time in Nepal, the applicant approached an agent in Kathmandu known as Person J who arranged a passport and a ticket to Australia for him. The applicant did not pay the agent before leaving Nepal as he did not have the financial resources to pay the fee. However, he was told he could repay the debt once in paid employment in Australia. The fact that the applicant's mother did not go with him acted as a security for the loan. The applicant was able to repay the agent's fees after being granted permission to work in Australia.

The applicant's flight took him to City X. It is not clear why a City Y flight was not chosen as a destination by the agent, since the applicant's only contact in Australia, as arranged by the agent, was Person K in City Y. After clearing immigration and customs, the applicant rang Person K from the airport. Person K advised him to travel to City Y. Once in City Y, the applicant again rang Person K and received directions on how to meet Person K. Person K took him to his home where he stayed for a period of time.

It was submitted that when the applicant arrived in Australia he spoke no English, had no friends or family and was totally dependent on Person K for advice on all aspects of life in Australia.

The applicant asked Person K for advice on how to remain legally in Australia. Person K referred him to Person I in City X. Person K acted as an intermediary between the applicant and the law firm. The full extent of Person K's role is unclear. However, he did perform some translation functions and filled out a protection visa application form for the applicant. Person K sent the form to Person I for lodgement. Person I typed the handwritten application, had it signed by the applicant and then lodged it with the Department. A number of mistakes were present in the form which was not translated for the applicant.

The applicant's birth was not registered in Bhutan. He has no documentation to prove the date or location of his birth, nor the identity of his parents. Bhutan's nationality law makes it possible for Bhutanese nationals to be deprived of their citizenship simply by leaving the country.

The applicant's father is dead and the last time he communicated with his mother was several years ago by telephone through a call to a Kathmandu shop. The call had been arranged through the agent who supplied him with the passport and air tickets, but the agent has since moved and the applicant has now lost contact with his mother.

It was submitted that the "Hagar" ethnic group does not exist and that the entry in his application form was a typographic error, which probably occurred when Person K's handwriting was being transcribed into a type-written copy of the application form by the applicant's then representative. The applicant's ethnic group should read Magar and not Hagar. It was submitted that given the transcription was completed in City X, it is unlikely Person K would have been consulted for clarification over what may have seemed to be a minor point. It was submitted that Magar is a major tribal (ethnic) group within Nepal, of which the Thapa clan is the largest sub tribe.

It was submitted that some authorities use the term Lhotshampa to refer to Nepalese from the south of Bhutan. This is not a different Nepalese tribe, but rather a Dzongkha word meaning "southerner". The term is often used when collectively referring to Bhutanese of Nepalese ethnic origin.

In relation to the applicant's religion, it was submitted that the applicant was a Hindu, not a Christian at the time he made his application for a protection visa. However, his friend Person K who filled in the form for him was a Christian. As the applicant accompanied Person K to church on occasions, "it is possible" Person K thought that was sufficient to justify listing the applicant's religion as Christian. The applicant did not correct this information as he had no functional English, he was completely dependent upon Person K to fill in the form, he was in City Y while his representative was in City X and there was no benefit to be gained by claiming his religion to be "CHRISCHIAN"(sic) instead of "HINDU".

It was submitted that the applicant converted to Christianity and was baptised. The applicant and his family have attended church services every week as well as Nepalese home fellowship and evangelical activities. The applicant and his wife have also been actively sharing their faith with other members of the Nepalese community in City Y.

It was submitted that the applicant has a well founded fear of persecution for reasons of religion if returned to Nepal. It was argued that proselytisation is intrinsic to the practice of the applicant's religious faith; the Nepalese law banning proselytisation is not a law of general application; the applicant will not be afforded protection from extremists when he proselytises and that he is likely to attract the attention of the Maoists because of his links to Australia. It was further submitted that the applicant will become a target of Maoist extortion, will fall under suspicion by government and Maoists forces as an agent of foreign propaganda; will be imputed with an adverse political opinion as a Bhutanese Nepali evangelical Christian and his association with an Australian church.

It was further submitted that the applicant he has a well founded fear of persecution for reasons of race if returned to Bhutan on the grounds that Bhutan has and continues to systematically discriminate against ethnic Nepalis living in the south of the country.

Attached to the submission was a detailed statutory declaration by the applicant explaining in some detail his family background, the circumstances surrounding his departure from Bhutan, his life in a Nepalese refugee camp and his departure from Nepal. The applicant's claims as outlined in his statutory declaration were consistent with the claims advanced on his behalf by his then representative in the submission referred to above.

The following documents were also submitted to the second Tribunal:

- A number of submissions from the applicant's friends and acquaintances in support of the applicant's claims of having converted to Christianity and being engaged in proselytisation;
- A letter from a senior pastor attesting to his Christian faith; and
- Country information in relation to Nepal and the situation with regard to Christians and Christianity in Nepal

The applicant gave oral evidence to the second Tribunal at a hearing ("the second hearing"). The Tribunal has listened to the tape recording of the second hearing and the following is a summary of the applicant's oral evidence at that hearing:

The applicant left Bhutan in the mid 1990s. In the refugee camp in Nepal he had a lot of problems and had to struggle. There were many other refugees in the camp and many talked

about getting out of the camp and going overseas. At that time he had no money and he used to go outside of the camp to work. He worked for a landowner. The landowner agreed to help him as he knew an agent in Kathmandu. The arrangement was for the applicant to repay all expenses by working in Australia and sending money back. He was told that the landlord's friend in City Y will assist him and will find him an opportunity to work. After he came to Australia, he sent money back to his mother to help her and to repay the agent. He has not been in contact with his mother for several years. He was asked how a Bhutanese refugee can have an address in Kathmandu. He said they went from the camp to Kathmandu in the end of 1990s. After that his mother lived with the landlord. He was asked how is it possible for Bhutanese refugees to live in Kathmandu and have a fixed address there. He said his mother was hiding in Person J's house performing house duties. Person J was the agent contacted by the landlord.

He was asked what the currency of Bhutan is. He said Ngultrum. He was asked about the language of Bhutan. He said Dzongkha. He was asked where he had travelled to in Nepal. He said he had travelled to many places in Bhutan. His family were farmers and his father passed away when he was young. His father owned a small farm in Bhutan.

The applicant stated that as a Bhutanese it would be difficult for him to live in Nepal and as a Christian the society will hate him. He will engage in proselytisation and will anger many people and could be attacked. The second Tribunal then discussed with the applicant country information regarding the situation of Christians in Nepal.

The applicant's then representative provided a post-hearing submission emphasising that the applicant was a member of the Magar ethnic group and a Lhotshampa, a term collectively referred to Bhutanese of Nepali ethnicity. In relation to arrangements to repay the agent in Nepal, it was submitted that the applicant's mother was the security for the loan provided by Person J and as part of the loan arrangement she had to stay with Person J until the loan was repaid. She performed housekeeping duties in exchange for board. Most of the time she lived at the agent's house, but she was free to go out to the markets to buy food and other necessities. As long as she did not attract the attention of the authorities, her freedom of movement in Kathmandu was not restricted, even though she was a refugee from the camps in Nepal. It was submitted that the applicant repaid the agent after coming to Australia through payments sent to his mother, which was then given to the agent. The submission also included further arguments in support of the applicant's fear of persecution in Nepal for the reason of his religion and his fear of persecution in Bhutan for the reason of his religion and race.

After examining the documentation relating to the applicant's visit to Australia, the second Tribunal came to the conclusion that the applicant was not the person identified in the passport. The second Tribunal, nevertheless, found the applicant to be a Nepali national.

Evidence before the Current Tribunal

In a detailed statutory declaration provided prior to the hearing, the applicant stated that the last time he managed to contact his mother was when he rang a shop in Kathmandu where his mother was waiting for his call. The call had been arranged through the agent who organised his travel out of Nepal. The agent subsequently moved and he lost contact with his mother.

However, a few days before the Tribunal hearing his mother rang him at his home after many years.

The applicant provided an account of his nationality, family background, circumstances of his departure from Bhutan and Nepal. The applicant also provided detailed information regarding his life in Australia since arrival, including why he got married and an account of his conversion to Christianity. These claims were consistent with his previous claims.

The applicant stated that he was afraid to return to Bhutan for the reason of his Nepali ethnicity and his Christian religion. Ethnic Nepalis are not allowed to speak their language and are forced to wear the national dress. Christians are not allowed to enter Bhutan and his life would be in danger if he were to practice his religion in Bhutan. He further stated that he was very worried about his wife and his children who do not have any nationality or identity from any country.

The First Hearing

The applicant stated that he was born in Bhutan to ethnic Nepali parents. He explained that his great grandfather migrated to Bhutan from Nepal and his grandfather, his father and his mother were born in Bhutan. His father died when he was young and his mother always talked to him about his father.

He was asked about his mother's whereabouts. He said until several years ago he used to contact his mother in Nepal by telephoning her at a shop. He lost contact with her as the people she was living with moved away. His friend and his wife's ex-partner was going back to Nepal sometime ago and the applicant begged him to try and find his mother. His friend called him from Nepal and told him that he had found his mother and put her on the phone. His mother cried uncontrollably and repeatedly asked him where he was, why she had not spoken to him for so many years and if he was coming back. His mother was crying and they did not have a full conversation. His friend told him that they would call him again, but he had not heard back. He said his mother is old and still lives with Person J in Kathmandu. Person J helped him to come to Australia and his mother stayed with Person J and his family after that. Due to the emotional nature of his conversation with his mother recently, they did not have a long conversation and the applicant did not get the chance to ask her many questions about her circumstances, including where exactly and under what conditions she was living.

The applicant stated that his wife travelled to Australia on a Nepalese passport. He said they have several children and they spoke to each other and to their children in Nepalese. He explained that as an ethnic Nepali from Bhutan his accent was different to native Nepalese speakers and easily distinguishable. He was able to provide examples with the aid of the Nepalese interpreter at the hearing.

The applicant stated that he was unable to return to Bhutan because he was expelled from that country like many other ethnic Nepalis who are unable to go back to Bhutan. He said that if he were to return to Bhutan he would be subjected to the same conditions he was subjected to before his departure. He cannot go back because his house and land were taken and his mother was raped and beaten. He stated that the Bhutanese army went to his house and beat him. His mother was also beaten and he witnessed her being raped, which caused him great distress and made him "collapse". He wanted to retaliate, but he couldn't. The soldiers threw out their belongings and forced them into a truck. Eventually, they were abandoned. After a

while they met a group of ethnic Nepalis who led them to a camp. Subsequently, they relocated to a camp in Nepal where they lived under difficult circumstances. He was able to work illegally and he worked hard. As a result, he was able to befriend the landlord, who heard his life story and told him that many refugees like him are able to acquire “citizenship” in other countries. The applicant asked him for help and the landlord introduced him to an agent, Person J.

He was asked why he had not mentioned that his mother had been raped at any stage prior to the hearing. He said he found it very embarrassing to disclose this fact to strangers, but despite the shyness that he continued to feel he had decided to disclose everything at the hearing.

He was asked if he ever possessed a Bhutanese passport. He said no and explained that when he travelled to Country A to work, he did so without any formal documentation.

He was asked if he was able to return to Nepal. He said no.

The applicant’s representative stated that Bhutan has refused to take back ethnic Nepalis who had fled or were forced out of Bhutan and there was no reason to believe that they were prepared to take the applicant back.

The Second Hearing

At the second hearing the applicant stated that his grandfather, father and mother were all born in Bhutan. He lived in his home district until he was a teenager. He then travelled to Country A to work. He returned to Bhutan in early 1990s and stayed with his mother for several months before going back to Country A. He returned to Bhutan again in the mid 1990s for a few months before being expelled. In Country A he had worked in different places. However, he never considered Country A as his home.

In Bhutan he worked in the family farm. The farm was very small and the produce was just enough for the family to survive on. The farm belonged to his father and as far as he knew, his mother was in possession of the relevant ownership documents.

He stated that he never received any formal education and could not read or write any language when he came to Australia.

He was asked if he could recall what documents the family had in its possession before they were forced to leave Bhutan. He said his mother had a box where she put papers, but he did not know what these papers were. He stated that his mother was also illiterate and was unable to read or write.

He was asked if he knew whether he ever possessed a citizenship ID. He said he did not have anything. He was asked if he was ever told whether the family had any documents to show that they were citizens of Bhutan. He said he did not know and he had never talked to his mother about this.

The applicant’s representative submitted a number of reports and news items in relation to the treatment of Christians in Bhutan and a Human Rights Watch report in relation to the discrimination directed at ethnic Nepali children in Bhutan.

Evidence from other Sources

The Nepali of southern Bhutan

In May 2007 Human Rights Watch published an extensive study of the situation the Nepali communities which have been displaced from southern Bhutan to refugee camps in Nepal, as well the situation of the Bhutan's remnant Nepali population. The relevant extracts follow in detail:

The Bhutanese refugee crisis has its roots in the history of migration to Bhutan, the resulting ethnically diverse make-up of the country's population, and the harsh policies of Bhutan's absolute monarchy towards its ethnic Nepali minority.¹ The politically and culturally dominant Ngalongs, who live mainly in the central and western regions of Bhutan, are of Tibetan descent; their ancestors arrived in Bhutan in the eighth and ninth centuries. The Ngalongs speak Dzongkha and follow the Drukpa Kagyu school of Tibetan Buddhism, which is Bhutan's state religion. Bhutan's king, Jigme Khesar Namgyel Wangchuck, is a Ngalong. The Sharchhops, who live in eastern Bhutan, are descendants of the earliest migrants to arrive in Bhutan; they are of Indo-Burmese origin, speak Tshangla (which is closely related to Dzongkha) and follow the Nyingma school of Tibetan Buddhism. Together the Ngalongs and Sharchhops are known as Drukpas. The third major group, who differ greatly from the Drukpas in terms of culture, language, and religion, are ethnic Nepalis in southern Bhutan; they speak Nepali and are predominantly Hindu.

Ethnic Nepalis first began migrating to Bhutan in the nineteenth century. Many became eligible for Bhutanese citizenship under the 1958 Nationality Law. Moreover, from the mid-1950s ethnic Nepalis began to be admitted into the bureaucracy, the army and the police, and were made members of the cabinet and the judiciary. However, by the late 1970s the Drukpa establishment had come to see the ethnic Nepalis' growing numbers and influence as a threat to Bhutan's cultural identity and the Drukpas' own privileged position. Increasingly, Bhutan's ruling elite asserted that the majority of the ethnic Nepalis in Bhutan were not in fact citizens but illegal immigrants who threatened Bhutan's "survival as a distinct political and cultural entity."

The government invoked these perceived threats as justification for a series of discriminatory measures aimed at the political, economic, and cultural exclusion of Bhutan's ethnic Nepalis. Two new Citizenship Acts were passed in quick succession, in 1977 and 1985, each tightening the requirements for Bhutanese citizenship. The 1977 Citizenship Act increased the residency requirement for citizenship by 10 years: from five to 15 years for government servants and from 10 to 20 years for all other foreigners. The growing concerns about the threat posed by ethnic Nepalis to Bhutan's cultural identity were reflected in an additional requirement for applicants for Bhutanese citizenship to have "some knowledge" of the Dzongkha language and Bhutanese history. The 1977 Act also provided that citizenship would not be granted to anyone who was related to any person involved in activities against the people, the country, and the King.¹⁰ Bhutan's first national census from 1979 to 1981 used the criteria set out in the 1977 Act to identify residents as citizens or not. Following the census, only those identified as citizens according to the 1977 Act were issued citizenship identity cards.

The 1985 Citizenship Act tightened the requirements for Bhutanese citizenship still further. Under the 1985 Act, a child only automatically qualifies for citizenship if both parents are Bhutanese. The 1985 Act raised the bar higher for naturalization. The 1985 Act also provided for citizenship by registration if one had been permanently domiciled in Bhutan on or before December 31, 1958, and one's name had been registered in the Ministry of Home Affairs census register.

The 1985 Citizenship Act was followed by a new census in 1988. This census amounted to a selective, arbitrary, and retroactive implementation of the 1985 Act. First, the government only conducted the census in southern Bhutan. Second, the authorities excluded ethnic Nepalis from becoming naturalized citizens, as provided for under the 1985 Act; instead, the authorities restricted Bhutanese citizenship to ethnic Nepalis who had records, such as tax receipts, to prove residence in Bhutan in 1958—30 years before the census. Bhutanese officials refused to accept residency records from 1957 or earlier, or from the years 1957 and

1959 (indicating residency in 1958) to establish citizenship. They disregarded the citizenship identity cards issued after the previous census: the authorities classified people who could not prove residence in 1958 as non-nationals, “returned migrants”, or other illegal immigrant categories, even if they possessed a citizenship card.

The census caused considerable anxiety among the ethnic Nepali population in southern Bhutan. A series of “Bhutanization” measures in line with Bhutan’s “one nation, one people” policy exacerbated this state of fear and resentment by trying to impose a distinct national identity. On January 16, 1989, the king issued a decree requiring all citizens to observe the traditional Drukpa code of values, dress, and etiquette called driglam namzha. Then in February 1989 the government removed the Nepali language from the curriculum in all schools in southern Bhutan.

Ethnic Nepalis perceived these policies as a direct attack on their cultural identity. This led to growing unrest in southern Bhutan, culminating in mass demonstrations in September and October 1990. The government response was swift. The authorities classified all participants in the demonstrations as ngolops (“anti-nationals”), and arrested and detained thousands of people accused of taking part in the demonstrations. Many were subjected to ill-treatment and torture; a number of people reportedly died in detention. The security forces staged frequent raids on the homes of ethnic Nepalis, and there were numerous accounts of women and girls being raped in the course of these raids. Following the demonstrations, the government closed all schools in southern Bhutan and suspended health services.

By the end of 1990 the Bhutanese authorities coerced the first ethnic Nepalis to leave Bhutan. They released some ethnic Nepalis from prison on condition that they would leave the country, while giving others who were categorized as non-nationals under the 1988 census the “choice” to leave the country or face imprisonment. Some fled to avoid falling victim to arbitrary arrest and detention. The security forces harassed many ethnic Nepalis, in some cases destroying their homes. The authorities forced the majority of those who became refugees into exile by intimidating them into signing so-called “voluntary migration forms.”

...Some of the ethnic Nepalis who fled or were expelled from Bhutan settled in India, but most refugees ended up in Nepal. UNHCR has provided assistance to the Bhutanese refugees in Nepal since 1992. There are currently more than 106,000 Bhutanese refugees living in seven refugee camps in Nepal.

...Ethnic Nepalis who were not evicted and who remain inside Bhutan face persistent discrimination and ongoing threats to their citizenship status. A nationwide census completed in 2005 classifies 13 percent of current Bhutanese permanent residents as “non-nationals.” While it is not possible to say what groups or individuals have been classified as “non-nationals,” they are widely believed to include many ethnic Nepalis.

...Following the unrest in southern Bhutan in the early 1990s, the government introduced so-called “No Objection Certificates” (NOCs), issued by the police on the basis of confirmation from the Dzongdag (district administrator) that the person in question is not in any way involved in “anti-national activity.”⁶² NOCs are required for enrollment in higher education, employment with the civil service, to obtain business and trading licenses, for travel documents, for buying and selling land, and for selling some cash crops. Being denied a NOC deprives a person of almost all means of earning a living. All Bhutanese citizens must apply to the police for their NOC on an annual basis.

...Drukpas are routinely re-issued with NOCs every year. As one man said, “Drukpas just phone and they [the police] issue their NOC. They have no problems.”⁶⁴ Ethnic Nepalis, on the other hand, experience great difficulties in obtaining NOCs. In particular, if ethnic Nepalis are known to have relatives in the refugee camps in Nepal they are denied NOCs.

...One measure of the disastrous consequences of not having a NOC is the extraordinary fear on the part of ethnic Nepalis in Bhutan about making contact with their relatives in the refugee camps in Nepal, because they are afraid that any such contacts might disclose to the authorities that they are related to refugees. ...[One] refugee said, “My brother still lives in

Bhutan, he has come to visit me three times in the last 16 years. When he is here he doesn't talk about the situation in Bhutan, because he fears that the information might get back to Bhutan and then he will be expelled too." A refugee teacher said, "When they come here they are afraid to come out of our hut. They are afraid that spies will report back to the government of Bhutan. Their minds are full of fear."

...Other ethnic Nepalis from Bhutan agreed that while they did not expect the government to undertake a new round of expulsions, many ethnic Nepalis might eventually decide that their lives and livelihoods are so insecure in Bhutan that they are left with no other option but to leave the country.

...In October 1993 the governments of Nepal and Bhutan met for the first time for negotiations aimed at resolving the refugee crisis. Each subsequent round of bilateral talks built up refugee hopes that a way out of the impasse would soon be found, allowing them to exercise their right to return to Bhutan. However, the negotiations got off to an inauspicious start when Bhutan proposed, and Nepal agreed, to categorize the camp population into four different groups: (1) bona fide Bhutanese who were forcibly evicted; (2) Bhutanese who voluntarily migrated; (3) non-Bhutanese; and (4) Bhutanese who have committed crimes. Both this categorization scheme and the verification process—reflecting Bhutan's intention from the start to limit the right of return to only a small subset of the refugees—met with widespread international criticism for failing to meet established standards for refugee screening and verification.

...After many years of fruitless talks and delays, Bhutan and Nepal agreed during the 10th round of bilateral talks in December 2000 to establish a Joint Verification Team (JVT).¹²² The 12th round of bilateral talks in February 2003 produced an agreement whereby only people in category one were accorded the right to repatriate to Bhutan and have their status of citizens of Bhutan restored to them. People in category two would have to re-apply for Bhutanese citizenship after their return to Bhutan, whereas people in category four would first have to stand trial in Bhutan. People in category three would not be allowed to return to Bhutan at all.

The JVT completed the verification exercise of the first camp, Khudunabari, between March and December 2001, but did not release the results until June 2003.¹²⁴ Out of a total of 12,643 people registered in the camp, the JVT categorized 12,090. Of these the JVT placed 293 (2.4 percent) in category one; 8,595 (70.55 percent) in category two; 2,948 (24.2 percent) in category three; and 347 (2.85 percent) in category four. The two governments confirmed their agreement on the treatment of the four categories during the 15th round of bilateral talks in October 2003. Since then no progress has been made.¹²⁶ No verification exercises have been conducted in other camps, and none of the residents of Khudunabari camp have been allowed to return to Bhutan.

...Nepal government policy is firmly aimed at precluding the Bhutanese refugees from integrating in Nepal, both in legal and in economic terms.

...Nepal is not a party to the 1951 Refugee Convention or its 1967 Protocol, nor has it adopted national refugee legislation. Instead, the legal status of asylum seekers and refugees in Nepal is governed by the Aliens Act supplemented by administrative directives, leaving the legal status of the Bhutanese refugees in Nepal far from secure. While Nepal allows the Bhutanese refugees to remain on its territory, it accords them few rights.

...First, regardless of the fact that many Bhutanese refugees have now resided in Nepal for more than 15 years, and that a significant proportion of the Bhutanese refugee population consists of children who were born in Nepal, no provision is made for Bhutanese refugees to acquire Nepalese citizenship, leaving them politically disenfranchised.

...Second, Bhutanese refugees are denied two basic rights that are a prerequisite for economic integration: freedom of movement and the right to engage in incomegenerating activities. Bhutanese refugees do not enjoy freedom of movement in Nepal; instead they are confined to seven refugee camps where they face highly congested living conditions (see section IV).

Refugees need to apply for permission from the government authorities in the camps whenever they want to leave the camps for more than a day; so-called “out passes” are issued only for a maximum of one week. Under article 12 of the International Covenant on Civil and Political Rights, to which Nepal is a party, everyone lawfully within the territory of a State has, within that territory, the right to liberty of movement and freedom to choose his residence. Exceptions to this right are allowed only on strictly necessary national security or other narrowly prescribed grounds.¹⁸² Thus the continuing use of the camps and the restrictions on the Bhutanese refugees’ freedom of movement could only be justified if it were shown to be clearly in the interest of refugee security or overall national security.

...The government of Nepal estimates that between 10,000 and 15,000 Bhutanese have settled in Nepal outside the camps.²²⁸ They fall in a number of different categories. Some Bhutanese, wanting to avoid the dependency of life in the camps, never registered as refugees in Nepal. Instead, they settled amongst the Nepalese and tried to make their own living.

Other Bhutanese have applied for refugee status in Nepal, but are still waiting for a decision. The Nepalese government recognized all Bhutanese refugees who arrived in Nepal prior to June 1993 on a prima facie basis. In June 1993 the government instituted individual refugee status determination (RSD) procedures for all new Bhutanese arrivals. With the start of the joint verification exercise in Khudunabari camp in early 2001, however, the government suspended all RSD activities, and it was not until October 2003 that the RSD operation was resumed. By the end of 2004 the government had decided all applications that had been pending when RSD was suspended in late 2000. However, the government of Nepal has continued to receive applications from people claiming to be Bhutanese refugees who have never gone through the RSD process, and the RSD process continued until it was suspended again with the start of the census in the camps in November 2006. UNHCR is aware of 1,343 individuals who have yet to receive a decision on their asylum claim (<http://hrw.org/reports/2007/bhutan0507/bhutan0507web.pdf>).

Reports noting the arrest of ethnic Nepali in Bhutan for political reasons relating to the above issues often name arrested persons of the Magar identity. For instance, a May 2007 report names a Magar among a group of people who were arrested in Bhutan due to a “Bhutanese police fear that a section belonging to the Southern Bhutan might speak against the discrimination meted out to them by the current Bhutan regime” (http://www.nowpublic.com/ethnic_nepalese_bhutanese_refugees_seek_citizenship_rights_in_bhutan).

A 2003 Amnesty International report discusses the situation of “Nepali-speaking refugees from southern Bhutan living in seven refugee camps in Jhapa district, eastern Nepal” who have been unable to return to Bhutan “[a] decade after tens of thousands of people from the ethnic Nepali community in southern Bhutan were forced to flee the country”. The report notes the arrest of a Magar person: “Dalman Magar, [from Beldangi II refugee camp in Jhapa District, Nepal], was arrested in southern Bhutan on 22 September. He was allegedly tortured in police custody” (see: <http://web.amnesty.org/report2003/btn-summary-eng>)

Bhutanese citizenship

The terms of Bhutanese citizenship are currently specified by the terms of Bhutanese citizenship are currently specified by Bhutan’s 1985 Citizenship Act:

The Bhutan Citizenship Act, 1985

This Act may be called the Bhutan Citizenship Act, 1985. It shall come into force from the twenty third day of the fourth month of Wood Bull year of the Bhutanese calendar corresponding to 10th June, 1985. In case of conflict between the previous laws, rules and regulations relating to citizenship, the provisions of this Act shall prevail.

Citizenship by Birth:

A person whose parents are both citizens of Bhutan shall be deemed to be a citizen of Bhutan by birth.

Citizenship by Registration:

A person permanently domiciled in Bhutan on or before 31st December 1958, and, whose name is registered in the census register maintained by the Ministry of Home Affairs shall be deemed to be a citizen of Bhutan by registration.

Citizenship by Naturalization:

A person desiring to apply for Bhutanese citizenship to the Ministry of Home Affairs in Forms KA-1 and KA-2 must fulfill all the following conditions to be eligible for naturalization:

The person must have attained the age of 21 years, and 15 years in the case of a person either of whose parents is a citizen of Bhutan;

The person must be mentally sound;

The person must have resided in Bhutan for 15 years in the case of Government employees and also in the case of applicants, either of whose parents is a citizen of Bhutan, and 20 years in all other cases, and this period of residence must be registered in the records of the Department of Immigration and Census;

The person must be able to speak, read and write Dzongkha proficiently;

The person must have good knowledge of the culture, customs, traditions and history of Bhutan;

The person must have good moral character and should not have any record of imprisonment for criminal offences in Bhutan or elsewhere;

The person must have no record of having spoken or acted against the King, Country and People of Bhutan in any manner whatsoever, and

The person must be prepared to take a solemn Oath of Allegiance to the King, Country and People of Bhutan according to the prescribed Form KHA.

On receipt of the application Form KA-1 for naturalization, the Ministry of Home Affairs will take necessary steps to check all the particulars contained in the application. The Ministry of Home Affairs will also conduct written and oral tests to assess proficiency in Dzongkha and knowledge of the culture, customs, traditions and history of Bhutan. The decision of the Ministry of Home Affairs on the question of eligibility for naturalization shall be final and binding. The Royal Government of Bhutan also reserves the right to reject any application for naturalization without assigning any reason.

Grant of Citizenship:

A person, whose application for naturalization has been favourably considered by the Ministry of Home Affairs, shall take the Oath of Allegiance according to Form KHA of this Act.

A person shall then be deemed to be a citizen of Bhutan upon receiving a Kasho from His Majesty the King of Bhutan according to Form GA of this Act.

Termination of Citizenship:

Any citizen of Bhutan who acquired the citizenship of another country shall cease to be a citizen of Bhutan. The wife/husband and children shall have the right to remain as citizens of Bhutan provided they are permanently domiciled in Bhutan and are registered annually in the Citizenship Register maintained by the Ministry of Home Affairs.

Any citizen of Bhutan who has acquired citizenship by naturalization may be deprived of citizenship at any time if it found that naturalization had been obtained by means of fraud, false representation or the concealment of any material fact.

Any citizen of Bhutan who has acquired citizenship by naturalization may be deprived of citizenship at any time if that person has shown by act or speech to be disloyal in any manner whatsoever to the King, Country and People of Bhutan.

If both the parents are Bhutanese and in case of the children leaving the country of their own accord, without the knowledge of the Royal Government of Bhutan and their names are also not recorded in the Citizenship Register maintained in the Ministry of Home Affairs, then they will not be considered as citizens of Bhutan. (Resolution No. 16(2) adopted by the National Assembly of Bhutan in its 62nd Session).

Any citizen of Bhutan who has been deprived of Bhutanese citizenship must dispose of all immovable property in Bhutan within one year, failing which, the immovable property shall be confiscated by the Ministry of Home Affairs on payment of fair and reasonable compensation.

(http://www.satp.org/satporgtp/countries/bhutan/document/actandordinances/bhutan_citizenship_act_1985.html).

A range of different citizenship ID cards have reportedly been issued and then outmoded under Bhutan's successive nationality laws. An Amnesty International report, reproduced on the [bhootan.org](http://www.bhutan.org) website, relates that some ethnic Nepali have reported having previously issued citizenship ID cards confiscated from them by authorities following the promulgation of the implementation of the 1985 Citizenship Act and the subsequent 1988 census. The issues are discussed in the context of possible plans which were being mooted at the time for the return of Bhutan's ethnic Nepali (the return did not proceed).

It is not yet known how it will be decided whether a person is "Bhutanese" (categories one, two and four) or "non-Bhutanese" (category three). If the determining factor is whether the person is entitled to Bhutanese citizenship, as defined under the 1985 Citizenship Act, this is of concern because of the act's vague provisions and the sometimes arbitrary ways in which it has been applied. For example, in many cases it will now be impossible to establish if a person was resident in Bhutan in 1958, which is a requirement for citizens under the act.

This is because census registers are incomplete, some people have had their status as citizens altered, some people have had their names deleted from the census records, and many people who might otherwise be able to prove residence in the country by producing their land tax receipts and other relevant documents have had them confiscated by local government authorities. These factors are described more fully below. Secondly, while the law allows for citizenship by naturalization, it excludes anyone from gaining citizenship in this manner if they have a record of "having spoken or acted against the King, country and people of Bhutan in any manner whatsoever". This can include the non-violent expression of opposition to government policies. Applications for citizenship can be refused "without assigning any reason" under the act. Finally, the requirements that citizens be proficient in Dzongkha (the language of the northern Bhutanese) and knowledgeable about the culture, customs, tradition and history of Bhutan could be used to exclude many Nepali-speaking people in southern Bhutan from gaining citizenship.

Category two (Bhutanese who emigrated) may give cause for concern depending upon the fate of those included in this category. If emigrants from Bhutan have no other citizenship, they have the right under international law to return to Bhutan regardless of whether they left

voluntarily. Amnesty International is not aware of any provision in the 1985 Citizenship Act which qualifies the right to return of citizens who have left Bhutan. However, an earlier act – the 1958 Citizenship Act (as amended in 1977) – required citizens who left the country and then wanted to re-enter to go through a two-year probation period upon re-entry before having their citizenship renewed. One ground for refusing to renew citizenship was that the person “was responsible for any activities against the Royal Government”. An assurance is therefore needed from the Government of Bhutan that no restrictions on return would apply to Bhutanese who had voluntarily emigrated and wished to return, as a refusal to permit people in this category to return would amount to forcible exile.

...People from southern Bhutan whom Amnesty International interviewed in Nepal described how the census teams had worked. They said that when the census team arrived in a village, the head of the family was requested by the village headman to present him or herself to the team with their documents, including Bhutanese Citizenship Identity Card, marriage certificate, land ownership documents including land tax receipts and their certificate of origin (which is a document similar to a birth certificate). Those people who were able to produce a land tax receipt for 1958, or a certificate of origin showing that both their parents were born in Bhutan, were classified as genuine Bhutanese citizens (F1, in the seven-fold classification system used for the census). Those people who could produce a certificate of origin proving only one parent had been born in Bhutan were classified as F4 or F5, and their citizenship status remained unclear. Those people who were unable to produce either document were classified as non-nationals (F7). The head of the family was told orally what category he and his family had been put into, but in the majority of cases the census team did not give the head of family any documentation showing which category each individual family-member had been assigned to.[6]

Although the government has said that any documentary evidence whatsoever showing that a person was resident in Bhutan in 1958 is accepted as proof of citizenship[7], the people from southern Bhutan whom Amnesty International interviewed in Nepal said that this was not the case, and that if they could provide documentation from an earlier year, but not for 1958 itself, it was not accepted. People who possessed land tax receipts for 1956 or 1957, for example, but not for 1958, said they had been classified as non-nationals. In some cases a person who possessed an identity card but had no land tax receipt for 1958 or no certificate of origin were classified as non-nationals. Identity cards were often seized or confiscated by the census team or other local officials (Amnesty International (undated), ‘Bhutan: Forcible Exile’, bhootan.org website http://www.bhootan.org/thronson/thronson_protest.htm – Accessed 6 November 2007).

Citizenship documents

According to HRW, the Bhutanese government has actively sought to restrict ethnic Nepali access to Bhutanese citizenship. The HRW report suggests that the Bhutanese citizenship has only been made available to ethnic Nepali who have met very strict criteria and provided the appropriate documentation. Being born in Bhutan is not, of itself, sufficient to make an ethnic Nepali eligible for Bhutanese citizenship according to this report. “Under the 1985 Act, a child only automatically qualifies for citizenship if both parents are Bhutanese. ... The 1985 Act also provided for citizenship by registration if one had been permanently domiciled in Bhutan on or before December 31, 1958, and one’s name had been registered in the Ministry of Home Affairs census register.” In practice, meeting the requirements of the 1985 Act is not, however, enough. HRW reports that the Bhutanese government effectively closed off citizenship to much of Bhutan’s ethnic Nepali when it conducted a census in 1988. During this census: “authorities restricted Bhutanese citizenship to ethnic Nepalis who had records, such as tax receipts, to prove residence in Bhutan in 1958”.

Ethnic Nepalis first began migrating to Bhutan in the nineteenth century. Many became eligible for Bhutanese citizenship under the 1958 Nationality Law. Moreover, from the mid-1950s ethnic Nepalis began to be admitted into the bureaucracy, the army and the police, and were made members of the cabinet and the judiciary. However, by the late 1970s the Drukpa

establishment had come to see the ethnic Nepalis' growing numbers and influence as a threat to Bhutan's cultural identity and the Drukpas' own privileged position. Increasingly, Bhutan's ruling elite asserted that the majority of the ethnic Nepalis in Bhutan were not in fact citizens but illegal immigrants who threatened Bhutan's "survival as a distinct political and cultural entity."

The government invoked these perceived threats as justification for a series of discriminatory measures aimed at the political, economic, and cultural exclusion of Bhutan's ethnic Nepalis. Two new Citizenship Acts were passed in quick succession, in 1977 and 1985, each tightening the requirements for Bhutanese citizenship. The 1977 Citizenship Act increased the residency requirement for citizenship by 10 years: from five to 15 years for government servants and from 10 to 20 years for all other foreigners. The growing concerns about the threat posed by ethnic Nepalis to Bhutan's cultural identity were reflected in an additional requirement for applicants for Bhutanese citizenship to have "some knowledge" of the Dzongkha language and Bhutanese history. The 1977 Act also provided that citizenship would not be granted to anyone who was related to any person involved in activities against the people, the country, and the King. Bhutan's first national census from 1979 to 1981 used the criteria set out in the 1977 Act to identify residents as citizens or not. Following the census, only those identified as citizens according to the 1977 Act were issued citizenship identity cards.

The 1985 Citizenship Act tightened the requirements for Bhutanese citizenship still further. Under the 1985 Act, a child only automatically qualifies for citizenship if both parents are Bhutanese. The 1985 Act raised the bar higher for naturalization. The 1985 Act also provided for citizenship by registration if one had been permanently domiciled in Bhutan on or before December 31, 1958, and one's name had been registered in the Ministry of Home Affairs census register.

The 1985 Citizenship Act was followed by a new census in 1988. This census amounted to a selective, arbitrary, and retroactive implementation of the 1985 Act. First, the government only conducted the census in southern Bhutan. Second, the authorities excluded ethnic Nepalis from becoming naturalized citizens, as provided for under the 1985 Act; instead, the authorities restricted Bhutanese citizenship to ethnic Nepalis who had records, such as tax receipts, to prove residence in Bhutan in 1958 – 30 years before the census. Bhutanese officials refused to accept residency records from 1957 or earlier, or from the years 1957 and 1959 (indicating residency in 1958) to establish citizenship. They disregarded the citizenship identity cards issued after the previous census: the authorities classified people who could not prove residence in 1958 as non-nationals, "returned migrants", or other illegal immigrant categories, even if they possessed a citizenship card (Human Rights Watch 2007, 'Last hope: The need for durable solutions for Bhutanese refugees in Nepal and India', vol.19, no.7, May <http://hrw.org/reports/2007/bhutan0507/bhutan0507web.pdf> – Accessed 18 May 2007).

The US Committee for Refugees and Immigrant's (USCRI) *World Refugee Survey 2004 Country Report* provides information on the role of documentation during the 1988 census and the assessment of Bhutan's ethnic Nepali population. The USCRI also provides some information on the kinds of documentation being held by Bhutan's displaced ethnic Nepali in the one camp which was assessed by the Bhutanese and Nepalese governments' Joint Ministerial Committee (JMC) program which stalled after 2003.

In 1988 the government conducted a census in the southern districts of Bhutan, the area largely populated by the Lhotsampa requiring documentation that did not exist as proof of citizenship. Documents showing land taxes paid were only available starting in 1977 and the census teams demanded proof of earlier payment. In some cases, census teams refused documentation issued before 1958; in others, officials categorized as illegal immigrants some Lhotsampa who had citizenship cards issued by district officials under the 1958 law, unless they could document residence and land ownership prior to 1958. Authorities rejected some because of small spelling errors on their documents, or because their middle name was spelled out on one document and not on others. As a result, Bhutanese officials excluded or revoked the citizenship of large numbers of Lhotsampa who had or were entitled to citizenship.

...In 1993 the Bhutanese and Nepalese governments established a Joint Ministerial Committee (JMC) to negotiate a solution to the displacement. After years of negotiations and debate, in 2001, joint verification teams (JVT) of Bhutanese and Nepalese officials began to determine the citizenship of the Bhutanese refugees to decide who would be allowed to repatriate to Bhutan.

In March 2001, the JVT interviewed the refugees in one camp. The authorities divided the nearly 12,200 refugees verified into four categories and in June 2003 released the results: Category 1 – Bhutanese citizens eligible to return (2.5 percent); Category 2 – Bhutanese who “voluntarily emigrated” who have to reapply for citizenship (70 percent); Category 3 – non-Bhutanese (24 percent); and Category 4 – Bhutanese who had committed crimes whom the government would try upon return (3 percent).

Human rights groups said that the process lacked transparency and failed to provide sufficient time and due process for appeals. Refugees were given only 15 days to appeal the decisions to the same persons who made the original decision, were not provided with reasons for the decision, and had to introduce new evidence on appeal. The governments of Nepal and Bhutan excluded UNHCR from the process, and the criteria to determine which persons belonged to which categories were unknown. According to the Nepalese government’s National Unit for Coordination of Refugee Affairs, in 1992, some 85 percent of the refugees had proof of citizenship, some 10.5 percent had proof of land ownership, and almost 3 percent had school certificates or other official documents showing residence in Bhutan. USCR interviewed a number of Bhutanese refugees in 1992 and saw their documents.

Those in Category 2 will have to wait for 2 years to be eligible to apply for citizenship. It is questionable whether they will be able to obtain it, given the 20-year residency and other requirements in the 1985 Citizenship Act, including being proficient in Dzongkha. Officials will try those in Category 4, for political crimes such as forming opposition parties or protesting government actions. A conviction in such a trial, which will be unmonitored by the international community, will result in the denial of citizenship and render them stateless. In addition, it is unlikely that the Bhutanese government will compensate those in Categories 2 and 4 for losses, return their land, or provide other land to them. In December 2003, members of the Bhutanese verification team visited Nepal. Dr. Sonam Tenzing advised the refugees that those in Category 1 would not receive their original homes and land. Those in Category 2 would have to stay in transit camps and prove their “loyalty to Bhutan’s history, culture, and monarchy,” and the Bhutanese government would permit only one member from family in Category 2 to work, and then only in a menial job. He also announced that there would be no review of those placed in Category 3. In response, some refugees threw stones at the team. The team left Nepal, and the Bhutanese Foreign Minister reportedly told his Nepalese counterpart that repatriation would not start until the incident was somehow “resolved” by an inquiry (US Committee for Refugees and Immigrant 2004, ‘Unending Limbo: Warehousing Bhutanese Refugees in Nepal’, in *World Refugee Survey 2004 Country Report* <http://www.refugees.org/data/wrs/04/pdf/98-105.pdf> – Accessed 6 November 2007).

A 2005 study published by Zurich’s provides the following information on the manner in which ethnic Nepali were classified during the census of 1988:

In this census, each individual was categorised from F1 to F7: F1 genuine Bhutanese citizen; F2 returned migrants (having left Bhutan and then returned); F3 drop-out cases (not around at the time of the census); F4 a non-national woman married to a Bhutanese man; F5 a non-national man married to a Bhutanese woman; F6 adoption cases (legally adopted children); F7 non-nationals (migrants and illegal settlers). In the early stages of the census operation, very few Lhotshampa were registered as F7. But as the census teams came around several times between 1988 and 1990, there was the possibility of being re-categorised (Hutt, M. 2003, p.154, *Unbecoming Citizens. Culture, Nationhood, and the Flight of Refugees from Bhutan*, New Delhi: Oxford University Press, cited in: Schäppi, D. 2005, ‘Cultural Plurality, National Identity and Consensus in Bhutan’, Center for Comparative and International Studies website, no.6 http://www.cis.ethz.ch/publications/publications/WP6_Schappi.pdf – Accessed 6 November 2007).

According to HRW the various categorizations have played an important role in restricting the manner in which new citizenship ID cards have been distributed to ethnic Nepali remaining in Bhutan following a 2005 census. Possession of the new ID card does not, according to HRW, afford ethnic Nepali the rights of a citizen in and of itself. To access a range of services it is also necessary to acquire a “no objection certificate” (NOC). Information on the distribution and function of these authorities follows below:

Ethnic Nepalis who were not evicted and who remain inside Bhutan face persistent discrimination and ongoing threats to their citizenship status. A nationwide census completed in 2005 classifies 13 percent of current Bhutanese permanent residents as “non-nationals.” While it is not possible to say what groups or individuals have been classified as “non-nationals,” they are widely believed to include many ethnic Nepalis. Following the census new ID cards are being distributed to all recognized Bhutanese citizens. In interviews with Human Rights Watch, ethnic Nepalis who reside in Bhutan reported that only those people who have been classified as F1 (genuine Bhutanese citizens) and F4 (non-national women married to Bhutanese men, and their children) are given new citizenship cards.⁶⁰ One man said, “Until now, everyone has had a red ID card [the old version of the Bhutanese ID card]. But the new cards are given only to [people who have been classified as] F1 and F4. The others don’t get one.”

No Objection Certificates Following the unrest in southern Bhutan in the early 1990s, the government introduced so-called “No Objection Certificates” (NOCs), issued by the police on the basis of confirmation from the Dzongdag (district administrator) that the person in question is not in any way involved in “anti-national activity.” NOCs are required for enrollment in higher education, employment with the civil service, to obtain business and trading licenses, for travel documents, for buying and selling land, and for selling some cash crops. Being denied a NOC deprives a person of almost all means of earning a living. All Bhutanese citizens must apply to the police for their NOC on an annual basis.

Drukpas are routinely re-issued with NOCs every year. As one man said, “Drukpas just phone and they [the police] issue their NOC. They have no problems.” Ethnic Nepalis, on the other hand, experience great difficulties in obtaining NOCs. In particular, if ethnic Nepalis are known to have relatives in the refugee camps in Nepal they are denied NOCs. One man said, “If you have relatives in the camps, then for you there will be no NOC, no other facilities.” Another man described his predicament as follows: “I am in F4. F4 is nearest to F1. But in practice, since my parents are refugees, I cannot get a NOC. I cannot get government jobs, I have to work privately” (Human Rights Watch 2007, ‘Last hope: The need for durable solutions for Bhutanese refugees in Nepal and India’, vol.19, no.7, May <http://hrw.org/reports/2007/bhutan0507/bhutan0507web.pdf> – Accessed 18 May 2007).

Deprivation of Bhutanese citizenship

According to HRW, Bhutan maintains of the displaced Nepali encamped in Nepal that: “the camp population left Bhutan voluntarily and renounced their Bhutanese citizenship in the process. If Bhutan were to allow the ‘voluntary migrants’ to return, it maintains that they would have to re-apply for Bhutanese citizenship under Bhutan’s exceedingly strict citizenship laws.” Further details follow:

In October 1993 the governments of Nepal and Bhutan met for the first time for negotiations aimed at resolving the refugee crisis. Each subsequent round of bilateral talks built up refugee hopes that a way out of the impasse would soon be found, allowing them to exercise their right to return to Bhutan. However, the negotiations got off to an inauspicious start when Bhutan proposed, and Nepal agreed, to categorize the camp population into four different groups: (1) bona fide Bhutanese who were forcibly evicted; (2) Bhutanese who voluntarily migrated; (3) non-Bhutanese; and (4) Bhutanese who have committed crimes. Both this categorization scheme and the verification process—reflecting Bhutan’s intention from the start to limit the right of return to only a small subset of the refugees—met with widespread

international criticism for failing to meet established standards for refugee screening and verification.

After many years of fruitless talks and delays, Bhutan and Nepal agreed during the 10th round of bilateral talks in December 2000 to establish a Joint Verification Team (JVT). The 12th round of bilateral talks in February 2003 produced an agreement whereby only people in category one were accorded the right to repatriate to Bhutan and have their status of citizens of Bhutan restored to them. People in category two would have to re-apply for Bhutanese citizenship after their return to Bhutan, whereas people in category four would first have to stand trial in Bhutan. People in category three would not be allowed to return to Bhutan at all.

The JVT completed the verification exercise of the first camp, Khudunabari, between March and December 2001, but did not release the results until June 2003. Out of a total of 12,643 people registered in the camp, the JVT categorized 12,090. Of these the JVT placed 293 (2.4 percent) in category one; 8,595 (70.55 percent) in category two; 2,948 (24.2 percent) in category three; and 347 (2.85 percent) in category four. The two governments confirmed their agreement on the treatment of the four categories during the 15th round of bilateral talks in October 2003. Since then no progress has been made. No verification exercises have been conducted in other camps, and none of the residents of Khudunabari camp have been allowed to return to Bhutan (Human Rights Watch 2007, 'Last hope: The need for durable solutions for Bhutanese refugees in Nepal and India', vol.19, no.7, May <http://hrw.org/reports/2007/bhutan0507/bhutan0507web.pdf> – Accessed 18 May 2007).

A 1998 study by human rights lawyer Tang Lay Lee contends that a reading of Bhutan's successive nationality laws, in concert with a number of relevant international treaties, could be employed to argue that Bhutan's evicted ethnic Nepali possess a theoretical right to Bhutanese citizenship and to return. In practice, however, Lee's study finds, as per the information cited above, that Bhutan's evicted ethnic Nepali have been effectively excluded from any rights to citizenship or return to Bhutan (Lee, T.L. 1988, 'Refugees from Bhutan: Nationality, Statelessness and the Right to Return', *International Journal of Refugee Law*, vol.10, no.1-2, pp.118-155).

Bhutanese Refugees in Nepal

According to information sourced from Nepal's Ministry of Home Affairs:

Refugees from Bhutan entering into Nepal began in 1990s, with a peak in their influx during the first half of 1992 reached up to 1,000 persons a day crossed the border. A group of 60 Bhutanese asylum seekers, however, were recorded on 12 December 1990 for the first time. In July 1993 there were over 84 thousand Bhutanese refugees in eastern Nepal. The rate of new arrivals from Bhutan has steadily decreased since then, with the introduction of Government of Nepal's screening centre in Kakarvitta on the border between Nepal and India. New arrivals in the Bhutanese refugee camps have dropped to insignificant numbers since 1996 while a natural increase has taken place in the camp population owing to an average growth rate of two percent. Refugee coordination Unit (RCU). Jhapa has registered a total number of 1,06,868 refugees as of the record of 31 May 2006 languishing in the seven camps in Jhapa and Morang districts of eastern Nepal. (<http://www.moha.gov.np/activities.html>)

Re-entry to Nepal for displace ethnic Nepali Bhutanese

In December 2006 the Department received the following advice from UNHCR:

UNHCR Kathmandu has provided the following information in response to the protection visa case manager's questions:

Q1. What is the current situation/status of Bhutanese refugees in Nepal?

A1. Bhutanese entering Nepal prior to 1993 who applied for registration as refugees were granted registration automatically and placed in refugee camps. Since 1993, Bhutanese living in Nepal, of whom there are believed to be “unknown 1000s” living in both rural and urban areas, have been eligible to apply to a Nepalese government screening centre to have their status determined on an individual basis. This screening primarily assesses if the applicant is a Bhutanese national rather than a Nepalese attempting to pass himself/herself off as Bhutanese. There is no time limit on such applications, i.e. it doesn't matter how long the applicant has been living in Nepal, and applicants are not newcomers who have arrived directly from Bhutan but people who have been living in the community in Nepal for some years. Once determined to be Bhutanese, the applicant is placed in a refugee camp and becomes eligible to take part in any future durable solution. Refugees living in the camps are not permitted to work outside (though many do illegally), however, permission may be granted for refugees to leave the camps for specific purposes, e.g. health care, higher education or to visit relatives overseas.

Q2. Do Bhutanese refugees who have lived in Nepal have a right of re-entry to Nepal?

A2. Bhutanese who left legally would have the right to re- enter Nepal. Also, due to the open border policy, Bhutanese are able to enter Nepal freely from India. (Nepal: Bhutanese refugees in Nepal, DFAT, CIR No. 07/2, 29 December, 2006 CX167896)

The US Committee for Refugees and Immigrants' most recent *World Refugee Survey* states:

For international travel, Bhutanese refugees had to apply to camp officials, who recommended them with photo attestation to the Refugee Coordination Unit in Jhapa, which recommended them to the National Unit for Coordination of Refugee Affairs in the Ministry of Home Affairs, which recommended them to the Ministry of Foreign Affairs, which issued the necessary documents.

Nepal stopped issuing travel documents and exit permits in October 2005. In May 2006, the Government resumed issuing travel documents to refugees it recognized, i.e., Bhutanese and pre-1990 Tibetans, and, in June, resumed issuing exit permits for newly arrived Tibetan refugees. Refugees of other nationalities whom UNHCR recognized under its mandate were eligible for neither.

...In September, in response to pressure from resettlement states, the Government agreed to allow third countries to resettle 16 Bhutanese refugees but only allowed three of them to leave by year's end (<http://www.refugeesusa.org/countryreports.aspx?id=2011>).

FINDINGS AND REASONS

The applicant arrived in Australia and lodged his application for a protection visa. Ever since, he has submitted numerous written statements outlining the nature of his claims and has used every opportunity to provide more details in relation to his life circumstances before coming to Australia. The additional information provided by the applicant at various stages, has not distorted the essence of his claims and has been free of any sign or implication that the further details incrementally provided have been designed to artificially boost his case. Apart from identifying his ethnicity as “Hagar” and his religion as “Chrischian” - typographical or other errors which the Tribunal has no hesitation in attributing to those he had relied upon to complete his application form due to his near complete illiteracy -, the applicant has been entirely consistent in the essence and the nature of his written claims.

In relation to his oral evidence, since the lodgement of his application for a protection visa, the applicant has appeared before the Tribunal and had given oral evidence on four separate occasions, twice before differently constituted Tribunals and twice before the currently constituted Tribunal. Having listened to tape recordings of his oral evidence before the previously constituted Tribunals and having had the opportunity to listen to him first hand and observe him during the course of the last two hearings, the Tribunal formed a strong impression of a reliable, truthful and genuine witness. The Tribunal draws no adverse

inference from the belated disclosure of the claim relating to the applicant's mother being sexually assaulted in Bhutan and accepts his reasons for not having raised this claim earlier.

Having regard to its findings in relation to the applicant's credibility and in the absence of any persuasive reason to the contrary, the Tribunal accepts that the applicant is a person as he has always claimed to be. The Tribunal accepts that he was born in Bhutan to ethnic Nepali parents who were also born in Bhutan. The Tribunal accepts that the applicant's father died when he was young and that he continued to live and work with his mother on the small farm owned by his family. The Tribunal accepts that as a teenager he travelled to Country A and worked in that country for many years. The Tribunal accepts that in the mid 1990s the Bhutanese army forcibly removed the applicant and his mother from their home and confiscated their belongings. The Tribunal accepts that they subsequently found their way to Nepal where he resided for a period of time as a Bhutanese refugee before he came to Australia. The Tribunal accepts that the applicant departed Nepal on a passport issued under a different name and arranged for him by an agent. The Tribunal accepts that he had met this agent through an employer he worked for illegally in Nepal. The applicant's claim that he worked illegally outside of the camp and that his mother ended up residing with the agent as a housekeeper and a security for the applicant's debt to the agent is not inconsistent with the country information before the Tribunal which suggests that many ethnic Nepali refugees from Bhutanese work outside of the refugee camps in Nepal illegally. The Tribunal further accepts that the applicant converted to Christianity in Australia. The Tribunal accepts that he attends church regularly and is involved in evangelical activities, including sharing his faith with members of the Nepali community in City Y.

In assessing the applicant's claims to a protection visa, the first issue to be determined is the country or countries against which the applicant's claims must be assessed.

As the above country information suggests, being born in Bhutan to Ethnic Nepali parents does not automatically confer an entitlement to Bhutanese nationality.

The Tribunal accepts that the applicant's birth was not registered in Bhutan. He has no documentation to prove the date or location of his birth, nor the identity of his parents. He is illiterate and stated at the hearing that he did not know what kind of documents were in his family's possession before the Bhutanese authorities confiscated their belongings or if his parents ever possessed Bhutanese citizenship documents. It is, therefore, difficult to attach weight to certificates of nationality or similar documents issued to the applicant by Bhutan Peoples' Party or Human Rights Organization of Bhutan as conclusive evidence of the applicant's nationality. Similarly, the Nepalese passport the applicant travelled to Australia with is not his and bears no value in determining his nationality.

In the absence of any other documents to conclusively establish the applicant's nationality, the Tribunal finds that the applicant is stateless and must be assessed against his "country of former habitual residence".

The applicant has previously lived in three different countries: Country A, Nepal and Bhutan. He travelled to Country A with the specific intention to work. He worked in Country A for many years living in shared accommodation with a number of other Bhutanese migrants. As he did not have a passport, he entered and exited Country A illegally. There was no evidence before the Tribunal to suggest that the applicant had enjoyed any formal residency rights or that his connection with Country A went beyond being employed in that country as an illegal migrant worker. The nature of the applicant's residence in Country A was, therefore, transitory and confined in purpose.

The Tribunal accepts that the applicant went to Nepal as a Bhutanese refugee in the mid 1990s and that he lived and worked illegally in that country for sometime before coming to Australia. He speaks Nepalese and his mother continues to live in Nepal. However, he had never travelled to Nepal before the mid 1990s and his evidence makes it clear that he has no other connections with that country. There was no evidence before the Tribunal to suggest that the applicant's status was ever determined or regularised by the Nepali authorities. The applicant's evidence suggests that he did not make or intend to make Nepal his 'abode' or 'the centre of his interest' and departed that country as soon as an opportunity presented itself. As the applicant departed Nepal illegally he does not have the right to re-enter Nepal (Nepal: Bhutanese refugees in Nepal, DFAT, CIR No. 07/2, 29 December, 2006 CX167896).

As indicated above, the applicant was born in Bhutan to parents who were also born in Bhutan, as were his paternal grandparents. His father owned a small farm in Bhutan, but he passed away when the applicant was young. Subsequently, the responsibility for running the farm was born by the applicant and his mother. The applicant travelled to Country A when he was a teenager but always considered Bhutan as his home. During his lengthy stay in Country A, despite his very modest financial means, he returned to Bhutan on two occasions and remained for prolonged periods of time working alongside his mother on the family farm. At the hearing the Tribunal formed the impression that he identified strongly with Bhutan and that, at least in theory, he considered himself to be a citizen of Bhutan. Although, in practice, the applicant currently has no right to return to Bhutan, having considered all the evidence before it, on balance, the Tribunal is of the view that Bhutan can be considered the applicant's country of former habitual residence and his claims must be assessed against that country.

The applicant's claims of being expelled from Bhutan for the reason of his ethnicity are consistent with the country information before the Tribunal. The Tribunal accepts that in the mid 1990s the Bhutanese army went to his house and beat him. His mother was also beaten and raped in front him. The Tribunal accepts that this incident had a traumatic impact on the applicant. The Tribunal accepts that they lost all their belongings and were forcibly removed to a Bhutanese town. The Tribunal accepts that the applicant's experiences at the hands of the Bhutanese army amount to serious harm within the meaning of the Convention. The Tribunal is satisfied that the essential and significant reason behind the harm suffered by the applicant was the convention reason of ethnicity.

The applicant's eviction from Bhutan meant that he was effectively excluded from any rights to citizenship or return to Bhutan (Lee, T.L. 1988, 'Refugees from Bhutan: Nationality, Statelessness and the Right to Return', *International Journal of Refugee Law*, vol.10, no.1-2, pp.118-155; and Human Rights Watch, *ibid*, <http://hrw.org/reports/2007/bhutan0507/bhutan0507web.pdf>). It also entailed serious consequences for him and his mother. They were left homeless, destitute and with no choice but to follow other expelled ethnic Nepalis to a refugee camp in India and subsequently a refugee camp in Nepal where they had to endure very harsh living conditions. The Tribunal is of the opinion that the applicant's exclusion from the right to Bhutanese citizenship and the right to return to the country where his family had lived for three generations, as well as all the disadvantages that emanated from the deprivation of these rights amount to persecution for the Convention reason of ethnicity.

The country information before the Tribunal suggests that ethnic Nepalis in Bhutan face persistent discrimination in almost all aspects of their daily lives in Bhutan, including education, employment, and land ownership.

(<http://hrw.org/reports/2007/bhutan0507/bhutan0507web.pdf>). The sources consulted also indicate that proselytism, particularly through the provision of financial and economic incentives, were deemed illegal by the government due to the National Security Act, which prohibits “words either spoken or written, or by other means whatsoever, promotes or attempts to promote, on grounds of religion, race, language, caste or community, or on any other ground whatsoever, feelings of enmity or hatred between different religious, racial or language groups or castes and communities”. Violating the act is punishable with up to three years’ imprisonment, although it was not clear that the government enforced this provision of the Act (US Department of State, Country Reports on Human Rights Practices 2006 in relation to Bhutan, <http://www.state.gov/g/drl/rls/hrrpt/2006/78870.htm>). According to the US Department of State, in January 2006 authorities arrested two civil servants accusing them of engaging in acts of proselytism under the false pretext of holding an official meeting, maligning the Spiritual Head of Bhutan, posing as officials on official business, and giving false information. In accordance with provisions in the Bhutan Penal Code and the National Security Act, both men were found guilty and sentenced to three and a half years and three years in prison. They were released 6 months later after payment of a fine (US Department of State, International Religious Freedom Report 2007, <http://www.state.gov/g/drl/rls/irf/2007/90227.htm>). The Tribunal is of the view that the applicant’s ethnicity combined with his evangelical Christian faith would place him at a real risk of harm in Bhutan. The Tribunal is satisfied that the applicant does not have a right to enter and reside in any other country. The Tribunal is satisfied that the applicant has a well-founded fear of persecution in Bhutan for a Convention reason.

CONCLUSIONS

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 Officer’s I.D. PRRRNP