

1004169 [2010] RRTA 723 (27 August 2010)

DECISION RECORD

RRT CASE NUMBER: 1004169

DIAC REFERENCE(S): Cif2010/16709

COUNTRY OF REFERENCE: Mongolia

TRIBUNAL MEMBER: Pauline Pope

DATE: 27 August 2010

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Mongolia, arrived in Australia [in] December 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] February 2010. The delegate decided to refuse to grant the visa [in] May 2010 and notified the applicant of the decision and her review rights by letter dated [on the same day].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] May 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. 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.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. 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.

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

17. 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.
18. 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

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal [in] July 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Russian and English languages. The Tribunal notes that the applicant specifically requested the assistance of a Russian speaking interpreter. It proved necessary to continue the hearing at a later date. The continued hearing was held [in] August 2010. Prior to this hearing the applicant's adviser informed the tribunal that the applicant required the assistance of a Mongolian speaking interpreter.
21. The applicant was represented in relation to the review by her registered migration agent. He was present at both hearings.

Application for protection visa

22. According to the application for the Protection visa the applicant was born on [date deleted: s.431(2)] in Ulaanbaatar, Mongolia. She claims that she speaks, reads and writes Mongolian and Russian. The applicant states that she is married and separated from her husband. She has one child who was born on [date deleted: s.431(2)] in Mongolia. According to the information provided by the applicant she has completed her education to tertiary level. She states that she has worked as a [teacher], most recently from August 2001 till May 2002 at the [education provider deleted: s.431(2)]. According to the information she has provided, the applicant has lived and studied abroad in both Russia and the United States of America.
23. The applicant has provided a written statement in which she outlines her claims and details of her experiences in Mongolia. The statement is reproduced in full. Minor grammatical corrections have been made.

Applicant's statement

I am a citizen of Mongolia. I arrived in Australia on [date] (sic) with intention to seek protection because I can no longer maintain a normal life in Mongolia without constant fear of being persecuted for the reason of my sexual orientation.

I became aware of my sexual orientation when I was aged 22. At that time I commenced same sex relationship with a girl named [Ms A] a student at the university where we both studied. I also had relationship with boys because all girls of my age had boyfriends.

It should be said that in Mongolia girls entered into a marriage at young age, mainly at 18 -20 years and parents are very incentive to organise marriages to their daughters.

My parents also wanted me to marry one of our distant relative; however I was not interested in marriage at all at that time. Also I was interested in studies and especially in [subject] so I went to Moscow Russia where I prepared my PhD thesis and got PhD degree.

While in Russia I entered in sexual relationship with one Russian woman named [Ms B], who also studied at [education provider deleted: s.431(2)]. We shared accommodation and live together as a family for a period of three years. It is not safe to disclose same sex relationship in Russia until present, however the Russian society is more tolerant to lesbians than Mongolian society.

As I achieved a great success in [subject] I was invited to the USA to continue studies there. I spent in the USA 18 months. All this time I missed my Russian lesbian partner. She tried to get a visa to the USA so we could be together at least for a couple of months however she hadn't managed to get it. We maintained communication for approximately 7 months and then she aborted it, she explained that she fell in love with another woman and asked me to pardon her. It was psychologically difficult time for me and I even decided to quit my studies in America and return to Russia. But considering all the circumstances I came to the conclusion that it will have no result for me and could end up just in jealousy brawl.

In 2007 I returned to Mongolia. In Ulaanbaatar once I was introduced to a man [Mr C] who fall in love with me. I was [age] at that time and start to think of having a child. Even though I was not very happy to have sexual relationship with men I decided that we could form a family and that was how our relationship commenced. In November 2008 our son [name] was born. I respected [Mr C] however I was not in love with him.

Once a few months after my child were born I encountered with a woman named [Ms D] on one of my friend's party. It appeared that we knew each other since the time we were young. She chatted with me all the evening and at the end we exchanged phone numbers. Then we often chatted by phone and once she asked me about my relationship with [Mr C]. I told her that I am not in love with him, she asked me about my attitude to same sex relationship. I told her the truth and she said that she also had affair with woman long ago. One day she invited me to her summer house on outskirts of the city. I came there with my son for a weekend and we have good time there. Within these two days we both realised that we are attracted to each other and we spend the second night at summer house sleeping in one bed.

That was how my relationship with [Ms D] started. At the beginning we met on weekends at [Ms D]'s summer house. Neither [Mr C] nor any one else knew that we were meeting to have sex. I always told [Mr C] that I go there just to spend time outside of the city. One day in November 2009 [Mr C] told me that he also wanted to spend weekend together with me. I didn't know how to stop him from this visit and warned [Ms D] that I will be accompanied by [Mr C] to spend weekend at summer house. On Friday evening we had a party, BBQ, drinks. [Mr C] always had no measure in drinking, quite fast he got drunk and fall asleep in the main room. Usually at such state he would sleep until morning so I and [Ms D] went to the bedroom. Unfortunately [Mr C] woke up very soon and start wondering around the house looking for toilet. He entered the bedroom and found us in a bed making love.

[Mr C] was very angry and started beat both us screaming that he is going to kill us. We managed to run way from the house. We hid in the sauna at the backyard and lock up the door. [Mr C] approached the sauna calling us names, shouting abusive word and threaten to set sauna on fire. Neighbors ran to that place tried to calm him but he resisted and was about to set sauna on fire, so they put him to the ground tied his legs and called the police.

When police arrived they took him to the police station. I and [Ms D] went back to Ulaanbaatar. Next day [Mr C] came home very angry. He immediately started to beat me. I ran to the police station and lodge report accusing him in violence. I did not disclosed in that report what happened at the weekend, just asked the police officer to warn [Mr C] on consequences that he might have for beating me. One of the police officers brought me home, he got a chat with [Mr C]. [Mr C] told him about what happened on weekend. The officer then turned to me and said that I should blame myself for [Mr C]'s behavior and would he be in his place he probably killed me.

My first thought was to grab my son and run away from the house, however I had no place to go, so I decided to remain with [Mr C] hoping that the matter could be settled. [Mr C] did not speak to me for a couple of days, and then we resumed speaking to each other. [Mr C] still was angry, abused me, and called me names. He told me that he intends to quit our relationship and just was thinking on how he could get full custody for our child. I was scared that he might take the child from me so I tried to do what ever he asked me to do. But he always told me that he did not kick me out just because our son needed me. I missed [Ms D] very much. Since the incident we called each other every day but I was scared to meet her. In two months time we decided that we should meet gain. I was scared to go on weekends from the house. [Ms D] had relatives who were working overseas, she looks after their flat, periodically watering flowers and checking whether everything was OK with it. She suggested that we could spend time together in that flat, so one day we met there. Since there we often met at that flat.

I still have no idea on how [Mr C] discovered that I and [Ms D] were together again but one day in September 2009, when I and [Ms D] were together at her relatives' flat, police knocked at the door demanding to open it. When we opened door it appeared that [Mr C] and two police officers were there. [Mr C] immediately ran on me and start to beat me. Police officers were staying calm. Then they took me and [Ms D] to the police station. It was a long interrogation about how we got in to that flat; the officer accused us in unlawful entry in to private premises, in attempt to steal goods. [Ms D] told him that she was asked to look after that flat by her relatives, suggested to call them overseas to confirm that fact, however police officer just smiled and told us that in fact he doesn't care about that flat. He told us that we are bloody perverts and our place is in hell. He said that he is not going to charge us because he was sure that [Mr C] will take care on how to punish us. It should be said that the Mongolian police share the same hostile attitude towards lesbians as the majority of Mongolian population. So he told us to go home and be prepared for worst. I insisted that I was going to lodge report on [Mr C], the officer said that I could write what ever I want, it will not save me from being punished by [Mr C].

I left the police station and was scared to go home. I called [Mr C] and said that I will not make any report on him, asked him just to give me our child and promised never meet with him any more. He told me that I ashamed him before his friends, colleagues and relatives, that he did not see any way to restore his reputation but to kill me.

I was told by neighbors that [Mr C] took our son to his parents. [Ms D] provided me with accommodation. One day I went to the place where I lived with [Mr C] hoping to collect my documents while he wasn't at home. I just got my personal documents and ran back to [Ms D].

Since there I realised that my life was in danger and start to look on how to leave Mongolia and find a safe place somewhere.

I am positive that the Mongolian law enforcement agencies will not protect me because homosexuality is not accepted in Mongolia, it is not tolerated by people, homosexuals and lesbians still are regarded as perverts.

The Mongolian police is corrupt and underpaid this is why not only lesbians and homosexuals never file any charges fearing that nothing will be done to protect them but in opposite they will be victimised by the police. Until present the police and Security Office have file on Mongolian homosexuals.

More sincerely I implore the Department of Immigration to protect me from persecutions that I will face should I return to Mongolia.

Interview with the Delegate

24. The applicant was interviewed by a Delegate of the Department [in] April 2010.
25. On the basis of the applicant's written and oral evidence, the Delegate did not accept the applicant's claim that she is lesbian. The Delegate formed the view that the applicant was not forthright when answering some of the Delegate's questions and although the Delegate afforded ample opportunity for the applicant to provide her evidence, according to the Delegate she remained vague on many occasions. Furthermore, according to the Delegate's findings, the applicant provided inconsistent information in the application which she made for a visitor visa and in the Protection visa application. The Delegate did not accept as plausible the applicant's accounts of how she claims her parents and her estranged spouse became aware that she is a lesbian.
26. The Delegate concluded that the applicant is not lesbian. The Delegate did not accept the applicant's claims that she has suffered past Convention-related persecution in Mongolia for reasons of her sexual orientation or for any other reason. The Delegate did not accept that the applicant would be perceived as lesbian if she returns to Mongolia and she did not accept that she would engage in future conduct which might give rise to such a perception. The Delegate was not satisfied that the applicant has a well-founded fear of Convention-related persecution in Mongolia.

Application for Review

27. The applicant did not provide any additional evidence or submission in support of the application for review which was lodged [in] May 2010.

Evidence at Hearing

28. At the outset the Tribunal examined the applicant's passport. The passport was issued to her [in] 2003. It has been renewed and is now valid until [2012].

29. The Tribunal asked the applicant how the information was gathered for the application for the Protection visa. The Tribunal noted that some of the information is typed and some is hand-written. It asked how the application was prepared. The applicant began to tell her story and her claims in detail. The Tribunal interrupted the applicant in her evidence and asked her to explain how she prepared the application for the Protection visa. The applicant then explained that she found a lawyer and asked him to help her. She said she told this lawyer that it was difficult for her to live in her country. She said that she told him everything about her life and he completed the form on the basis of the information that she gave him. She said everything that is written in that form is based on information she had told her lawyer.
30. The Tribunal said it would like to establish that personal particulars on the application form are true and correct. The Tribunal asked the applicant the date of her marriage. Initially she replied that she married two years ago. Again the Tribunal asked the applicant the date of her marriage. She said that they met in 2007. The Tribunal repeated the question again and asked the applicant when she was married. She then said that she and her partner met in December 2007. She said that they have no certificate of marriage. She continued that [in] November 2008 her son was born. She said they could not do it; (the Tribunal took it that the applicant was referring to the marriage) because he knew that she was lesbian. The applicant said they are not legally married.
31. In relation to her education and subsequent employment, the Tribunal said that it had read that she completed studies in Mongolia in 1997. The applicant confirmed that this is correct. She said that she subsequently worked as a [occupation deleted: s.431(2)] for one year. She said that she worked for a [company] in Ulaanbaatar. She continued that from 1998 until 2002 she was a teacher of [subject deleted: s.431(2)] and at the same time she pursued further studies at the [university]. This study related also to [subjects deleted: s.431(2)]. The applicant continued that from 2002 until 2006 she undertook studies leading to the award of a Ph.D. in Moscow. She told the Tribunal that she was invited to go there on the basis of her academic achievement. On the completion of her Ph.D. studies in 2006 the applicant said that she returned to Mongolia. She continued that she was then invited to undertake English studies in the United States. She said that she studied English at [education provider deleted: s.431(2)] from November 2006 and she remained in the United States until June 2008. The Tribunal established that the applicant was in the United States continuously during that time.
32. The Tribunal noted that the applicant states in her Protection visa application that she spent several periods in Germany. The applicant explained that this was during the time that she was studying in Moscow. She said that she went to Germany every year for a period of about three months. The Tribunal established that these visits related to work on her thesis.
33. The Tribunal asked the applicant about her employment after she returned to Mongolia in 2008. She explained that she was then pregnant with her son. The baby was born in [November] 2008. She told the Tribunal that she did not return to paid work after her return to Mongolia and after the birth of her child. She said that she stayed at home with her baby. The Tribunal asked the applicant to confirm that she remained at home with her child and did not re-enter the workforce in Mongolia. She said that is correct. She repeated that she remained at home with her son until she came to Australia.

34. The Tribunal asked the applicant whether her parents are still living. She said that they are. The Tribunal asked the applicant to write down the address of her parents. The applicant gave the address [deleted: s.431(2)], Ulaanbaatar. The Tribunal asked the applicant when she herself lived at the family address. She said she is not sure exactly. She said that she had lived at that address for a long time. The Tribunal asked her when specifically she lived at that address. She said she lived there from the time of her birth and lived there as long as she lived in Mongolia. The Tribunal asked her whether she had ever lived at any other address in Mongolia and her response to the question was that she did not. The Tribunal asked the applicant whether its understanding is correct that when she returned to Mongolia from the United States she went home to that address. She said that she did.
35. The Tribunal asked the applicant when and how she met the man who is the father of her baby son. She said that they got together in America and they married in America. The Tribunal asked her whether she met this man for the first time in America. She said that she met him for the first time in America and she lived with him there. The applicant then said that she knew him in Mongolia. The Tribunal asked the applicant when she met this man for the first time in Mongolia. The applicant continued that she was a teacher and he was a student. At an exam he asked her to be his friend. The Tribunal asked when this was and she replied that it was in 2002. She said that for several years they did not see each other and several years later they met again. She said that they saw each other in 2006. She explained that in the intervening period she had been in Russia but they kept in touch on the internet.
36. The Tribunal asked the applicant to describe the nature of the relationship in 2006. The applicant said that this young man told her that he wanted to travel to America as she herself did. The Tribunal asked the applicant whether the relationship was platonic or romantic in 2006. The applicant explained that they began a sexual relationship in America. The Tribunal asked her when her partner went to America. She said that he left Mongolia in 2006 and she followed some time later. The Tribunal asked the applicant about her partner's status in the United States. She said that he went as a tourist and she went on a student visa. The Tribunal asked whether they lived together from the time of her arrival in America. She said that they did not. She said that they began living together and the relationship started on 31 December 2006 at a New Year's celebration.
37. The Tribunal asked when they began to live together. The applicant explained that they did not actually share a domicile on a permanent basis. She said that she then found herself pregnant [in] 2008. She said that they shared a house later on. The Tribunal asked about the arrangements and the applicant explained that as a student she was not supposed to be living with someone in a relationship. The Tribunal asked the applicant how long she and her partner lived under the same roof together. She said that all of 2007 up until June 2008 when they both returned to Mongolia they lived together. The Tribunal asked the applicant why they returned to Mongolia from the United States. She explained that they needed accommodation comprising three rooms and they could not afford this with the money that they had in the United States. The Tribunal asked the applicant about her plans when she returned to Mongolia in relation to her relationship with this man and in relation to the pending birth of her child.
38. The applicant explained that in Mongolia it did not matter if they had rooms or a house. However in America she said it was important to have three rooms for them and it was

very hard to do that. The Tribunal asked the applicant how she and her partner supported themselves in America. She said that she had jobs in between her study commitments. Initially she said her husband could not work because he was a tourist. The Tribunal asked the applicant whether her husband's visa was in effect for the entire period that he was in the United States. It asked whether his visa was extended. The applicant explained that he did not extend his visa. He was living in the United States illegally. The Tribunal asked her how her husband was supported. She said he had a reasonable life in America and he was picking up jobs cleaning in a restaurant, as she herself did.

39. The Tribunal asked where her husband's parents live. The applicant said they live in Ulaanbaatar, a distance about [deleted] by taxi from her parents' place. The Tribunal established that the applicant has met her husband's parents. It heard also that his father has died although the applicant said she was not sure when.
40. The Tribunal asked whether the applicant and her husband returned from the United States together. She said that they did. The Tribunal asked where they went to live when they went back to Mongolia. It asked whether they went to live with his parents. She said that they did not. The applicant then went on to explain that the domicile of her husband's parents consists of two separate dwellings. She said that she and her husband lived in one and his parents lived in the other.
41. The Tribunal observed that the applicant appeared hesitant and unable to concentrate on her responses. It asked whether she was feeling well. The applicant explained that she has had a medical problem. The Tribunal asked when she first experienced this problem. The applicant said it has been since her husband hit her on the head. She said that in Australia she was not well and she went on to say that about one month ago she experienced an episode. The Tribunal asked her to explain what happened. The applicant said she was going home by train. She said she may have fainted. She said she is not sure what happened. From what she said it seems that the applicant had fainted on the platform of the railway station. She explained that the staff were talking to her and they asked if she had a friend she could call to come and help. The applicant explained to the Tribunal that she faints sometimes and it lasts for a minute. The Tribunal asked if she could recall what else happened that day. She said she called a friend and the friend came. The applicant's advisor then explained that the applicant has received a bill from the Ambulance Service for an amount of about \$600 for the assistance they rendered on that day. The Tribunal asked the applicant if she could explain how she incurred this bill. She said that she was at the station; she said that no treatment was given and she was not taken to hospital. The applicant's words suggested that she was saying that she had gone to the ambulance station. The Tribunal examined the invoice rendered by the Ambulance Service. It put to the applicant that the invoice reports that the ambulance attended her on [the] station on [date deleted: s.431(2)]. There is no evidence on the invoice that she was transported to hospital. The applicant again said she does not know what happened that day. The Tribunal asked the applicant whether she has received or required any further medical attention since that day. She said she has not.
42. At this stage the applicant rummaged in her handbag and produced a small white container, apparently containing medication. She said that she takes this medication twice a day. The interpreter indicated that the medication is Carbamazepine. The Tribunal asked the applicant where she sourced this medication. She said she obtained

it from a Chinese doctor who lives and works in Mongolia. The Tribunal asked the applicant what the medication is for, specifically. She said that it is used commonly for people who faint. She explained that she brought the medication with her to Australia. The Tribunal asked the applicant how long she has been using this medication. She said it was around three years. The Tribunal asked the applicant whether she continues to experience fainting spells. She said not often. She said it happened no more than five times a year. The Tribunal asked the applicant how long she has experienced these symptoms. She said that after her son was born and her husband found out about her sexual orientation he mistreated her and struck her on the head. She said that this must have been towards the end of 2008. She said again that these things happened after her son was born in November 2008.

43. The Tribunal said it would like to speak a little more about her living arrangements in Mongolia. It asked whether its understanding is correct that the two living places at the home of her husband's parents were side by side. She said that is correct. The Tribunal asked her how long she continued to live at that place. The applicant said it was not for long. She said after her partner found out he hit her and she left there. Again the Tribunal asked the applicant how long she lived at that place. She then said she returned to Mongolia in June 2008. Her son was born in November 2008. The Tribunal asked the applicant how long she lived at that place with her husband's family. She said she lived there for no more than six months. The Tribunal asked the applicant whether she was saying that she lived there for six months from June 2008 or from November 2008. The applicant replied that it was around six months from June. She said then that after her son was born she lived with her parents.
44. The Tribunal asked the applicant about her partner's occupation. She said he is [occupation deleted]. The Tribunal asked whether he completed tertiary studies. She replied that he did. The Tribunal asked the applicant whether her partner worked as [occupation deleted] in Mongolia before going to America. She said that he did not. Again she said that he worked previously as [occupation deleted] but she does not know what work he does now. The Tribunal asked whether her husband worked as [occupation deleted] when they returned to Mongolia. She said that he did. The Tribunal recalled that the applicant had said that she went back to her parents' place. She said that is correct. The Tribunal asked why this was and the applicant replied it was because her parents really wanted her son to be there. The Tribunal asked the applicant whether she stayed at her parents' place until she left Mongolia for Australia. She said that she did.
45. The Tribunal asked the applicant whether she took her baby with her when she went to live with her parents. She said that she did. The Tribunal then asked how she supported herself and her baby at that time. She said that her parents always helped her and her lesbian partner helped sometimes.
46. The Tribunal asked the applicant to explain why she left her husband and his family at that time. She said it was because she felt free when she was living with her parents, whereas she did not feel free when living at the home of her husband's family. The Tribunal asked her whether it had been her choice to go and live with his family when they returned to Mongolia from the United States. She replied that it was not her choice. She said that her husband said that they must return there because he is a man and he wanted to live in his own house. The Tribunal asked the applicant if she is saying that she followed her husband's wish when she went there. She said that is so.

The Tribunal asked when she made the decision to leave that place. The applicant replied that after her son was born her parents wanted her and her son in their house. The Tribunal asked what her husband said about that, when she told him that she was leaving him to go and live with her parents. She said he did not say anything. The Tribunal asked her to describe the state of the relationship when she left. She said that her husband's view was that her parents were better able to help her. The Tribunal asked the applicant whether her relationship with her husband was still ongoing at the time she left his family home to return to her parents. She said that it was. The Tribunal then asked her when a problem first arose in the relationship. She said it was when her husband found out that she was sleeping with her partner. The Tribunal asked when that was. The applicant replied that it was in 2009. The Tribunal asked when in 2009. The applicant replied that it was in March 2009.

47. Again the Tribunal invited the applicant to describe the nature of her relationship with her husband from 2008 up until the time that she left his family home to go to her parents. The applicant continued that sometimes when her husband was working in the area he would come and stay with her at her parents' place. The Tribunal asked whether they continued to maintain a sexual relationship over this period. She replied that they did. The Tribunal asked her whether she and her husband ever had plans to establish a household together. She said that they did not. The Tribunal asked why this was the case. The applicant did not respond to the question put to her by the Tribunal. She said it is dangerous for her to return to Mongolia. She said she cannot work and she cannot return to Mongolia. Again the Tribunal asked the applicant whether there had been any plans in the past for them to establish a household jointly. She said that there was not. The Tribunal asked why this was. She replied that it was because her husband hit her. She said now her mood is not good. The Tribunal said it was talking about a time when the relationship appeared to have been ongoing and before the time when she says he learned about her lesbian partner. Again the applicant said they did not have plans to live together. The Tribunal asked the applicant what the plan was when she went to stay at her parents' place with her son. She said that she loved her son and did not want him to grow up without a father. The Tribunal said it was trying to understand the nature of the relationship at that time when she went to live with her parents. The applicant replied that her husband did not know at that time that she had a (lesbian) partner. Again the Tribunal asked her the nature of the relationship with her husband when she went back to live with her parents. It asked whether the relationship had finished or not. She said that they still had a relationship as husband and wife. The Tribunal asked the applicant whether she was saying that they continued to have sexual relations. She said that they did.
48. The Tribunal said that it wanted to clarify aspects of the applicant's evidence. It asked whether she was saying they slept together but they did not live together. She said that they lived together at her parents' house. The Tribunal asked when her husband came to live there. She said as soon as her son was born he came there. The Tribunal said it had some difficulty with this. It asked the applicant to clarify and put to her that what she was now saying was not consistent with what she had said earlier on the same matter. The applicant said that her husband stopped living with her as soon as he found out about her. The Tribunal asked the applicant specifically about the nature of the relationship when she was living with her parents. The applicant then said that her husband was working in a [company details deleted: s.431(2)]. He was absent on his work for five days and on his two days off he would return to cohabit with her at her

parents' place. The Tribunal asked where her husband was working at that time. She said it was a place about three and a half hours by taxi away. The Tribunal asked the applicant whether she was saying that her husband worked five days and came back to stay with her for two days. The applicant agreed that this is what she had said. The Tribunal asked her how long things continued in this way. She replied that it was up until her husband found out about her partner. The Tribunal asked when this was. The applicant replied it was after May 2009. The Tribunal asked the applicant how her husband found out that she had a partner. She explained that her husband was always asking her where she was going. It seems that she told him that she was meeting her friend. She said that her husband asked many times to meet that friend. She continued and explained that on one occasion she told her friend that her husband wanted to meet her. She told the Tribunal that her friend agreed to a meeting just once. So they allowed the applicant's husband to accompany them. The Tribunal asked the applicant to explain what happened. She said they were at a restaurant and her husband was drinking a lot of vodka. The Tribunal asked about the restaurant. It asked where that restaurant was situated. She said it was in Ulaanbaatar. She then went on to say it was near an area called [deleted]. She described this place as being like a camp or some sort of resort or camping area about [distance] from the centre of Ulaanbaatar.

49. The Tribunal asked the applicant to describe exactly what happened on that occasion. She said that he found out about them and he got very angry. She said he was threatening them with a knife. She said they called the police. The Tribunal asked the applicant to explain what happened in detail. She said that her partner had a phone and she called the police.
50. The Tribunal invited the applicant to describe in detail what happened on this occasion. The applicant said that her husband found out about them and got very angry. She said he was threatening them with a knife and they called the police. The Tribunal asked the applicant who called the police. She replied that her partner had the phone. The Tribunal asked the applicant to go through the events slowly and methodically. It asked what her husband found exactly. The applicant said that her husband was drinking vodka and he wanted to sleep. She said she and her partner were in the other room. She said that they did not think that her husband would walk in because he had been very drunk. The Tribunal asked the applicant about drinking at the bar. She said that they had all been drinking and they went back to their rooms. The Tribunal asked the applicant to describe the location. She said that they were summer-type cottages and the particular cottage had three rooms. The Tribunal asked what the accommodation arrangements were. The applicant continued that the house belonged to her partner. She said that her husband slept in one room and she slept in the other room with her partner. She said that she always went to that place with her partner. The Tribunal asked the applicant how long they had planned to stay in the cottage on that particular occasion. She said that they were just staying the night because her son was still very young. The Tribunal asked what day of the week this happened. The applicant said it was a Friday. The Tribunal said that it had heard that the applicant said that she went there regularly with her partner. She said that is correct. The Tribunal asked how often they went there. She said that they went on her partner's days off; mostly Saturdays and Sundays and also Fridays.
51. The Tribunal asked the applicant to take it through the events of that evening. She said that she told her partner that her husband wanted to visit the place with her. She said

that her partner asked her why she did not come there alone. She said she explained to her partner that her husband asked many times to meet her friend. She told the Tribunal that she had no choice. She said her partner said it was OK for him to come if it was only once. She said she told her partner they should give him lots of vodka. In the event she said he drank heavily and fell asleep. She told the Tribunal that they then started having sex in the other room. He knocked and the door was not locked. He came into the room. When he saw them he started to act in a dangerous manner. The Tribunal asked the applicant what she and her partner were doing when her husband walked into the room. She said he was approaching them and thinks looked very dangerous. She said her partner called the police and they turned up. The Tribunal asked when the police arrived. The applicant replied that it was about an hour later. The Tribunal reminded the applicant that it had specifically asked what she and her partner were doing at the moment her husband walked into the room. She said they were having sex together. The Tribunal asked the applicant how long her husband had been asleep by this time. She said it was about four hours. The Tribunal asked the applicant whether she was saying about four hours later she and her partner were in the room next to her husband and they were having sex together. The applicant said this is correct. The Tribunal asked whether the applicant had then stated that she and her partner were in that room waiting for one hour for the police to arrive. The applicant then said that her partner left the room to call the police and the applicant was in another room. The applicant then said her partner might have left the house. She said she was with her husband and it was very dangerous. The applicant then said that she and her partner were in another room and they locked the door. The Tribunal asked the applicant to recall at what stage this was. She replied that this was before the police came. Again the Tribunal asked the applicant what exactly happened when her husband walked into the room. She said they could not do anything. She said she and her partner waited for the police. The Tribunal again asked the applicant to describe what exactly happened when her husband walked into the room. She said that firstly her husband hit her and she ran from him. She said her partner left the room but the applicant said she could not. She said she was left in the room with her husband but she wanted to leave. She continued that she was unable to leave. Her husband hit her a few times and she was bleeding and her head was hurting. The applicant said that her right arm was also hurt and she added that she subsequently had surgery due to her injury.

52. The applicant continued. She said that the police came and they took her husband. She said that she went to hospital. The Tribunal asked the applicant where her partner was while the applicant's husband was allegedly beating her. The applicant replied that her partner was with her. The Tribunal remarked that the applicant had earlier said that her partner had left the room. The applicant again said that as her husband was beating her up her partner was with her. The Tribunal asked why her partner did not assist her. The applicant explained that she did help her. She said that they were able to go into another room and lock themselves in a room. The Tribunal sought to clarify the applicant's evidence. It asked whether she had in fact said that her partner was in the room. She said that is correct. She said that after she called the police she came back. The Tribunal asked how long her partner was out of the room. The applicant said it was no more than half an hour. The Tribunal asked the applicant when she herself became aware that her partner had returned to the room. She said it was when she called out to her. The Tribunal asked the applicant what her partner did when she came back into the room. She explained that her partner was helping her because she was

bleeding a lot and could not move her arm. The Tribunal asked the applicant where her husband was at the time that her partner came back into the room. The applicant said that he was looking for her. The Tribunal asked the applicant to explain why there was a need for her husband to look for her. She then said that he was hitting her a lot and she was running away from him. The Tribunal asked where she ran. She replied that she ran into another room. She continued that her husband followed her and she ran away again. She said as she was running out of the room he hit her with a piece of timber. She said she fell down and he hit her again.

53. The Tribunal asked the applicant how she got to hospital. She said that she and her partner went to hospital by taxi. The Tribunal asked the applicant what time this was. She said it was about one or two in the morning. The Tribunal asked the applicant to what hospital she went. She said that she went to a hospital that specialises in arms and legs. (The interpreter suggested that this could have been an orthopaedic hospital.)
54. Again the Tribunal asked the applicant to what hospital she went. The applicant explained that it is a hospital in the centre of Ulaanbaatar but she said the hospital has no name. The Tribunal asked the applicant if she could explain what directions they gave the driver of the taxi when they asked the driver to take them to hospital. The applicant said that the taxi driver asked them which hospital they wanted to go to. She continued that the taxi driver saw her arm and he said that they should go to the hospital in the centre of town. The Tribunal asked the applicant what happened when she arrived at the hospital. She said it seems that the shoulder was injured. She said that her body was bandaged. She said the doctor warned her that if this happened again her situation could be serious. The Tribunal asked the applicant how long she was at the hospital. She said she was there about three hours; she was treated in the emergency department and allowed to go home. The applicant explained that she took a taxi and went to her parents' home. She said that her partner accompanied her to her parents' house and left their house after awhile. The Tribunal asked the applicant how far the taxi ride is from the hospital to her home. The applicant replied it was a journey of 10-15 minutes. She explained that her parents' place is close to the centre of the city.
55. The Tribunal recalled that the applicant had said that this hospital specialised in arms and legs and asked if that is correct. She said that is correct. The Tribunal then asked the applicant what she meant when she said this in describing the hospital. She said that they only treat arms and legs at that hospital. The Tribunal further questioned the applicant asking whether it is correct that she does not know the name of the hospital. The applicant then replied that there is only one big hospital in the town and it is that one. The applicant said that people know this hospital; it is open 24 hours a day. The Tribunal asked the applicant if it is the central general hospital or if it is a special hospital which treats and specialises in arms and legs. Again the applicant said it deals in arms and legs. She said that it could have taken up to a month to treat her injuries. The Tribunal commented that according to her evidence she had been at the hospital for about three hours. The applicant said that is correct. In response to the Tribunal's questions on the subject the applicant confirmed that she received no further or ongoing medical treatment. The Tribunal asked whether any medication had been prescribed at that time. She said she was prescribed medication for a very sore head. The Tribunal asked the applicant what time it was when she returned to her parents' home. She said it was still night time. Again the Tribunal asked what time it was when she returned there. She said it was about one or two in the morning. The Tribunal remarked that

earlier the applicant had said that it was about one or two when she went to the hospital and she was now saying that she had been at the hospital for three hours, but it was one or two when she returned to her parents' home.

56. The Tribunal asked the applicant to explain the injury to her arm or shoulder. She said that the arm was bandaged and she was told not to move it for three days. Again she told the Tribunal that she did not require any further treatment then or any time subsequently. However she told the Tribunal that she suffered recurring pain and the doctor suggested that she should have surgery. This she did last year. The Tribunal asked what the surgery achieved. From the applicant's response the interpreter suggested that it sounded like she had a procedure on a particular bone in the shoulder. The Tribunal asked the applicant where the surgery was done. She said it was done at the central hospital. She said she was in that hospital for about three weeks. The Tribunal asked the applicant whether she was talking about the same hospital to which she had referred earlier, that is the hospital to which she had gone with her injuries. She said that this is the same hospital. The Tribunal asked the applicant whether she is now saying that she spent some three weeks in that hospital but does not know the name of the hospital.
57. The Tribunal asked the applicant when she was in that hospital undergoing surgery. She said it was in July 2009. The Tribunal asked whether she has any of the medical notes or hospital reports on discharge. She said she has no medical information with her in Australia.
58. The Tribunal asked the applicant what her parents said when she arrived home early that morning in a very poor physical state. She said that her parents told her that they understand her. She said that they realise that it is hard for her and she should not continue to live with her husband. She said that her parents advised her that she should leave Mongolia because her husband could still find her there at any time. The applicant then went on to tell the Tribunal that it took her about four months to research the countries and that is why she eventually decided to come to Australia. The Tribunal asked the applicant to explain something about the research that she says that she conducted before she made the decision to come to Australia. She said she spoke to people and looked on the net. She read information about Australia and she felt she liked the country very much. The Tribunal asked the applicant why she did not go to Russia, Germany or the United States all countries where she had previously spent considerable periods of time. The applicant explained that in Australia homosexual people can live together freely. The Tribunal asked whether she learned this through her research. She said that her partner said that in Russia the law is against it. She said in Germany they make it very hard for homosexual people. The Tribunal asked about the USA. She said that the USA is very good but not as good as Australia. The Tribunal asked the applicant why she did not then seek to return to the USA. The applicant replied that they would not give her another student visa. The Tribunal put to the applicant that it would not agree with her statement that in Germany life is made difficult for homosexuals.
59. Again the Tribunal invited the applicant to describe the nature of the research she conducted over the four month period. She said that she looked on the internet, she read newspapers and she talked to people whom she knew. The Tribunal asked the applicant where she was living over those four months. She said that she stayed at her parents' place but then added that she was not there all of the time because her husband

knew that place and it was dangerous for her to be there. She said that she divided her time between her parents' place and that of her partner.

60. The Tribunal asked about her child. The applicant said that her son was staying with her parents. He is still living with her parents. The Tribunal asked the applicant whether her husband sees his child. She said that he does not. She said that he is possibly afraid to meet with or see her parents because of the way he treated her. The Tribunal asked the applicant when her husband last saw their son. She said that she heard from her parents that on 31 December he sent a present for him.
61. At this point the Tribunal said that it was its intention to adjourn the hearing and reconvene at a later date in order to continue to hear the applicant's evidence. Before the conclusion of the hearing the applicant's advisor said he would like to amend the dates given for the periods of the applicant's residence in the United States as recorded on the application for the Protection visa. He indicated that it appears that he has made an error in those dates and having heard the applicant's oral evidence before the Tribunal, he said that the date as recorded by him is not consistent with what the applicant had said; however he said that this appears to have been an error on his part. The Tribunal acknowledged the advisor's comment.

Resumed hearing

62. The hearing resumed [in] August 2010 and at the applicant's request she was assisted by a Mongolian speaking interpreter. At the outset, the Tribunal asked the applicant whether there was anything that she wished to add or explain in relation to the evidence she had given at the first hearing. The Tribunal said that it is mindful that in the interview with the delegate and at the previous Tribunal hearing the applicant had requested the assistance of a Russian speaking interpreter, whereas, for the continued hearing, she had expressed a wish to have a Mongolian interpreter. In view of this the Tribunal asked the applicant whether she is satisfied that she was able to express herself adequately at the previous hearing and was satisfied with the evidence that she had provided. The applicant replied that she was fully satisfied with the evidence provided on the previous occasion. She did not seek to make any amendment or change anything in her earlier evidence.
63. The Tribunal summarised briefly the evidence heard at the first hearing, particularly in relation to the applicant's time spent in the USA, the birth of her son and alleged poor treatment at the hands of her de facto husband. The Tribunal said it would like to clarify the timing of these major events in the applicant's life.
64. The Tribunal asked the applicant when she commenced a relationship with the father of her child. She said she knew him previously. She explained that he bought her flowers on her birthday, and asked her to go out with him. This was [in] December 2007. At this time, she said they were both in the USA. The Tribunal said that it recalled at the previous hearing, the applicant had said that she previously knew her husband in Mongolia. She said that is correct but they did not go out together at that time. She said he was a student and she did not wish to go out with him at that time. The Tribunal asked her whether she travelled to the USA to follow him, or whether it was a mere coincidence that the two of them were in the United States at the same time. The applicant explained that it was coincidental that they were there together.

65. The Tribunal asked the applicant when they left the United States to return to Mongolia. She said that this was [in] June 2008. The Tribunal then asked where they went to live when they went back to Mongolia. The applicant explained that in the beginning she stayed with her parents up until the time she gave birth to her son.
66. The Tribunal asked the applicant whether she had contact with her partner at this time. She said she did not. The Tribunal then ascertained that the applicant was mistakenly referring to her lesbian partner, and not to her husband. The Tribunal heard that the applicant maintained contact with her husband.
67. The Tribunal asked her how she would describe her relationship with her husband from June 2008 until November 2008. She said at that time, she was pregnant and she did not share a sexual relationship with her husband. She said that all he wanted was for her to keep healthy and give birth to a healthy child.
68. The Tribunal heard that the applicant's son was born at the [hospital deleted] in Ulaanbaatar. After the birth she said that she stayed with her parents for a while and then she, her husband and child, moved out to live in a different micro district in the city, at a place she called [Suburb A]. The Tribunal asked her whether it was just herself and her husband who lived there, or whether there were other people. She said it was just the three of them. She continued and said that they stayed there for about three or four months. The Tribunal asked her when exactly she stayed at that place. She said that she stayed there from New Year 2008 until her husband discovered that she was with [Ms D]. The Tribunal asked her when that happened. The applicant said it was in March 2009.
69. The applicant continued and said that she lived with her husband from New Year 2008 until March 2009 up until he found that she was with her partner, [Ms D]. The Tribunal clarified that the applicant, in fact, meant that she lived with her husband from 31 December 2008 until mid-March 2009. The Tribunal asked her where she went after March 2009. She explained that her partner [Ms D], assisted and found a place for her to stay. The applicant continued that she stayed at that place together with her son for about two months. The Tribunal asked the applicant the address of that accommodation. She replied that there was no exact address; the place was like a camping area. The Tribunal clarified that the applicant stayed at that place with her baby son. The Tribunal asked her where that place is located. She said it was about [distance] from the city. The Tribunal then asked her where she went when she left that place. The applicant said she returned to her parents' home and she stayed at her parents' home up until she came to Australia.
70. The Tribunal asked the applicant whether she is saying that [Ms D] was her lesbian partner. She said that is correct, and she also assisted her with food for about two months. The Tribunal asked the applicant whether she shared a sexual relationship with [Ms D]. She said that she did, sometimes. The Tribunal asked the applicant when she met [Ms D] for the first time. She explained that in December 2008 she was at a friend's party. The Tribunal established that the applicant had recently given birth to her child. The applicant said that the party was also an occasion to celebrate the birth of her child. The applicant told the Tribunal her husband was also present at the party.
71. The Tribunal asked her where she was living at the time, that is, in December 2008. The applicant said it was about two or three days after they had moved out. The

Tribunal asked the applicant to explain the details of the move. She said that after giving birth, she lived with her parents and then moved to [Suburb A] with her husband and son. She explained that the party was two or three days after this move.

72. The Tribunal invited the applicant to explain how a relationship developed with [Ms D] from the time of their first meeting at the party. The applicant said that after first meeting, they used to chat a lot online. She said that [Ms D] suggested that they all meet up together the three of them; that is, [Ms D], the applicant and her husband. She continued saying that on 8 March 2009 it was Women's Day. [Ms D] invited the applicant and her husband on an outing. The applicant said it was a Friday night; they had had some food and drinks and it was on this occasion that she introduced [Ms D] to her husband.
73. The Tribunal asked whether this was the first time her husband had met [Ms D]. The applicant explained that he had heard about her but he had not met her before. The Tribunal asked the applicant about her own contact with [Ms D] prior to 8 March. The applicant said it was just a friendship between them. She explained that she had only just given birth a few weeks before.
74. The Tribunal asked the nature of her relationship with [Ms D] up until 8 March 2009. The applicant said again that they were friends. The Tribunal asked whether the relationship was a sexual one before 8 March 2009. She said it was not. The Tribunal asked what her husband had heard from her about her friend, [Ms D] before 8 March. The applicant said that she used to leave their home and she told her husband that she was going to meet with [Ms D].
75. The Tribunal asked how often she left home for these meetings at that time. She said it was probably once a fortnight, mostly on weekends. The Tribunal asked what they did on these meetings. She said they would talk about all sorts of things. The Tribunal asked whether sexuality was ever discussed, and the applicant said it was. She said that they also discussed how they could continue to meet and where. The applicant added that her baby was now growing up, and it had been three or four months since his birth.
76. The Tribunal asked the applicant when she learned for the first time that [Ms D] is lesbian. She said it was at the party she had mentioned earlier and when they met for the first time that she discovered this. The Tribunal invited the applicant to explain how and in what circumstances at the party she learned about [Ms D]'s sexuality. She said that she distracted [Ms D] when she was in the bathroom, and in this situation they talked about it. The Tribunal invited the applicant to explain exactly how the conversation went in this meeting. The applicant said that [Ms D] was smoking in the bathroom, the applicant went in and they began to talk. She said they came to know each other. The Tribunal asked how long they were in the bathroom talking. The applicant said it was about an hour. She continued, and explained that the conversation was not like a normal conversation between women. The Tribunal asked the applicant what she meant by this. The applicant said that [Ms D] was different; her manner of speaking was different. She said that they started talking about homosexuality. The Tribunal asked again whether this was at the party when allegedly they met for the first time. The applicant said that it was. The Tribunal asked whether [Ms D] was with any other person at the party. The applicant said she was not.

77. The Tribunal recalled that the applicant had said that they chatted frequently online after their initial meeting and she had also said that they met occasionally at the weekend. The Tribunal asked for how long they met on these occasions. The applicant said it was usually between one and two hours. The Tribunal asked whether they ever stayed together overnight in that time. The applicant said that they did not.
78. The Tribunal asked whether during these meetings she and [Ms D] ever discussed the applicant's husband and the applicant's relationship with him. She said that they did. The Tribunal asked her what in particular they discussed about her relationship with her husband. She said that they talked about the relationship and how the applicant did not find it appealing or interesting. She told the Tribunal that she used to tell [Ms D] that she loved her company.
79. The Tribunal asked the applicant whether, at any time she ever lived with her husband and his family. She said that they did not. Sensing that the applicant had not fully understood the Tribunal's question, it repeated the question and clarified its meaning. The applicant then said that she and her husband actually established their own home in close proximity to her husband's family but not under the same roof. The Tribunal understood that there were two separate dwellings on the property in [Suburb A], and in one of these dwellings the applicant and her husband established a home for them and their baby boy. The applicant also said that on occasion her mother-in-law stayed with them and helped to look after the child.
80. The Tribunal asked the applicant when she left her home in [Suburb A]. The applicant said that she left after her husband found out that she slept with [Ms D]. The Tribunal asked when that was. She then said that since that time her relationship with her husband was not good, and they became distant from each other. The Tribunal asked the applicant when this happened. She said she did not know the date, probably at the end of March.
81. The Tribunal said it recalled the applicant's earlier evidence that [Ms D] found her and her son somewhere to stay. The applicant said that is correct. The Tribunal asked the applicant whether [Ms D] went to stay with her at that place. She said she did not. She said that [Ms D] works in the city. She said that on weekends she used to come and help the applicant and her son. The Tribunal asked about [Ms D]'s work in the city. The applicant said that she is a manager in a [company]. The Tribunal asked about [Ms D]'s living arrangements in the city. The applicant responded that she lives with her younger sibling.
82. The Tribunal asked the applicant where her son was living at the present time. She replied that he is living with her parents. The Tribunal asked whether his father sees him. She said that he does not. The Tribunal asked whether [Ms D] sees the applicant's son. The applicant said that she does not.
83. The Tribunal asked the applicant why she decided to leave Mongolia. She said that it is because her husband has threatened to kill her. She said that he physically assaulted her. The Tribunal asked when and where this happened. She said that he would threaten her anywhere even in the street. She said it is not secure for her to live in Mongolia. The Tribunal asked the applicant when her husband physically mistreated her the first time. She said it was when he found her sleeping together with her partner. He assaulted her and beat her. The Tribunal asked the applicant when that happened.

She said it was on the day that they all got together with [Ms D] to celebrate Women's Day at [Ms D]'s camping area on 8 March 2009. The applicant continued that the day was a work day. She said it was a Friday night. They had decided to celebrate after work. The Tribunal heard that the three of them travelled to the camping place by taxi. The Tribunal established that the applicant's son was not with them on that occasion.

84. The Tribunal said it recalled that the applicant said that she moved in March to temporary accommodation. The applicant said that she lived together with her husband until the celebration event on Women's Day. After that she went to the camping place, for which she said once again there was no actual address. The Tribunal asked whether that camping place was the same place to which they had gone on 8 March. The applicant said it was not the same location.
85. The Tribunal asked the applicant whether she saw her husband in the two months that she lived at this so called camping area location. She said that she did not. The Tribunal recalled that she had said that she went back to her parents' place. The Tribunal also recalled that that she said that that she stayed at her parents' place until she left Mongolia. The Tribunal asked the applicant whether she saw her husband again in that time. She said that she did. The applicant continued that she wanted to settle things with him. She said he was very angry and he was trying to kill her and he was making threats.
86. The Tribunal asked the applicant where she saw her husband and when he made the threats. She said that she went to their place in [Suburb A]. The Tribunal clarified that she was referring to the home she shared with her husband there. The Tribunal asked the applicant what happened when she went there. She said that her husband had been kept at the police station overnight, and he was therefore angry and he was screaming at her. The Tribunal asked the applicant when she went to [Suburb A]. She said it was immediately after the events of 8 March. The Tribunal asked her when she went to the house at [Suburb A]. She said she went there on the Saturday morning. The Tribunal asked whether she went alone or with someone else. The applicant said that she went by herself. She then explained that after the celebration (as she described it) finished, they headed to the city and separated each going to their own homes. The Tribunal ascertained that the applicant was referring to herself and her partner, [Ms D].
87. The Tribunal asked the applicant what time they returned to the city. She said it was about 6:00 in the morning. The Tribunal asked whether they went directly to the city. She said that they did. The Tribunal asked the applicant whether she is saying that she and [Ms D] took a taxi from the camping place directly to the city. The applicant said that is correct.
88. Again, the Tribunal asked the applicant whether she is saying that she and [Ms D] went by taxi together from the camping place to the city and then in the city they went their separate ways. The applicant explained that she took that taxi to her home, and she dropped [Ms D] off in the city. She said that [Ms D] did not want to go to [Suburb A]. The Tribunal asked the applicant whether she is saying that she went home in the taxi directly to her place in [Suburb A] at 6 o'clock in the morning on the Saturday; the day after the celebration of 8 March. The applicant agreed that is correct.
89. The Tribunal asked what happened when she returned to her home. She explained that this was the first time she had ever left her son, so she went and held him. She said that

her husband arrived home the next morning and he was mad. She said he started to scream. The Tribunal asked whether he attacked her physically on that occasion. She explained that his mother was present, and she stopped him from doing this. She said his mother heard the screams. She said his mother tried to calm him down. His mother said that they are now a family and she urged him to calm down. Trying to explain the applicant's presence in bed with another woman the applicant said that her husband's mother said perhaps the applicant was feeling cold and therefore had got into bed in order to keep warm. The applicant continued, saying that her husband did not say anything to her for two days. She said her phone then rang; her husband looked at the phone, saw the number and realised it was [Ms D] calling the applicant. She said he became angry again. She said that he started arguments. She said that his mother was not present at that time and he assaulted her. The Tribunal asked the applicant when this happened. She said it was on the Monday after the celebration the previous Friday being 8 March.

90. The Tribunal asked the applicant what she did then. She said that her husband pushed her to the wall, and she sustained an injury to the arm. The Tribunal asked what she did after that. She said she could not move her arm. She went to the hospital and received treatment for her injured arm. The Tribunal asked when this was. She said she went the following day; that is the Tuesday. The Tribunal asked the applicant whether she is saying that her arm was injured on the Tuesday. She said that is correct. She said that she received treatment for the injury at the injury hospital.
91. The Tribunal asked the applicant when she left her home at [Suburb A]. She said that she left around [a date in] March. The Tribunal asked whether she is saying that she stayed there [for eleven days]. She said that is correct. The Tribunal asked whether in that time, she met with or saw [Ms D]. The applicant explained her only contact was by phone in that time. She said that [Ms D] used to call her and check if she was okay. The Tribunal asked the applicant where she went when she left [Suburb A] on [a date in] March. She said it was at that time that she went to the accommodation that [Ms D] had arranged for her and to which she had referred earlier.
92. The Tribunal said that at the previous hearing the applicant had said that she made the decision that she would leave Mongolia. She undertook research about the country she might choose to go to. The Tribunal asked the applicant why she decided to leave Mongolia. She said it was because she was under constant pressure and threats from her husband. He injured her. She said that she has suffered a brain injury.
93. The Tribunal asked the applicant whether she discussed the plan to leave Mongolia with [Ms D]. She said that she asked [Ms D] where she should go. The Tribunal asked what [Ms D]'s advice had been. The applicant said that [Ms D] did not give her much advice. She said she must make her own decision as to what is best for her.
94. The Tribunal asked the applicant who in Mongolia knows that she is gay. The applicant said that the police know. She said that she is not sure about the people at the hospital, whether they know or not. The Tribunal asked the applicant how people at the hospital would know that she is gay. She said that they asked her how she sustained the injury to her arm. She told the Tribunal that she explained that her husband pushed her. She said the people at the hospital asked why he did that. The Tribunal asked her what she said in response. She said that she told a lie; saying that her husband was drunk.

95. The Tribunal asked again who else in Mongolia knows that she is gay. She said people related to her husband will know. The Tribunal asked who else knows. She said that when she was receiving treatment at the hospital her husband came and told them not to treat her. The applicant then said she does not know who else he told of this. The Tribunal asked again who else knows that she is gay. She said that in the aftermath this must have spread all over Mongolia. The Tribunal asked the applicant whether her parents know that she is gay. She said that they do. The Tribunal asked when they learned this for the first time. The applicant explained that when she was a student her parents constantly told her to get married and to go out. The Tribunal asked again when they learned for the first time that she is gay. She said that she used to have friendships only with girls. She said that she had a previous friend called [Ms E]. The Tribunal asked whether her parents knew of that relationship. The applicant said that they knew that she slept with [Ms E]. The Tribunal asked how they knew that. She said her mother asked her about [Ms E] and the applicant's relationship with her. She explained that her mother observed that the tone between them was different. She said that her mother told her that she should discuss these things with her. The Tribunal asked whether she did so. The applicant said that she did. The Tribunal asked whether her parents know and accept that she is gay. She said that they cannot do that. She said that her parents have told her it is not good to be that way.
96. The Tribunal asked the applicant who in Australia knows she is gay. She said that the Mongolian community does not know. The applicant then said that she has been to a place in Oxford Street, Kings Cross. The Tribunal asked what that place is called. She said she went there at night with a lady. She said that she did not like that place very much. The Tribunal asked her when she went to that particular place in Kings Cross. She replied it was in March 2010. The Tribunal asked how many times she has been to that place. She said that she went there and saw that woman, and she has been there five or six times. The Tribunal asked about the woman the applicant had mentioned. The applicant replied this woman is gay; the same as the applicant herself. The Tribunal asked where she met this woman. She said she met her at the club. She explained that it is a gay club in Oxford Street. The Tribunal asked what the club is called. The applicant said that she has been there only once. She said that this woman then took her to another club and they go there sometimes.
97. The Tribunal asked the applicant how she learned about the first location. She said she was out shopping, seeing Sydney and she found the place. The Tribunal invited the applicant to explain what happened when she found the place as she described it. She said that this lady she met was standing at the front of the building and she introduced herself. The Tribunal asked whether this woman speaks English only. The applicant said that is correct. The Tribunal asked the applicant whether she is saying that this woman introduced her to the club on that day as she happened to be walking by. The applicant said that the woman spoke to her and said that she seemed new. She said the woman told her that she would become more accustomed to things in Australia.
98. The Tribunal invited the applicant to explain how she came to commence a conversation with an unknown woman on the street. The applicant said that this woman was outside smoking. She said that they started to engage in a conversation. The applicant said she could not understand some of it. The applicant said that the woman said that this was a gay club and the woman asked her why she had come to that place. The applicant said that she replied she has not been in Australia for a long

time and she had come across the place suddenly by chance. The applicant said she explained to the woman that she does not know Sydney well. The Tribunal asked the applicant when she found this first location. She said it was in March. She explained she had no job. The Tribunal said it recalled that she said that she went to that location only once and met the woman there.

99. The Tribunal asked about the second location to which she claims to have gone. She said it is also in Oxford Street. She said that she walks 15 minutes from the first location in order to arrive at the second place. The Tribunal asked her what the second place is called. The applicant replied that she did not ask the name. She explained that she cannot speak English well. The Tribunal asked whether she meets the same woman at the second location. The applicant then said that the woman only introduced her to that place. She said other than that there is nothing else. The Tribunal asked how many times she has been to the second location. She said that she has been to the second location three times. The last time she went there was in June.
100. The Tribunal asked the applicant whether she has engaged in conversation with other women at the second location. She said that she has. The Tribunal asked the applicant whether she has developed a relationship with any woman that she has met there. She said she has not.
101. The Tribunal asked the applicant when she saw [Ms D] for the last time. She said that she met her on [a date in] December and they had dinner together at a restaurant. The applicant explained that she then left Mongolia [the following day]. The Tribunal asked the applicant whether she has been in touch with [Ms D] since she has been in Australia. The applicant replied that she has not. The Tribunal questioned that she has not had contact at all with her. The applicant then said that she called her and asked her to take care of her son. The applicant said that [Ms D] then told her that she had called the applicant's parents to check up on him and she was able to tell the applicant that he is okay. The Tribunal asked her whether she speaks regularly to her parents. The applicant said she speaks to them once a week, principally in order to see if her son is okay.
102. The Tribunal asked again how many times she has spoken to [Ms D]. She said she speaks to her once ever two or three weeks. The Tribunal asked whether she is still in contact with her now. She said she is.
103. The Tribunal asked the applicant about the visa she obtained in order to travel to Australia. It asked how she obtained the visa. The applicant explained that in the first place she requested an invitation from some one. After she received that invitation she prepared her documents necessary to obtain the visa. The Tribunal asked the applicant from whom she requested an invitation. She said that it was someone who sends people to Australia. The Tribunal asked the applicant how she did this. She explained that she saw an ad in the newspaper. She contacted these people and she was informed that she needed to prepare the documents for the visa. She said that the person to whom she spoke gave her a checklist of documents to be prepared and she set about preparing those documents according to the list.
104. The Tribunal asked the applicant whether she prepared the documents herself. She said most of them were already in her possession. The Tribunal asked the applicant what documents she was required to produce in order to prepare the visa application. The

applicant said that since 2002 she studied in other places outside Mongolia and she had all of the certificates and documents in relation to those studies. The Tribunal asked the applicant what else she had to prepare. She said that no other documents were required. The Tribunal asked whether she was required to provide details of her employment history. The applicant said she obtained a document from her previous employer before she left Mongolia for study. She said she had already left that employer but she provided the document to support the visa application.

105. The Tribunal asked the applicant whether she was required to provide details of her family situation and her marital status. She said that she was. The Tribunal asked the applicant what she said about her marital status. She said she stated that she had a husband and a child in Mongolia. The Tribunal asked her whether she was living with her husband when she applied for the visa. She said she was not. The Tribunal asked where she was living when she made the visa application. She told the Tribunal that she was living with her parents at that time.
106. The applicant said that she left Mongolia to undertake a PhD in Russia and she obtained a certificate at that time. She continued and said that her employer knew that she was undertaking her doctorate. The Tribunal asked whether she provided a statement from any employer to obtain the visa. She said she did so. She continued that it was that particular document to which she had already referred. She said that the document stated that she was going to be working in the future because at the time her son is still small.
107. The Tribunal put to the applicant that information available to the Tribunal in relation to her application for the Visitor visa and the documentation provided by her to support that application suggests that she provided information to the effect that she was, at that time, currently employed at [education provider deleted: s.431(2)] in the capacity of Consultant Teacher. Furthermore, the information provided by her indicates that she was in receipt of a monthly salary plus fees for speeches and lectures of 1,200 MNT.
108. The applicant responded that, as she had told the Tribunal, after she completed her PhD in Russia she used to lecture at universities including [university deleted: s.431(2)], private universities, and religious universities.
109. The Tribunal put to the applicant that it recalled at the previous hearing she had said that she was not working in Mongolia at the time she obtained the visa. However when she applied for the visa she provided information in support of the visa application to the effect that she was in paid employment at that time.
110. The applicant replied that she went to study by invitation. She said that does not mean that she quit her work. She can say that she was still employed by her employer. The Tribunal asked the applicant whether she is saying that she was employed at the university when she made the application for the visa. She said that this is correct; she confirmed that she was employed. The Tribunal asked the applicant when she ceased being an employee of the university. The applicant said when she left Mongolia for Russia in 2002 she was under contract to return to work. She said that she used to be invited to lecture to students of Master's programs. The Tribunal asked her when she ceased doing that. The applicant replied that she worked until November 2009. She said she sent the application for the visa [in] November and then she told the school that she would cease working. She then stopped, she said. The Tribunal asked the

applicant whether she is now saying that she worked until November 2009 at the university. The applicant said that the job she was doing was casual; one or two days a week. Again the Tribunal asked the applicant whether she is saying that she worked in Mongolia up until November 2009. The applicant replied that she would consider herself as working and lecturing by invitation.

111. Again, the Tribunal asked the applicant whether she is saying that she went to lecture and to teach at institutions up until November 2009. The applicant replied that she went to the university once or twice a week to lecture. She lectures at other places by invitation. The Tribunal asked whether she is saying that she did that until shortly before she left Mongolia. She replied that she did.
112. The Tribunal asked the applicant whether [Ms D] ever considered leaving Mongolia with her. The applicant replied that she did not. She said that [Ms D] wanted to leave but a visa application made for the United States of America was not successful. The Tribunal asked whether [Ms D] made an application for a visa. The applicant said she applied for a visa for the United States that was not successful. The Tribunal then asked whether [Ms D] ever made an application for a visa for Australia. The applicant said she did not. The Tribunal asked why she did not do so. The applicant explained that it was because the timing was not right. She added that the visa for the United States had been refused at about that same time.
113. The Tribunal asked the applicant whether she ever considered returning to the United States. She said she did not. She said she thought Australia is the best place. The Tribunal put to the applicant that she had never been to Australia in the past whereas she had spent a reasonable period of time in the United States of America. The Tribunal asked the applicant how she could be in a position to say that Australia is the best place. The applicant explained that she found out that Australia puts human rights at the forefront. She said she found this out on the internet and by talking to other people.
114. The Tribunal asked the applicant whether she claims to be gay. She said this is so. The Tribunal asked the applicant why it is as a woman who has come to a view and a decision about her sexuality and has come to a view that she is lesbian she would have pursued a relationship with a man, had a child and continued in that relationship after the birth of the child. The applicant explained that she became pregnant after having sexual intercourse with her husband for the first time. Again the Tribunal asked the applicant why as gay woman, she decided to embark on a sexual relationship with a man and further, why then pursue a relationship with a man. The applicant replied that she wanted to have her own child. She told the Tribunal that she wanted to end the relationship with her husband at some stage. Then [Ms D] came into her life and things happened.
115. The Tribunal asked the applicant whether she knows the names and phone numbers of any of the women she claims to have met in the gay venues in Oxford Street. The applicant said that the woman she met first gave her her phone number. The Tribunal asked whether she spoke to that woman regularly. The applicant replied that that woman contacts the applicant when she wants but she hides her phone number when she calls. She continued that this woman gave the applicant her number but later told her that she has changed it. She said she has no other contact number for this woman.

116. The Tribunal asked the applicant whether she is currently working. She said she is not. It asked whether she was working previously. The applicant said she was working previously but she has ceased employment because of visa issues. She told the Tribunal that she does not have permission to work. The Tribunal asked the applicant how she supports herself at the present time. She said sometimes she works at restaurants for a week or two. The Tribunal asked the applicant about her current living arrangements. She said that she shares a two bedroom flat with three other persons, a Russian and two people from China. The Tribunal heard that she shares a bedroom in unit in [suburb deleted: s.431(2)].
117. The Tribunal asked the applicant why she does not wish to return to Mongolia. She said if she goes back she may see her husband or he may find her. If he does that things may turn ugly. She said he threatens her and her life.
118. The applicant then said that because of the injury she sustained she fell down at the station. She now has a bill from a hospital for \$600 and she has not paid that. She said that the Tribunal had told her on the last occasion not to pay the bill. The Tribunal recalled that it had not said that at the previous hearing and in fact had suggested that she should contact the Ambulance Service as a matter of urgency and explain her situation. The Tribunal further suggested that the applicant engage the assistance of an interpreter through the Telephone Interpreter Service or that she approach Legal Aid and with their assistance approach the Ambulance Service of New South Wales in order to resolve the matter of this outstanding debt.
119. The Tribunal said it wished to clarify the dates of certain important events in the applicant's evidence. It ascertained that the applicant went with [Ms D] and the applicant's husband to the camping place on 8 March 2009. The Tribunal put to the applicant that she had said in her evidence today that this was the first time she shared a sexual relationship with [Ms D]. The applicant said that is correct. The Tribunal said it had a number of concerns with the applicant's evidence and it wished to put to her a number of inconsistencies in her evidence before the delegate and to the Tribunal, and inconsistencies in her written and oral evidence.
120. The Tribunal read to the applicant from her written statement of claims. In that statement the applicant has written that she was invited by [Ms D] to her summer house on the outskirts of the city. She has written that she went there with her son for a weekend, and she shared good times there. She has written that within two days they both realised that they were attracted to each other and they spent the second night at that summer house sleeping in one bed. According to the written statement, the applicant met [Ms D] to have sex at that place, and no one else knew they were meeting there for that purpose. The applicant has written that one day in November 2009 her husband told her he also wanted to spend the weekend together with her and it was on this occasion that he visited the summer house along with the applicant and [Ms D]. It was on this occasion that he entered the bedroom and found the two of them in bed making love.
121. The Tribunal put to the applicant, in the first place she had said in her evidence before the Tribunal today that the evening of 8 March 2009 was the first time she and [Ms D] had had sexual relations, whereas in her written statement she indicates that they shared a sexual relationship for sometime before this was discovered by her husband.

122. Furthermore, the applicant states in her written statement that the particular event took place in November 2009, whereas, she has told the Tribunal on two occasions that the event was on 8 March 2009. The applicant responded to this information. She said that the timing in the written statement is erroneous. She told the Tribunal she came to Australia in December 2009. She made the application for the visa before that. She explained that it is impossible that the particular event would have happened in November. The Tribunal put to her this is what is in the written statement. The applicant said that by November she had already sent her documents for the visa and was waiting for the visa.
123. The Tribunal put to the applicant that it has some difficulty accepting that she would make a decision to engage in sexual activity in a room adjacent to the room where her husband was sleeping. The Tribunal said it may not be persuaded that the applicant did this. The applicant responded that her husband was very drunk. She said that she and [Ms D] did not think that he would get up and discover them. She said that they wanted to use this time to be together.
124. In relation to the timing of the sexual relationship shared with [Ms D] the applicant said that because she had only just given birth to her son in November [Ms D] had said that they should not have sexual intercourse and they just kissed and cuddled each other.
125. The Tribunal put to the applicant that she had provided information to the delegate during the interview that she suffered violence from her husband for the first time in May and June. The Tribunal said that it had heard her evidence to the delegate that she had not pursued any gay relationships in Australia. This interview took place [in] April 2010. Today before the Tribunal the applicant claims that she first made contact with a woman outside a gay venue in Oxford Street in March, and has subsequently visited gay venues at least three times since. The Tribunal questioned why the applicant would not have disclosed this information to the delegate when specifically asked about it at the interview in April 2010.
126. The Tribunal put to the applicant that it heard her evidence to the delegate that her son was living with his father's parents. Furthermore, she told the delegate that her parents were not permitted to see her son. She told the delegate that her parents go and see her husband's parents and inquire about her son. She told the delegate that her parents do not see her husband. The Tribunal said that the applicant's evidence before the Tribunal is that her son lives with and is cared for by her parents. The applicant responded that her son was with her husband's mother for a while because at that time his mother was there and she used to assist looking after the child.
127. The Tribunal put to the applicant that her evidence before the Tribunal referred to an event which she told the Tribunal took place on 8 March 2009. The applicant had told the Tribunal at the hearing [in] August that, after the events of 8 March 2009 she had gone home to the city by taxi. The applicant said this is correct. The Tribunal said that it had asked her at this hearing on a number of occasions about that night and on each occasion, when questioned the applicant had said she had gone home directly from the camping area to her place by taxi and that she had dropped [Ms D] in the city.
128. The Tribunal asked the applicant whether she recalls that at the previous hearing she told the Tribunal that she and [Ms D] took a taxi to the hospital from the camping place because the applicant needed treatment for her injuries. The applicant said she did take

a taxi home and she stopped at the hospital for a short visit. She said she did not tell the Tribunal this today because she stopped there only briefly. She said it was not so bad. She said her nose and mouth were bleeding so she stopped by at the hospital.

129. The Tribunal put to the applicant that at the previous hearing she had told the Tribunal that her injuries were severe and required treatment in hospital; in fact, she had told the Tribunal on the last occasion that she sustained injuries to her shoulder and had required bandaging.
130. The Tribunal put to the applicant once again that it has concerns that her evidence on important aspects of her claim has been inconsistent at two hearings before the Tribunal, and her evidence to the Tribunal has been inconsistent with the contents of her written statement and her evidence provided to the delegate. The Tribunal said this may cause it to come to the view that she has not been completely honest in all of the evidence that she has provided to the Tribunal. The Tribunal said that it may not be persuaded on the basis of her evidence that she is gay. The applicant asked the Tribunal why, if she were not gay and her relationship had not been discovered her husband would have acted violently towards her. The Tribunal said that it could not speculate on this.

FINDINGS AND REASONS

131. On the basis of the passport issued to her the Tribunal accepts that the applicant is a Mongolian national.
132. The applicant claims that she is lesbian and came to a realisation about her sexuality as a young 22 year old student. She claims to have had three lesbian relationships; one in Russia and two in Mongolia.
133. The applicant is a highly educated woman having completed her PhD in Russia in 2006. She subsequently went to the USA to study English from late 2006 until June 2008. In the USA the applicant commenced a relationship with a Mongolian man whom she had known in Mongolia although there was no relationship between them at that earlier time. The applicant became pregnant and returned to Mongolia with her defacto husband in June 2008 to await the birth of the baby which was born [in] November 2008.
134. The applicant claims that shortly after the birth of the child she met a woman in Mongolia and commenced a sexual relationship with her. Her defacto husband discovered the relationship and reacted violently towards the applicant. She claims that he beat her and mistreated her.
135. The applicant claims to fear serious harm in Mongolia from her defacto husband who has sought to harm her since learning of her lesbian relationship. She said that she believed that her life was in danger in Mongolia. She claims that she will not be protected by Mongolian law enforcement agencies because homosexuality is not accepted in Mongolia and it is not tolerated by people.
136. The Tribunal held two hearings with the applicant. It has formed the view that she has not provided an honest and truthful account of her experiences in Mongolia. It comes to this finding for a number of reasons. In the first place the applicant provided

inconsistent evidence to the delegate and before the Tribunal on matters which go to the heart of her claims. Furthermore her account of her experiences before the Tribunal was vague and often internally inconsistent.

137. The Tribunal observed that at the hearings the applicant appeared to be despondent. It asked her about her well being and she explained that she sorely misses her child and he is constantly on her mind. The Tribunal asked whether she has sought any medical assistance in this regard and she told the Tribunal that she has not done so. The applicant did not provide medical evidence that she suffers from any physical or psychological condition. She did not say that she felt unable to take part in the proceedings. The Tribunal formed the view over two hearings that the applicant understood the nature of the proceedings and was able to provide her evidence.
138. Before the Tribunal the applicant claimed that her de facto husband discovered her lesbian relationship in the night of 8 March 2009. This was Women's Day; the applicant said it was a Friday evening and she and her defacto husband had gone to stay at the summer house of her lesbian partner for the evening. At the interview with the delegate the applicant said that the first time she suffered mistreatment from her husband was when he discovered her lesbian relationship. She said that this was in May or June 2009 when she was at the camp. She told the delegate that she was so badly injured that she was admitted to hospital for the month of June and required an operation for her injuries.
139. At the first hearing the Tribunal asked the applicant about the events of the evening of 8 March 2009 and into the next morning. It asked her particularly about how she and her lesbian partner left the scene and their actions immediately thereafter. At the first hearing the applicant gave an account of the journey back to her home. She told the Tribunal that she and her partner went by taxi to a hospital where she received treatment for her injuries. She told the Tribunal that they were at the hospital for some three hours and she received treatment for an injured arm or shoulder. Thereafter she told the Tribunal that she and her partner took a taxi back to her parents' home; her partner remained there with her for a while and then left. When questioned by the Tribunal about the particular hospital the applicant said that it is the main hospital in Ulaanbaatar, although she also said that the taxi driver suggested that they should go to the hospital which *specialises in arms and legs* She could not give the name of the hospital. At the resumed hearing [in] August 2010 the Tribunal again questioned the applicant about the events of the night of 8 March and the early morning of the following day. The applicant told the Tribunal that after the discovery by her husband she and her partner left the place and took a taxi back to the city; in the city she said that she dropped her partner and then went to her home in [Suburb A]. At the first hearing the applicant told the Tribunal that after she was injured by her husband during the events of 8 March she and her partner took a taxi to the hospital. She told the Tribunal that she required treatment for injuries to her shoulder and arm and they had both been at the hospital for some three hours. The Tribunal recalled the description the applicant had given about the medical treatment she received at that time.
140. The Tribunal put these significant inconsistencies to the applicant at the hearing and invited her to respond. She told the Tribunal that she took a taxi home; she did not mention the visit to the hospital this time because it had been a brief visit only because her state was not that serious; she added that she had a bleeding mouth and nose.

141. The applicant gave evidence which was inconsistent before the delegate and the Tribunal on other matters. She told the delegate that her son was being cared for by her husband's parents and her parents were not permitted to see him. They could only call to inquire about him. She told the delegate that her husband says that she is a bad woman and he will not allow their son to live with her. Before the Tribunal the applicant said that her son was with her when she was in Mongolia and has been in the care of her parents since she left Mongolia. The father, to her knowledge has not had contact with him although she learned from her parents that he sent the child a present at New Year.
142. At the hearing [in] July 2010 the Tribunal asked the applicant about her employment in Mongolia. She said, inter alia that when she returned to Mongolia from the USA in June 2008 and after the birth of her son in November 2008 she did not engage in employment. The Tribunal put to the applicant later in the hearing that information provided by her in the application for the visitor visa and documentation provided in support of the visa application in November 2009 was to the effect she was currently employed at the [education provider deleted: s.431(2)] as a consulting teacher and earning a salary of 1,000,000 to 2,000,000MNT. When the Tribunal invited the applicant to respond to this information she then said that she was employed on a part-time basis at the university up until the time she made the application for the visa in November 2009; she then ceased employment.
143. At the hearing the Tribunal asked the applicant about her relationship with her lesbian partner. It asked when the relationship became a sexual one. The applicant responded that she and her partner shared sexual relations for the first time on the evening of 8 March 2009 which she claims was the time her de facto husband discovered them. In her written statement the applicant has said that she went to her partner's summer house on the edge of the city. According to her statement they went there at weekends; that is how the relationship started and no-one else knew that they were meeting there to have sex. She continues in the written statement that she told her de facto husband that she just went to spend time out of the city. According to the statement this was at a time before her husband became aware of a lesbian relationship and therefore before 8 March 2009.
144. The Tribunal discussed the applicant's relationship with her defacto husband. As the Tribunal put to the applicant it questions that if she had come to a view about her sexuality; if she had come to the view that she is lesbian, that she would have entered into and pursued a marital type relationship with a man as the applicant claims to have done throughout 2007 and 2008. At the hearing she told the Tribunal that when she and her de facto husband returned to Mongolia in 2008 the relationship was still ongoing and it was her intention to remain in the relationship.
145. The Tribunal finds implausible that the applicant would have engaged in sexual relations with her lesbian partner in a room beside the room where her husband was sleeping as the applicant claims to have done in March 2008. Even if he was intoxicated as the applicant claims was the case the Tribunal questions that the parties would have engaged in this behaviour some four hours after the husband had gone to bed in the next room. Furthermore, the Tribunal found that the applicant's evidence in relation to the events after his discovery, particularly in relation to the actions, reactions and actual whereabouts of herself, her husband and her partner was vague and confused.

146. At the interview with the delegate [in] April 2010 the delegate asked the applicant whether she had socialised in the gay community since she had been in Australia. She said that it is really difficult for her. She said that her first priority in Australia is to use her education. The delegate asked the applicant to describe any approach or any interaction within the gay community since coming to Australia. The applicant did not refer to any meeting or event or indeed any contact with the gay community in Sydney. At the hearing [in] August 2010 the Tribunal asked the applicant who, in Australia knows that she is gay. She told the Tribunal that she went to a place on Oxford Street, Kings Cross in March 2010. She described her chance meeting with a gay woman outside a gay venue on Oxford Street and her introduction and subsequent visits to a second gay bar also on Oxford Street. The applicant did not know the names of the venues and she could not provide particulars of any of the women whom she claimed to have spoken to at either venue. As the Tribunal put to her at the hearing it questions why she did not provide this same information to the delegate when questioned on the same matter just a month or so after the first meeting, allegedly in March.
147. On the basis of the evidence before it the Tribunal is prepared to accept that the applicant had a spousal relationship of more than two years duration from 2007 until 2009. It accepts that the applicant has a child of the relationship born [in] November 2008. Beyond that the Tribunal does not accept, on the basis of the applicant's inconsistent and uncertain evidence that the applicant is lesbian and it does not accept that her lesbian relationship was discovered by her husband in the circumstances she has described. The Tribunal does not accept that the applicant's husband beat and mistreated her because he found out that she is lesbian. It follows that the Tribunal does not accept that the police failed to protect the applicant from harm for the reason that she is lesbian.
148. The Tribunal notes that in her written claims the applicant states that her husband, in the company of the police discovered her with her lesbian partner at premises which belonged to a relative of the partner in September 2009. The applicant says that she and her partner were taken to the police station and were told by the police that they are bloody perverts. The Tribunal notes that the applicant told the delegate that she separated from her husband in August 2009 and has not seen him since then. At the hearing the Tribunal questioned the applicant at length about her activities, her residential addresses and her contacts with her husband after the events of March 2009. She said that she lived with her parents from about May 2009 until she left Mongolia in December 2009. She said that her husband made threats against her. She did not mention the incident which allegedly took place in September 2009 and she did not describe any actual harm inflicted by her husband over the period that she was living with her parents. The Tribunal does not accept that the applicant was discovered with her lesbian partner in September 2009 as claimed in her written statement. It follows that the Tribunal does not accept that they were insulted by police on that occasion.
149. The Tribunal has formed the view that the applicant may have experienced some hardship in Mongolia but it does not accept that this was for the reason that she is lesbian or was suspected of being lesbian either by her de facto husband or by any other person. Furthermore, because the applicant was found not to be credible or truthful in her evidence the Tribunal cannot be satisfied that she was the victim of domestic violence perpetrated by her de facto husband.

150. For all of the reasons outlined the Tribunal does not accept the applicant's claim that she is lesbian and that she suffered harm at the hands of her de facto husband for that reason. The Tribunal finds that there is no real chance that she will suffer serious harm in the future in Mongolia for the reason that she is lesbian or perceived to be so.
151. Accordingly the Tribunal is not satisfied that the applicant has a well-founded fear of persecution for a Convention reason on her return to Mongolia or that there is a real chance that she would face serious harm for a Convention reason in the reasonably foreseeable future on return to Mongolia.

CONCLUSIONS

152. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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