

1206437 [2012] RRTA 753 (30 August 2012)

DECISION RECORD

RRT CASE NUMBER: 1206437

DIAC REFERENCE(S): CLF2011/179238 V11/2552

COUNTRY OF REFERENCE: Georgia

TRIBUNAL MEMBER: Bruce MacCarthy

DATE: 30 August 2012

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

RELEVANT LAW

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

Refugee criterion

4. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
5. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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; ...
6. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.
7. 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.

8. There are four key elements to the Convention definition. First, an applicant must be outside his 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.
9. 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.
10. 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.
11. 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 he has 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 probability of the persecution occurring is well below 50 per cent.
12. In addition, an applicant must be unable, or unwilling because of his fear, to avail himself of the protection of his country or countries of nationality. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution
13. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

14. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence

of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) (“the complementary protection criterion”).

15. “Significant harm” for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he will be arbitrarily deprived of his life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. “Cruel or inhuman treatment or punishment”, “degrading treatment or punishment”, and “torture”, are further defined in s.5(1) of the Act.
16. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Credibility

17. When determining whether a particular applicant is entitled to protection in Australia, the Tribunal must first make findings of fact on the claims he has made. This may involve an assessment of the credibility of the applicant. When assessing credibility, the Tribunal should recognise the difficulties often faced by asylum seekers in providing supporting evidence and should give the benefit of the doubt to an applicant who is generally credible but unable to substantiate all of his claims. However, it is not required to accept uncritically each and every assertion made by an applicant. Further, the Tribunal need not have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. Nor is it obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant’s country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.
18. If the Tribunal were to make an adverse finding in relation to a material claim made by an applicant but were to find itself unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true. (See *MIMA v Rajalingam* (1999) FCR 93 220).

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department’s file relating to the applicant. The Tribunal also has had regard to other material available to it from a range of sources. The applicant appeared before the Tribunal [in] August 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Georgian and English languages. The applicant was represented in relation to the review by his registered migration agent.

Application for a visa to enter Australia

20. According to the Department’s records (File V11/2552), the applicant applied for a Business visa [in] September 2011. He said that he resided at an address in the Georgian capital, Tbilisi, and

that his occupation was that of “machine operator.” He said that he had been employed for 2 years and 8 months by a company in Tbilisi. He said that he wished to visit Australia between [date deleted under s.431(2)] September and [date deleted under s.431(2)] September 2011 for the purpose of “technical inspection and training in operation of equipment.”

21. In support of his application, the applicant provided a document written in Georgian together with a translation which indicated it was a record of his appointment as an employee of his company [in] December 2008. He also provided a letter from a company in Sydney, inviting a person identified as the “Deputy Director” of the applicants employer, and the applicant himself to visit the company “for the purpose of inspecting and purchasing process equipment for their manufacturing plant in Tbilisi, Georgia.” Among other documents submitted in support of the application, were a statement from a bank stating that the applicant had a current account with a balance in excess of US\$16,000, and details of equipment sold by the company in Sydney.
22. The Department records indicate that an officer of the Department spoke to the “applicant’s manager” [in] September 2011. That officer’s notes suggest that the manager confirmed the details given in the application regarding the applicant and his reason for travelling to Australia. A Subclass 456 Business visa was granted [in] September 2011 and the applicant’s passport was returned to him by post.

Protection visa application

23. According to information provided by the applicant in his protection visa application forms and accompanying documents, the applicant is a [age deleted under s.431(2)]-year-old married man from [Town 1]. He named no close relatives. He did not disclose where he had resided in Georgia prior to coming to Australia.
24. He was educated between [dates deleted under s.431(2)]. He said he was currently unemployed, and he disclosed no paid employment in the past, though he said he had a qualification as the team leader of [a sporting] team between 1994 and 1996. He also gave a positive answer to Question 6 application form 866B, which asked if he had ever “*served in a military force or state sponsored/private militia, undergone any military/paramilitary training, or been trained in weapons/exposes used (however described)*” but he provided no relevant details.
25. He left Georgia legally [in] October 2011 and travelled to Australia with a passport issued in December 2010, and a Subclass 456 Business visa, issued in Ankara [in] September 2011. He had no difficulty in obtaining travel documentation. He said that he had never previously held any other passport and that, prior to his current journey to Australia, he had never previously travelled outside Georgia. However, entries in his passport [he had enclosed photocopies of some pages of that document] indicated that he had left Georgia on at least one prior occasion. He had entered Turkey [in] September 2011 and had left that country [in] October 2011, apparently (since he said he left Georgia [in] October) to re-enter Georgia.
26. He said that he had never been convicted of any crime or offence and that, to the best of his knowledge, he was not the subject of any criminal investigation or any pending criminal charges.
27. The applicant said that he was seeking protection so that he would not have to return to Georgia. He said that he had been a member of the Georgian Conservative Political party since 2006 and had participated in anti-government demonstrations because he and his party “wanted a democratic country.” The party opposed giving Georgian territory away and wished to keep

Georgian independence and such things as free speech, a free press, free courts and television stations, things which he said did not exist under the current Georgian government.

28. He said that on 20 May 2011, all the Georgian opposition leaders came together for a protest in the capital city. He said that at 3 a.m. on 26 May 2011, the government raided the anti-government demonstrators and beat up many people. He said his cousin was put in jail. He said they caught him and his cousin and beat them. However, he said he “ran away from jail after this episode,” but did not explain how he did so.
29. The applicant said that the government started to interrogate him “in very many ways” and said that if they caught him they would put him in jail and beat him until he was killed. He said that “somehow” he managed to get an Australian visa. He said he did not wish to return to Georgia because the Georgian authorities were looking for him and would put him in jail and kill him.
30. Question 12 in the protection visa application form 866B invited the applicant as follows:

“Please list all the documents you need to provide with this application and indicate when you will be providing them. If you are (sic) cannot provide certain documents, indicate this in the table and provide details at question 13.”
31. In response to this question he said he was attaching his passport. He did not indicate that there were any documents he was intending to provide later or which he could not provide. Question 13 said, “If you cannot provide a document, please indicate which document and explain why.” He left blank the space provided for an answer to that question. The Tribunal interprets these responses as indicating that the applicant was not aware of any documentary evidence which might support his written claims, other than his passport.

Interview

32. The applicant was interviewed [in] April 2012 by the officer considering his application, with the assistance of an interpreter in the Georgian and English languages. The Department’s file contains a CD recording of the interview. The Tribunal has listened to that recording. The Tribunal’s summary of the matters discussed at the interview, in paragraphs 33- 57 below, is not set out in strict chronological order. Some issues discussed at different times in the interview have been grouped together for greater clarity, and some matters which have proved not to be material to the Tribunal’s decision, or which merely repeat or confirm details provided by the applicant in connection with his protection visa application have been omitted.
33. The applicant said that, in the last few months before he came to Australia he had been hiding in [Town 2], and did not have any documents with him at that time, so was not in a position to submit any documents in support of his application. He had lived in [another town] which is close to [Town 1]. His wife and two children live there. His wife is a housewife, and the family is being supported by his parents and by his wife’s sister.
34. Before he left Georgia he had survived by doing odd jobs and selling some merchandise. He said it was very hard to find a job in Georgia, and he had never held any formal position of employment. However, his lack of a job was not any part of his reason for coming to Australia.
35. He had joined the opposition Conservative party in 2006. He said he believed the current president was not “treating people right.” He feared being arrested if he returned to Georgia. He feared he could even be killed. This was because of his activities in opposition parties. In particular, he had participated in an anti-government rally in [November] 2007, and in another

one on 26 May 2011. He had received a number of injuries, including having his nose broken, simply because he was in opposition.

36. On the occasion of the rally on 26 May 2011, he managed to run away but his cousin was arrested and remains in prison. His cousin was beaten so severely that [he had internal injuries] and he had to have surgery while in prison. The applicant said he was afraid he might suffer similar treatment. He said his cousin was charged with being involved in the rally. Apparently, the government was holding a parade, and the rally was “in the way.”
37. The delegate asked the applicant why he feared he might be arrested now, given that almost a year had elapsed since the rally in question. The applicant said that it did not matter how much time had elapsed; if the president wanted to “get” a person, he would do so even if 10 years have passed. He said he had been told that he would be arrested and that is why he was hiding in [Town 2] and why he came to Australia. Some “special people,” who never wear uniforms, came to him and threatened him with arrest. They had called him on the phone and made an appointment with him and they told him he would be arrested if he did not leave the opposition.
38. They told him that, if he wanted to “live naturally,” he should stop what he was doing. The two people in question invited him to sit with them in a car in the city [Town 1] and it was there that they made the threats. He then left. The delegate asked how these people knew who he was. He replied that “Misha” [a reference to the president, Mikhael Saakashvili] “knows everything.” He said that even when people have conversations at home, the authorities know what is said.”
39. The delegate said that it was her understanding that there were thousands and thousands of people at the rally in question, and asked why the authorities would have been specifically interested in him. He said that he was not the only one who was threatened. He said some people were “caught” and some were “arrested.” Although he was just an ordinary person, with no position in the party, he was threatened like many others.
40. The applicant said he had gone into hiding in [Town 2] about a month before he came to Australia. He then thought further and said he would have been between 20 days and a month. This would therefore have been in early September 2011. He stayed with a friend. He had gone into hiding at that particular time because of the threats which were made. He then said that the people who had threatened him and told him he should leave the country or he would be killed. He said he was safer in [Town 2], but there was still a good chance that the authorities would find him and arrest him. Even if he went to a larger place like the capital, Tbilisi, there was a strong possibility that he would be found and arrested.
41. He said that he had paid a “Turkish person” in [Town 2] to apply for a visa for him. The delegate asked why he had not gone into Turkey, but had remained in [Town 2]. He said he had not wished to go to Turkey and the Turkish person he had engaged had told him he could arrange a visa to Australia. The delegate asked why he had not gone to Turkey if he was afraid to be arrested in Georgia. He said that he had entered Turkey and had spent three or four days there before coming to Australia.
42. The delegate asked why the applicant had chosen to join the Conservative party in particular, out of all the opposition parties in Georgia. He said that the leaders of that party were Koba Davitashvili and Zviad Dzidziguri, and he thought they seemed like nice, fair and honest people. The party had ceased to exist by the time the applicant left Georgia. He said that he had been attending rallies of all the opposition parties trying to find one that he liked, but never found any

party that he really liked, although he opposed what the government and the president were doing.

43. He said there was currently no political party in Georgia of which he wished to become a member, though he would continue to look for one if he were to return to Georgia. However, even if he were not a member of any particular party, he would still be at risk. He said that he was no longer a member of any party by May 2011, though he was still attending rallies.
44. The delegate asked if the applicant had any other political involvement, beyond his participation in anti-government rallies in 2007 and 2011. He said that his participation in those rallies was his only political involvement beyond joining the Conservative party in 2006. He said that, as far as he could recall, the Conservative Party ceased to exist in 2009, though he could not remember in which month. He said the two leaders of the party went in different directions and the party fell apart.
45. The applicant was asked what policies of the Conservative party he had liked. He said that he liked virtually everything about the party specifically mentioning its belief in freedom of speech, free media court being free and fair and the reuniting of breakaway territories with the main part of Georgia.
46. The delegate referred to the applicant's claim that, during the May 2011 rally, he had run and had not been caught by police. She asked if he had been injured in any way at that time. He said that, in fact, both he and his cousin had been caught and arrested by three policemen, but he had been able to escape, and had not suffered anything serious. He said his cousin was not as strong as he was and had not been able to escape. The applicant said he could not recall precisely what he had done which enabled him to escape. He said he may have hit or kicked someone, but somehow he was able to pull away. The incident in which his nose was broken was in the November 2007 rally. He said that some people were killed on that occasion, so he regarded his injury as minor.
47. The applicant was asked if his wife and family were safe in his hometown. He said that, so far, they were safe and he hoped that situation would continue. He said that the authorities will really only interested in him, but nevertheless his wife was still scared, and he was scared for them. He said that his son was about to finish school and he was worried that the authorities could plant drugs or weapons on young people and find an excuse to arrest them
48. The delegate said that she had read reports from non-government organisations police planting drugs or weapons on people in 2009 order to excuse an arrest but said that she had not seen any more recent reports to that effect. The applicant said that as far as he was concerned, whereas such things happened 20% of the time in the past, now it was happening "250% of the time." He said that this is how things are and that the delegate should believe him. He said the authorities can do whatever they want and that, if they chose to they could "plant a tank" in someone's house. He said he could show the delegate reports on the internet, and that she should not believe everything the president said. The delegate said that if he had any information which contradicted what she had just said, he should submit it.
49. He said he could supply such information and the delegate said she would wait for a period of seven days to allow him to do so. However, there is no indication the Department file that the applicant made any such submissions in the three-week period which elapsed between the date of the interview and the date of the delegate's decision.

50. The delegate said that she needed to be satisfied that the applicant would be personally targeted because of his political opinion, and that his fear was not something shared by the population as a whole. He said that he would not have left the country if he was only in the same situation as any other citizen. He was afraid he would be personally targeted. The delegate said she would also need to be satisfied that there was a “real chance” of him facing harm because of his political opinion in the future.
51. She said that it appeared on the basis of his evidence that, if he were to return to Georgia and did not join any political party and confined his activities to attending rallies, it would be unlikely that he would come to the attention of the police in the future. The applicant said that it didn’t matter whether one was a member of a political party or not. The president’s attitude was that anyone who was not with him was against him. He said that at the present time, people were scared that if they did not vote for the president they would lose their jobs and perhaps even more than their jobs.
52. He said it could happen that people acting on behalf of the president could give a person 10 ballot papers and instruct them to complete them in favour of the president. If that person refused to comply, he risked losing his job, being arrested or killed.
53. After a brief adjournment to allow the applicant to confer with his agent, the delegate asked if there were any other matters the applicant wished to raise for her attention. He said there was nothing else that he could tell her beyond what had already been discussed. He said it was unlikely he would be able to produce independent evidence about the threats he had personally received, but he would be in a position to provide background information.
54. The applicant’s agent said she had explained to the applicant the fact that the delegate would need to be satisfied that he was likely to be personally targeted. She said the important thing to note was that an appointment had been made, by men and he could not identify, for a meeting at which he was told if he did not leave the country he would be arrested. She said the applicant had not sought to exaggerate his situation and it was obvious he was a person who was passionate about the political situation in Georgia.
55. The agent said that she presumed, from the earlier part of the hearing, that the delegate did not have any “credibility concerns” about the applicant’s claims. The delegate said that she was satisfied that the applicant had answered the questions honestly. She said she accepted that the applicant had been threatened though, given the number of people that the applicant said had been threatened like him, she wondered about the likelihood that any harm would actually come to him, given that no harm had come to him between May 2011 and when he left Georgia.
56. The applicant agreed that there were numerous people in the same situation as he was. His agent said that there was case law which indicated that even something with the probability of less than 10% might have a “real chance” of occurring. The delegate asked the applicant how likely he thought it would be that the threats to harm him would be carried out in the future, given that nothing had happened to him between May and October 2011. The applicant said he had not only been told that he faced arrest if he did not leave the country and, but references had been made to his family in a way which left him in no doubt that he was being threatened with harm to the family. Moreover, he said he really believed that the people who made the threats intended to carry them out.
57. He confirmed the delegate’s understanding that his main fear was that he would be imprisoned. However he emphasised that he also feared what might happen to him while he was in prison.

He said it was possible that he could be physically mistreated or killed. Prison conditions were harsh and the cells were overcrowded. He said he had some acquaintances who had somehow managed to be released from prison and they had told him about the conditions in prison. He said people could be beaten up simply for laughing about something. The interview concluded. The delegate repeated that she would wait for a period of seven days to allow the applicant time to submit any further material.

Further submission

58. It is apparent that the applicant's migration agents made further submissions to the Department [in] April 2012, by facsimile, as a copy of those submissions was sent to the Tribunal [in] June 2012. However, there are no copies on the Department's file and no reference is made to it in the decision under review. In these submissions, drew the delegate's attention to a number of links to country information concerning protests [in] November 2007 and 26 May 2011, and to prison conditions in Georgia.
59. The agent said that the information accessed via the provided links supported the applicant's evidence regarding his fear of persecution for his political events if he were to return to Georgia. She said that the information confirmed that there was a culture of police brutality during the two protests and another report referred to deep problems relating to the rule of law, corruption and lack of media freedoms, all of which were issues the applicant had claimed would make it more likely that a person believed to be in opposition to the regime would be unfairly targeted. She said the information demonstrated that prison conditions in fell short of relevant international standards. Another report referred to increase in the number of "political prisoners in Georgia."
60. The agent added that the information provided supported the applicants claim that the police might plant drugs upon his son illegally. She noted that the delegate had except that the applicant's account of his experiences as "honest." On that basis, the agent said that he should be found to be a refugee. In the alternative she said the applicant should be found to be owed complimentary protection.

The decision under review

61. As noted below, the applicant has provided the Tribunal with a copy of the decision under review. In that decision, the delegate referred to country information regarding opposition to the current government and said that, based upon that information, she had formed the view that "individuals may hold an express an anti-government viewpoint in Georgia without fear of persecution." She conceded that it was possible that a person in the public sector might lose his or her job on the basis of political opinion, but the delegate said that "being dismissed from a job, of itself, does not usually amount to persecution." She said that, given that individuals "can generally be opposed to the government without fear of persecution," the applicant needed to demonstrate that he and the kind of political profile that would draw the attention of the authorities, in order to demonstrate a well-founded fear of persecution. She went on to consider the applicant's claims regarding the May 2011 protests in the light of country information.
62. The delegate said that, based upon the country information she had cited, she had formed the view that police used excessive force in dispersing the protests in May 2011. She also accepted that a portion of the people involved in those demonstrations were arrested and imprisoned and that this may have been done "without due process." However, she said that there was no information to support the applicants claim that the state continued to pursue and threaten demonstrators in the months after the protests. She acknowledged a quote from an opposition

leader that the president was “putting pressure on rank-and-file activists” but concluded that this did not amount persecution.

63. She noted further that those imprisoned during the May 2011 protests were “most likely detained under a law of general application. She said that Georgia’s “Code of Administrative Offences” governance “misdemeanour offences which are minor public order offences that are not accrue a criminal record.” She said that the penalties for such offences ranged from a fine to imprisonment for up to 90 days. She noted that, in 2011, 31 individuals was sentenced to 90 days imprisonment, 132 to 60 days and 343 to imprisonment of 30 days.
64. Referring to the applicant claims about being harassed and threatened by plainclothes police, the delegate noted country information which referred to widespread questioning of people “in a western region of Georgia” who were involved with the opposition. She said that while this was consistent with the applicant’s claims, the particular events took place “a long way” from where the applicant lived and said there was no information to indicate that anything similar happened in the applicant’s home region.
65. The delegate also noted evidence which suggested that paramilitary groups were being formed to intimidate persecute “politicians whose views differ from those of the authorities.” However, she was clearly of the view that the term “politician” meant someone with a high political profile, rather than an ordinary member of society.
66. Referring to country information about prison conditions in Georgia, the delegate accepted that there was a higher than average risk of a Georgian citizen being detained than a citizen of some other countries, and she acknowledged that prison conditions were poor.
67. She said that, while there had been anecdotal evidence of police planting drugs or weapons on political opponents in the past, in order to arrest, “this is not a continuing or significant risk in the foreseeable future.” Moreover, she said that any fears in this regard related to the applicant son and not to the applicant himself and therefore did not relate to his claims for protection.
68. The delegate accepted that the applicant’s claims had a factual basis and that he felt strongly about the political situation in Georgia and was distressed by it. However, she did not consider that the oppressiveness of the government in Georgia it was sufficient of itself to engage Australia has protection obligations. She said that the essential question was whether the applicant personally had a real chance of suffering persecutory harm because of his political opinion.
69. While she accepted that the applicant had in participated in demonstrations, had narrowly escaped arrest in the 2011 protests, and had subsequently been threatened by two unidentified men, she said there were thousands of participants in the demonstrations. She said the applicant was not a member of a particular political party and had no political involvement beyond his attendance at to demonstrations. He had never been arrested or detained in the past. She said he therefore had a low political profile, and concluded that the risk of him being targeted because of his political opinion was remote.
70. She noted that, between the two demonstrations in which the applicant had taken part he had not suffered any harm. He did not suffer any harm after the May 2011 protest. She noted his claim that he had [hidden] from month prior to departing Georgia, she did not consider that this explained the fact that for nearly 5 months after the protest he was not harmed. She said this situation cast doubt on his claim that he would be harmed in the future.

71. In all the circumstances, the delegate was not satisfied that the applicant had a real chance of being persecuted for a convention reason. She also consider the applicant's situation in relation to the complimentary protection alternative, but did not believe there was substantial grounds for believing that, as a necessary foreseeable consequence of him being removed from Australia to Georgia there was a real risk he would suffer significant harm.

Application to the Tribunal

72. The applicant made no further claims when applying to the Tribunal. He provided a copy of the decision under review, but neither he nor his migration agent made any comment on that decision at the time. [In] July 2012, the applicant's agent made submissions, addressing elements of the delegate's decision and referring to certain country information.

Evidence given at the hearing

73. This summary of the evidence given at the hearing is not set out in strict chronological order. Some issues discussed at different times have been grouped together for greater clarity. The Tribunal has also omitted some matters which have proved not to be material to its decision, or which merely repeat or confirm details provided by the applicant in his protection visa application forms.
74. After explaining the procedures of the hearing, and in particular the provisions of s.424AA of the Act, the Tribunal confirmed with the applicant that he was satisfied that the information given in his protection visa was the truth. He said that a friend had translated the questions in those forms for him and had translated his responses. He said that what had been written was a "short version" of his experiences. He also confirmed that, when interviewed by the Department previously in April 2012, he had been truthful.
75. To confirm its understanding of the key elements of the applicant's claims, the Tribunal read out the following précis of them:

You were a member of an opposition political party in Georgia. You have been involved in anti-government demonstrations. In particular, you were involved in the demonstration which was broken up on 26 May 2011.

You and a relative were caught by police, but you were able to pull free and escape. Your relative was beaten by police and remains in custody. Later, police called you at home in [Town 1] and arranged to meet you. At that meeting, they threatened you with arrest if you did not cease your political activities.

You decided to leave the country to avoid being arrested and put in jail. You left Georgia and arrived in Australia [in] October 2011. You fear to return to Georgia because you believe that, if you do, you will be arrested and put in jail.

The applicant accepted this précis as a fair summary of his situation and claims and he did not seek to change or add anything.

76. Noting the applicant's response, in protection visa application form 866C which indicated that he had not experienced any difficulties in obtaining travel documentation, the Tribunal asked what had prompted him to seek a passport in late 2010, before the events of May 2011. He said he had sought the passport because he had intended to travel to Turkey for business reasons. However, his plans did not come to fruition and he did not travel to Turkey at the time.
77. In protection visa application form 866C, the applicant had described himself as having been unemployed in Georgia, and had disclosed no periods of employment since he left school in

1991. However, the Tribunal noted that, in response to a question in form 866B which asked if he had ever “served in police forces, intelligence organisations, secret police, special guards, hospitals, chemical/biological products manufacture”, the applicant had answered in the affirmative. The Tribunal asked the applicant to identify the employment to which he was referring when he answered that question. In response he said he had never had any such employment. The Tribunal pointed out that he had ticked the box which indicated an affirmative answer to the question. He said that was a lie and he did not know who made such an assertion.

78. He said that, “officially,” he had never had any employment. However, he owned a car and he used to travel to the western part of Georgia to buy fruit and vegetables, which he sold in the east. The Tribunal mentioned that he had also referred, in his application, and having something to do with [a sporting] team. He queried the use of the [term] and said he had played [a specified sport] in [a] youth team between 1991 and 1997. The Tribunal verified with him that he was talking about [a certain sport]. He said that he was a player in that team, and had never been a coach or manager.
79. The Tribunal said that, when he applied for a visa to come to Australia, he had said that he had been a machine operator ,had worked for a particular company since 2008 and that he had been invited by equipment traders to come to Australia to visit their company and inspect their equipment. If the Tribunal were to accept that he had been employed by that company it may conclude that he had given false information about his employment in his protection visa application, and this may lead the Tribunal to conclude that he had given other false information in the application. This information provided in his application for a business visa would therefore be part of the reason for affirming the decision under review. The Tribunal invited the applicant to comment on, or respond to that information. It reminded him of his right to seek further time to respond, but he did not seek any more time.
80. He said that he had not been interested in the kind of visa which might be caned for him and had no clue about what might have been said in the relevant application. He had paid a Turkish man money and that man had organised the visa. The Tribunal said that in essence he was saying that someone acting on his behalf must have organised the production of the documents which spoke about his claimed employment and made the appropriate statements in the application forms. The applicant confirmed that that was his meaning.
81. The Tribunal asked if, prior to leaving Georgia [in] October 2011, he had ever travelled outside Georgia. The applicant said he had never done so. The Tribunal drew the applicant’s attention to stamp impression is on page 48 of his passport. Two of those stamps indicated that he had entered Turkey [in] September 2011 and had left the country again [in] October 2011. The Tribunal said that, if he had left Georgia [one day later in] October as he said, he must have returned to Georgia [the day before] October before leaving again the following day, which seemed inconsistent with his claim that he feared persecution in that country.
82. The applicant said there was no reason to him to lie about when he came to Australia. The Tribunal showed the applicant the relevant answer in his application form. It appeared that [one date] October 2011 had originally been written, and it had been changed to [the next day in] October. The applicant said that the latter date was the date he arrived in Australia and “some kind of mistake” must have been made. He said the Tribunal could believe him or not, as it shows. The Tribunal said it was merely trying to clarify apparent inconsistencies in information provided by him in connection with his application.

83. The applicant said the party to which he had belonged was the Conservative Party. He had been a member for 4 years. The party had “divided” in 2008. He said he joined the party in 2006 and had left it in 2009. He had not been a formal member of any party since then. He said he did not know when the party had been founded. He said he had no documents which would support his claim to have been a member of the Conservative party. He said the only documents he had related to his been required to report to the police and to the injuries sustained by his cousin on 26 May 2011. He said those documents were not translated.
84. The Tribunal asked the applicant to describe the Conservative Party’s flag. He had some difficulty describing it. He first said it said “it’s got black colour and red crosses.” The Tribunal sought to confirm that the flag was basically black in colour. He said it had “different colours – black, red, and crosses.” The Tribunal asked the applicant to draw an approximation of the flag. He said that he was not sure how to do that, but he drew a small rectangle divided horizontally by a line, and with a small rectangle in the upper left corner [equivalent to the position of the Union Jack in the Australian flag].
85. He said that that small square represented the location of a “logo.” He was unable to describe what that “logo” looked like. The Tribunal asked the applicant where on the flag the “cross” he had mentioned was displayed. He then denied that he had ever mentioned that the flag had any cross on it, and affirmed that the flag had no cross. The Tribunal asked what the party’s motto was. He said it was “United Georgia, Free Speech, Free Television, Free Media.” The Tribunal said that this was not the motto which it understood that the party’s motto. The applicant said the party stood to such things as “giving pensioners and their money back.”
86. The Tribunal asked the name of the Secretary-General of the Party. He said that this position was held by Koba Davitashvili and Zviad Dzidziguri. The Tribunal said it recognised these names as being those of the co-chairmen of the party, but said it wished to know the name of the Secretary-General. He said he did not know who held that position. He said (correctly) that the party was regarded as a right-wing party
87. The Tribunal asked to see the documents to which the applicant had previously referred (see paragraph 83 above). He showed the Tribunal a two-page document written in Georgian. He said it related to the arrest of his cousin on 26 May. It said his cousin was “let out after 45 days.” He said that as a result of the ill treatment he sustained, his cousin had to have [surgery]. He said the document in question was issued by the government. The Tribunal commented that it could not take account of the document in the absence of a translation. The Tribunal notes that, as at the date and time of this decision (more than a week after the hearing), neither the applicant nor his agent have made any further submissions.
88. The applicant also produced another document together with the translation which he said had been provided by his wife. According to the translation, the document was a notification dated [May] 2012 by the Prosecutor’s office in Tbilisi. It states that the applicant was asked to visit that offers [in] May 2012.
89. The Tribunal asked why the applicant had not submitted these documents before this. He said he had not thought it necessary. However he had asked his family to send it. The Tribunal said it would take copies of the documents. However it referred to earlier discussions regarding fraudulent documents. It said that, given that someone acting on the applicant’s behalf had apparently been able to obtain fraudulent documents to say that he was working in Tbilisi, the documents he had just submitted could equally have been obtained in exchange for money.

90. The applicant said that, if the Tribunal did not believe the documents were genuine that was the Tribunal's right. Said the Tribunal could check the authenticity of the document if it wished. The Tribunal said it would be very difficult for any checks to be made of the authenticity of the document requesting him to report to the police as it contained no serial number or such distinguishing feature. The applicant said that the government could issue any kind of document it wanted, with or without serial numbers.
91. The Tribunal asked if, prior to 2011, had never experienced harm directed at him because of his political stance. He said that, during a demonstration held [in] November 2007, he had been beaten with a rubber "police stick," but was not seriously injured in all the circumstances.
92. Turning to the demonstration which occurred in May 2011, the Tribunal said that, according to the applicant's written claims, opposition leaders came together on 20 May 2011 for a political meeting in the capital. The applicant confirmed that this was the case that he said he could not recall on what day of the week the demonstration commenced. People had gathered from the various regions on that day and he was among those who gathered on that day.
93. The Tribunal commented that, when people hold protests of that kind they frequently do so in some place of national significance. The applicant said that the demonstrators had gathered in front of the Parliament on the evening of 20 May and the demonstration continued on the 21st and on to 26 May, when the protesters were attacked. The demonstration was led by Nino Burjanadze and many others.
94. The Tribunal said that it understood that this protest had continued for a number of days in a relatively peaceful manner, but that then some hundreds of the demonstrators had moved from the place where they had initially gathered to another location. The applicant said that some people remained where they were, but others left because they were required by the authorities to move, as there was to be a parade for Independence Day on 26 May. The Tribunal said that, according to the accounts it had read, the demonstration did not commence in front of the Parliament building [in] May, but had commenced at another location.
95. The applicant said that the demonstrators were required to go to Freedom Square but were beaten and arrested. The Tribunal said its understanding was that demonstrators did not move to the front of the Parliament building until 25 May, and that they had permission to be in front of the Parliament building until midnight on that day. The applicant said that that he did not know what had been done, but "Saakashvili's people came."
96. The Tribunal noted the applicant had claimed, in his application, that the government raided the anti-government demonstrators and beat many of them up at 3 a.m. on 26 May. It asked if this was correct. He said they attacked after 12 o'clock. The Tribunal noted that 3 o'clock was "after 12 o'clock," and the applicant agreed that this was the case. The Tribunal asked if, things had been generally peaceful up until 3 a.m. on 26 May. He said that "many people were arrested, I don't know, maybe 2, 3, maybe longer." The Tribunal asked if he was saying that people were starting to be arrested at around 2 a.m. He said it started "after 12 o'clock." The Tribunal asked how long after 12 o'clock. He then said it started around 5 or 6 hours after 12 o'clock. The Tribunal asked him to confirm that he was saying the arrests started 5 or 6 hours after 12 o'clock, and he replied that it could have been more than that.
97. The Tribunal said that the applicant was providing conflicting details regarding the timing of the arrests. In his written claims he had said the arrests started at 3 a.m. However, a few minutes earlier he had said that the arrests started at around 3 a.m. and he was now saying that it may

have been 5 or 6 a.m. or even later. The fact that the applicant was giving varying accounts of when the arrests took place was causing the Tribunal to wonder whether the applicant was actually present at the demonstration, particularly given that his a description of the event was at variance with independent accounts of the event.

98. In response, the applicant said that the Tribunal had asserted that he had left Georgia [in] October 2011, but queried whether that was correct. The Tribunal said that it did not know whether that was correct, but it had quoted what was written in his application. The applicant said he had not written anything. He then digressed and said he was not seeking anything in particular and Georgia. He was just a normal citizen.
99. The Tribunal said that its understanding, from the country information it had read, and indeed supported by the applicant's recent oral evidence indicated that the protesters were allowed to be where they were on 25 May 2011, but that permission only ran until midnight, because the following day was Independence Day and a military parade was scheduled for later in the day. The applicant did not respond directly to this point said that Saakashvili's government was just "a clique on the edge of collapse." He said the demonstrators could have stayed there for 45 days or more, and Saakashvili could not control that.
100. The Tribunal said that the reason it had raised the point about the demonstrators having permission to remain until midnight on 25 May was that it seemed to indicate that the government was not so much concerned with the fact that people were demonstrating against it, but that they remained on the site for too long and were disrupting preparations for the Independence Day parade on the following day. While the Tribunal accepted that there may have been excessive police violence on the occasion, it had read other reports which indicated that a number of the policemen involved had been themselves charged with offences because of their behaviour. It had seen other reports which indicated that some of the protesters were armed with weapons and wore masks and had come ready for a fight. That also seemed to suggest that being involved in an anti-government protest was not of itself sufficient to place oneself at risk of persecution.
101. In response, the applicant denied that any police had been charged or punished for using excessive force and asked the Tribunal the source of its belief that demonstrators had come prepared for a fight. The Tribunal said it had read an independent report from the BBC. The applicant said that "the BBC is Saakashvili's" in the sense that the BBC does what Saakashvili asks it to do. He said that Saakashvili can do whatever he wants on the BBC. The Tribunal said that it would have thought the BBC had a reputation for reporting objectively on world events. The applicant said that the Tribunal should look at other reports, because the BBC does what Saakashvili says.
102. The applicant referred to a situation which he said occurred approximately 2 months previously in which a person who spoke against the government was arrested by police. The police threw that person out of a second floor window but claimed that person had jumped. He said that a Member of Parliament named Jondi Bagaturia had claimed that person was actually thrown out of the window.
103. The Tribunal said that the applicant's written claims about things that happened to him as the protest was being broken up at 3 o'clock were a little confusing. It therefore wished to clarify a few points. It asked the applicant whether he personally was physically assaulted by police as the protest was being broken up. He said the police had assaulted him. He said some of the police had guns, some had rubber batons, and some had gas. Some of them struck him with

rubber batons and punched and kicked him and threw him to the ground. He said that “there were five of them but I managed to escape.” He was not seriously injured, but suffered “stress and bruises.” The Tribunal contrasted this with his evidence to the delegate in which he had said his cousin had been seriously beaten but he (the applicant) had managed to escape, which seemed to imply that he was not assaulted. He said that he and his cousin were arrested, but he managed to run away.

104. The Tribunal asked how the applicant had been able to run away if he had been arrested by five people. He said he did not know for certain whether the people concerned were policeman, because they wore masks. He said he did not know precisely how he managed to escape but he was very powerful. The Tribunal noted that he had said he had been arrested by five people, whom he assumed to be policeman. The applicant said he had never said five people arrested him and that the Tribunal had made a mistake. He said that he had never mentioned how many people beat him. The Tribunal said that the applicant had said precisely that it just a few minutes before. [Note: the Tribunal has checked the recording of the hearing and is satisfied that he had referred to 5 people.] The applicant said that “2 people” were “taking him” but there were many who were beating him, perhaps as many as 20. He said that he did not know how many people were “taking” his cousin.
105. Referring to the applicant’s written claim that he “ran away from jail,” the Tribunal asked if in fact he was ever in jail. The applicant said that he had never run away from jail and asked the basis of the Tribunal’s question. The Tribunal said it based its question upon the statement made in his protection visa application.
106. The applicant said that he had never said such a thing. He became angry and said that he wanted “to stop this,” and that he didn’t “want any protection.” He said that when he returned to Georgia he would be killed and that would be a matter on the Tribunal’s conscience. The Tribunal did not interpret it as a formal withdrawal of his claims for protection at a merely as a sign of his annoyance at being quizzed about details of his application.
107. The Tribunal attempted to dissuade the applicant from abandoning the hearing. It appreciated that it was confronting for him to be quizzed about the details in his statements, but the Tribunal had an obligation to try to clarify matters raised in his written claims where there was apparent confusion or conflict.
108. The applicant said he had never run away from jail and he had not left Georgia [in] October 2011. He asked again for the hearing to be ended. He said he did not know who had written those things. The Tribunal said that it did not know who had written them, but they were written in his application form. The Tribunal showed the applicant the forms which had been submitted to the Department and, by way of example, showed him the answer related to the date of his departure from Georgia where it appeared it had originally been written that he departed [in] October 2011 at that date had been amended to read [a later date two days later in] October 2011 (see question 47 in application form 866C). The applicant said that he had been telling the truth and that he was leaving the hearing. He said he was not a “big politician,” but loved his country. He said that Saakashvili kills people and that the Tribunal should look at other sources.
109. The Tribunal told him that it he had the right to leave the hearing if he wished to but counselled him that it was in his best interests to remain. The Tribunal asked the applicant, if it was his wish to leave the hearing to it least remain so that the hearing attendant could be called and the hearing formally concluded in his presence. He said he was leaving because he could not stand it any

more. He said he had had everything in Georgia and had no reason to leave the country. His wife and children were there and he missed them so much he did not want anything more.

110. The Tribunal again counselled him not to terminate the hearing and said it wished to ask him about things raised in his application. However, the applicant could not be dissuaded and he left the hearing room, slamming the door. The hearing was formally concluded.

Independent information

The Conservative Party of Georgia

111. The Conservative Party of Georgia (also known as the Georgian Conservative Party) was formed in 1995. It secured representation in the 2004 legislative poll as part of the New Right bloc. In early 2006 the party was among the opposition groups that organized public demonstrations calling for the resignation of President Saakashvili. At that point, several of the party's legislators were participating in an opposition parliamentary faction called the Democratic Front that also included the Republican Party of Georgia and Industry Will Save Georgia. In April 2006 the front, led by Davit ZURABISHVILI, announced a boycott of parliament pending action on the front's demands for representation on the national election commission, the direct election of the mayor of Tbilisi (currently appointed by the president), and other reforms. The Conservatives participated in the 2006 local elections in alliance with the RPG. In 2008 and 2009 the party called for a campaign of civil disobedience to prompt the resignation of President Saakashvili. Its leaders are Koba DAVITASHVILI and Zviad DZIDZIGURI (Cochairs); and Kakha KUKAVA (Secretary General).
112. The Party's flag is white with a purple red cross at the left and a gryphon in the middle located between two horizontal lines. It's motto, as appearing on the lower part of the Party's "emblem" (a shield divided in 4 with the images of St. George, the Golden Fleece, a Griffin and Michael Archangel and with a royal crown on top) is "*Ena, Mamuli, Sartsmunoeba*" which come from the famous Georgian writer Ilia Chavchavadze, and which mean "Language, Homeland, Religion."

(SOURCES: Muller, C *et al* 2011, 'Georgia', *Political Handbook of the World*, CQ Press, Washington <http://library.cqpress.com/phw/phw2011_Georgia> Accessed 18 May 2012. "Conservative Party of Georgia (Political party, Georgia) downloaded on 30 July 2012 from <http://www.crwflags.com/fotw/ge%7Dcpg.html>.)

Demonstrations in Tbilisi in May 2011

113. According to a 26 May 2011 Human Rights Watch report, protests in Tbilisi started on May 21, when about 10,000 opposition supporters demonstrated in Central Tbilisi, led by former speaker of the parliament, Nino Burjanadze. The report states that, since then, hundreds of protesters held a continuous demonstration in front of the Public Broadcasting building calling for President Mikhail Saakashvili to step down". The protest continued but, on 25 May 2005 some "hundreds" of protesters then gathered in front of the Parliament,. Human Rights Watch provided the following summary of the events that followed:

On May 25, 2011, hundreds of opposition supporters gathered in front of the parliament building on Rustaveli Avenue, the main thoroughfare in Tbilisi. The authorities warned protesters that they would break up the demonstration in order to make way for the planned Independence Day military parade on Rustaveli Avenue on May 26.

The protesters had a permit to hold a rally on May 25 that expired at midnight, and opposition leaders stated that they intended to stay put. Tbilisi's municipal authorities offered the protesters another rally

venue, which they refused. At 12:15 a.m., 15 minutes after the rally permit expired, riot police moved on the demonstrators using water cannons and teargas to disperse them, beating and detaining many.

“Even if the Tbilisi demonstration was unauthorized, nothing can justify the beating of largely peaceful demonstrators,” said Rachel Denber, Europe and Central Asia deputy director at Human Rights Watch. “Police responsible for beating protesters should be held to account.”

Police pursued fleeing demonstrators, kicking and beating many, using rubber truncheons. In one case, they chased down demonstrators who had taken shelter in a nearby cinema, detaining them and kicking and beating many as they exited. One journalist who was briefly detained reported to local media that he had seen a large number of injured protesters at the Tbilisi main police station, some requiring medical assistance.

According to media reports, some protesters armed with long flag poles and makeshift shields clashed with riot police. Also, according to an official police statement, one policeman died after he was hit by a car fleeing the protest venue. The exact number of injured protesters is not yet known.

114. A BBC report of the incident stated (with some paragraphs combined):

The Georgian capital Tbilisi is tense after an overnight crackdown on anti-government protesters, during which a policeman and one other person died. Both victims were killed by a speeding car, which President Mikheil Saakashvili said had been in a convoy carrying opposition leaders.

Nearly 40 people were also injured as riot police cleared protesters ahead of independence day events. Celebrations went ahead on Thursday with a military parade.

Hundreds of opposition supporters have been protesting daily all week, demanding the president’s resignation. Protesters say the president has failed to tackle poverty and accuse him of authoritarian behaviour.

Speaking at the parade, Mr Saakashvili said every citizen had the right to freedom of expression but events of recent days had had “nothing to do with the postulates of freedom of speech”.

‘Silver revolution’

Police moved in on the protesters shortly after midnight, as heavy rain fell. Backed by armoured cars firing water cannon, large numbers of riot police arrived from several directions. Clashes broke out with some of the protesters who were armed with long sticks and makeshift shields.

The BBC’s Damien McGuinness witnessed journalists and peaceful demonstrators being beaten by police. Within about 30 minutes, the area around parliament had been cleared. Police said 28 protesters and nine policemen had been treated for injuries.

Protests began on Saturday, when as many as 10,000 people demonstrated in central Tbilisi.

115. In an “Analysis” piece attached to the above article, the correspondent mentioned in the article, Damien McGuinness, said:

It was clear from the outset that the protest on Wednesday would end in bloodshed.

About half of the people gathered on the steps of parliament were masked men armed with metal poles or heavy sticks. We saw some sharpening the ends of the sticks with knives.

The authorities told the protestors they would have to move at midnight to make way for Thursday’s celebrations. The demonstrators refused and 2,000 riot police officers moved in, breaking up the crowd with tear gas, water cannon and rubber bullets.

The authorities’ heavy-handed approach will be used by the president’s critics to undermine his credibility but opposition leaders will see their credibility weakened even more.

One of those killed was run over by a jeep in the convoy taking away Nino Burdzhadze, the leader of the protest movement. Many Georgians accuse her of whipping up violence to destabilise the country.

(SOURCES: Georgian protests: Two killed as police clear Tbilisi. BBC World Service, 26 May 2011, downloaded on 7 August 2012. from www.bbc.co.uk/news/world-europe-13554828. Human Rights Watch 2011, *Georgia: Police Used Excessive Force on Peaceful Protests*, 26 May

<<http://www.hrw.org/en/news/2011/05/26/georgia-police-used-excessive-force-peaceful-protests>>
Accessed 30 May 2011.)

FINDINGS AND REASONS

116. The applicant claims to fear persecution in Georgia directed at him because of his political opinion. He claims that he joined the Georgian Conservative party in 2006 and that he participated in anti-government demonstrations. In particular, he claims that he was present during a period of protest in Tbilisi in late May 2011. He claims he was present when police broke up the demonstration on the morning of 26 May 2011. He claims that he and his cousin were arrested by police but he managed to break free and escape. He claims that, subsequently police threatened him with arrest if he did not leave the opposition.
117. While the Tribunal acknowledges that there is no onus upon an applicant to produce documentary evidence to support claims, the fact remains that his claim to have belonged to the Georgian Conservative party is an unsubstantiated assertions on his part. While the applicant was aware of the names of the two co-chairmen of the party, and expressed views which the Tribunal accepts would be in line with those of that party, he was not aware of the name of the general secretary of the party, which the Tribunal would have expected someone who had been a member for a number of years would know.
118. In addition, the applicant could not articulate the motto of the party, (see paragraph 112 above) His description of the party's flag, was internally inconsistent, in that at one stage he said it had crosses on it and later denied that. His description was also inconsistent with the description of the flag set out in paragraph 112 above, in that he described the flag is being a black flag, whereas the description given above states the flag to be on a white background. The Tribunal accepts the information set out in paragraph 112 as being accurate. In all the circumstances, the Tribunal finds that the applicant was not a member of the Conservative Party at any stage before he left Georgia.
119. The applicant's claims are largely (though not exclusively) based on his assertion that he was a participant in the demonstrations in Tbilisi in the latter part of May 2012. The circumstances of those demonstrations are set out in independent evidence cited in paragraphs 113 to 115 above. The Tribunal accepts that evidence. In doing so, the Tribunal has considered the applicant's assertion that the BBC is an organisation which publishes material to suit the current president of Georgia, but does not accept that assertion. It regards the BBC, and Human Rights Watch (the two sources cited) as reputable, objective sources, and regards the articles cited as presenting a balanced view of the events, being critical of both the government and some of the demonstrators.
120. On the basis of the evidence cited, which it accepts, the Tribunal finds that the demonstration in question started on 21 May 2011, when thousands of opposition supporters held a continuous demonstration in front of the Public Broadcasting Building. That protest continued until 25 May, when some "hundreds" protested in front of the Parliament. The demonstrators were asked to leave the vicinity of the Parliament by midnight on 25 May to allow her preparations for the Independence Day parade on 26 May. The demonstrators were offered an alternative rally venue but they declined. Authorities broke up the demonstration at around 12:15 a.m. and had clear the area within 30 min. Although police used excessive violence in breaking up the demonstration, that violence was not one-sided.

121. The Tribunal has established by reference to the on-line Google Maps (see RRT file ,folios 88-9) that the Parliament is located approximately 3 km from the Public Broadcasting Building.
122. The applicant's account of his alleged experiences at the demonstration is inconsistent with the independent accounts in three important aspects. First, he said that the demonstration started on 20 May, whereas the independent accounts indicate it started on 21 May. Second, he said the protest demonstration started outside the Parliament building, whereas the independent accounts indicate it started outside the Public Broadcasting Building, approximately 3 km away. Third, his written claims indicated that the police moved in on the demonstration at around three o'clock in the morning, whereas the independent accounts indicate they did so at around 12.15 and that they had cleared the place within half an hour. The Tribunal notes that, at the hearing, he changed his account of when the dispersal commenced, saying at one stage that it may have been 2 a.m. and, at another, that it may have been five or six hours after midnight.
123. Further, the applicant's account of the alleged interaction between himself and his cousin on the one hand and police on the other was inconsistent. He initially told the Tribunal that five policemen assaulted him and tried to arrest him, but he later said that only two policeman tried to arrest him and at another stage said that more than 20 police assaulted him.
124. Having regard to the inconsistencies between the applicant's claims about the events in May 2011 and the independent evidence regarding those events, taking into consideration the internal inconsistencies in his evidence, the Tribunal finds that the applicant was not present at the demonstrations in Tbilisi. It follows from this that the Tribunal does not accept that the applicant had any confrontation with police on 26 May. It is not necessary, in these circumstances, to make any findings on whether the applicant's cousin may have been at the demonstration and, if so whether that cousin was subsequently arrested and mistreated by police.
125. In support of his application, the applicant submitted a copy of a document purporting to be, in essence, a summons requiring him to visit the prosecutor's office in Tbilisi in May 2012. This document was not an original, and it is apparent that it has no serial number. In considering what weight to give this document, the Tribunal has taken note of the applicant's evidence that he had no knowledge of the documents submitted in support of his application for a business visa, which indicated that he was employed by a company in Tbilisi.
126. The Tribunal accepts the applicant's evidence that he had no knowledge of those documents but, as discussed with him at the hearing, if someone acting on his behalf was able to provide false documentation indicating that he was employed, someone else could equally have obtained false documentation purporting to be a police summons. In these circumstances, and given the Tribunal's findings that the applicant was not present at the demonstrations in Tbilisi and had no confrontation with police, the Tribunal gives no weight to the document purporting to be a summons. Given its findings that the applicant was not present at demonstrations, the Tribunal does not accept that police subsequently interrogated the applicant or threatened him in his hometown.
127. There were other aspects of the applicant's claims which the Tribunal had wished to discuss with him, such as the length of time which elapsed between the granting of a business visa to him and his departure from Georgia, his claim and threatened in his home town, and the apparent conflict between his answer in his application form that he had experienced no difficulty in obtaining travel documentation, and his claim that he had to pay an intermediary in order to obtain a visa. His decision to walk out of the hearing denied the Tribunal the opportunity to explore these

matters with him. As noted above, the Tribunal attempted to persuade him to remain to complete the hearing, but without success.

128. In short, the Tribunal does not accept that the applicant has presented a true account of his circumstances and does not accept that the applicant is in anyway adversely regarded by the authorities. In the light of its findings that the applicant was not a member of the Conservative party, and was not present at the demonstration in May 2011, it also rejects his claim that he was present at other rallies and, in particular, the demonstration in November 2007, and was injured when police broke up that demonstration.
129. As noted above, the independent evidence indicates that the authorities did not object to the holding of an anti-government demonstration over an extended period of time. The authorities offered the demonstrators an alternative venue to continue their protest on Independence Day so that the proposed Independence Day parade could proceed. On this basis, the Tribunal finds that merely expressing opposition to the government would cause the government to seek to persecute an individual.
130. In all the circumstances, the Tribunal does not accept that the applicant is a political activist who will seek to involve himself in public anti-government demonstrations were he to return to Georgia.
131. Having disbelieved all the applicant's claims, there is no basis upon which the Tribunal could conclude that the applicant has a well-founded fear of persecution for a Convention reason in Georgia.
132. Similarly, there is no basis upon which the Tribunal could have substantial grounds for believing that, as a necessary and foreseeable consequence of him being removed from Australia to Georgia, there would be a real risk that he would suffer significant harm.

CONCLUSIONS

133. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore he does not satisfy the criterion set out in s.36(2)(a).
134. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
135. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

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