

1000979 [2010] RRTA 261 (14 April 2010)

DECISION RECORD

RRT CASE NUMBER: 1000979

DIAC REFERENCE(S): CLF2009/147431

COUNTRY OF REFERENCE: Nepal

TRIBUNAL MEMBER: Andrew Jacovides

DATE: 14 April 2010

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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 Nepal, arrived in Australia [in] September 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] November 2009. The delegate decided to refuse to grant the visa [in] January 2010 and notified the applicant of the decision and his review rights by letter [on the same date].
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] February 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 CLF2009/147431, with the protection visa application and the delegate's decision, and the Refugee Review Tribunal (RRT) file 1000979, with the review application.
20. The applicant appeared before the Tribunal [in] April 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Nepali and English languages.
21. The applicant was represented in relation to the review by a registered migration agent.
Department's file CLF2009/147431
22. The applicant stated in his protection visa application that he was a citizen of Nepal. He stated that he was born in [Village A], [District 1], in Nepal, on [date of birth deleted: s.431(2)]. He described himself as a Chhetri Hindu. He stated he was a farmer and he lived at the same [District 1] address from 1999 until 2009. He indicated that his wife, three children, parents, and four siblings, were living in Nepal.
23. The applicant submitted a partial copy of his passport which was issued to him by the government of Nepal and various other documents in Nepali without translations. His adviser stated that translations would be provided on a later date.
24. The Department received a submission from the applicant's adviser on 30 November 2009. He submitted a statement by the applicant; a certified translation of the applicant's 'relationship certificate'; and a letter from the district police in Nepal.
25. The applicant claimed that he and his father were members of the Communist Party in Nepal. He stated that his party opposed the Maoists. He stated that the Maoists asked him and his father to join the party and they subjected them to "physical and mental torture" when they refused to join. He stated that they suffered ongoing harassment from the Maoists with persistent demands for donations. He stated that when they complied the authorities would target them as Maoist sympathisers. He stated that either way they were targeted by the Maoists and the authorities. The applicant stated that if they did not give donations to the Maoists they would have been killed. He claimed that he suffered constant beatings from the Maoists and targeting by the security forces.
26. The applicant stated that sometimes he fled to India to hide and sometimes he sought assistance from relatives in the armed forces but eventually he would be forced to return to his village and the Maoists would target him again. He stated that he could not remain in India because he did not know the language and he had no income there. He stated that he had to remain hidden and he could not survive in India.

27. The applicant claimed that in 1998 his father divided the land in three, one third for each of his sons, and his parents moved to an area where the security forces were in control. He stated that he remained on the farm but he suffered ongoing targeting by the Maoists. The applicant claimed that when the civil war ended and the Maoists came to power they did not “relinquish their negative behaviours and their activities”. He stated that the torture and beatings continued. The applicant claimed that he was forced to sell his land and move to a house in [Village B] where he opened a small mixed business, [details deleted: s.431(2)]. He claimed that the Maoists were still demanding donations and he gave them small amounts. He claimed that they demanded increasing sums and they threatened to burn down his house if he did not comply.
28. The applicant claimed that he received a notice from the Maoists telling him that he had to make donations regularly or he would be killed. He stated that he missed one payment, when he was in Kathmandu, and during his absence the Maoists burned down his house [in] July 2009. He stated that his son and wife were injured in the fire. He claimed that the Maoists took their cash and valuables [details deleted: s.431(2)].
29. The applicant stated that he and his family were homeless and unable to obtain assistance from anyone. He stated that the Maoists were still threatening to kill them. He claimed that his wife and children fled to another district on the Indian border and away from the Maoist threat. He stated that he was forced to flee the country. The applicant stated that the government “said they will punish those Maoists who have burnt” his “house but they are not able to catch them or recognize them or would not dare to do that”. He stated that the authorities are unable to provide security for the citizens of Nepal.
30. The document from the *District Police Office*, in [District 1], dated [in] October 2009, states that the applicant’s home was burnt by Maoist activists because he did not pay donations. The *Relationship Certificate* provides details regarding the applicant’s family.
31. The applicant was interviewed by the delegate on 14 January 2010. The Tribunal has listened to the interview.
32. The applicant essentially repeated his claims. He stated that on [date deleted: s.431(2)] 2066 (which according to the conversion tables at <http://www.rajan.com/calendar/convertn.asp> , was [in] July 2009) his house was burnt down by Maoists. He stated that he contacted the police but the perpetrators fled and the house/business burned to the ground. The applicant claimed that the police knew that Maoists were responsible but they told him that they could not do anything to assist him. The delegate asked the applicant why he approached the police in October 2009 when the house was destroyed in July 2009. The applicant stated that he had to take his son and wife to [City 1] for treatment. He stated that he left the two other children with his sister and when they were discharged they moved to his uncle’s house in a town near Kathmandu. He claimed that after his son was released from hospital he went to the police.
33. The applicant essentially repeated his written claims regarding his political beliefs and activities. He stated that he fled to India in 1997 for two months and in 2000 for five months. He was asked why he did not go to India in 2009 when he faced difficulties with the Maoists. The applicant stated that he had a large family and they could not relocate to India and survive there. He stated that he was forced to send his wife to her relatives. He stated that he did not go to India because he could not get work there.

34. The applicant claimed that he was harassed by Maoists even after they burnt his house. He stated that they were still demanding money from him and he feared that he will be harmed by Maoists in the future for the same reasons. He stated that no one will be able to assist him or protect him from the Maoists.
35. The delegate essentially found that the applicant lacked credibility and she did not accept his claim that he was targeted by Maoists for reasons of political opinion.

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36. The applicant did not provide any claims and evidence in support of the review application.

The hearing

37. The applicant attended the hearing with his cousin. He essentially repeated the claims he provided to the Department. The applicant stated that his difficulties with the Maoists began in [Village A] and then followed him to [Village B] when he moved there in 2003. He stated that [Village A] and [Village B] were in the [District 1] region [direction deleted: s.431(2)] of Kathmandu. He indicated that the two towns were approximately a two hour drive from each other. He stated that he often returned to [Village A] from [Village B].
38. The applicant claimed that he was considered an enemy of the Maoists because he and his father refused to join the party during the civil war. He claimed that when the civil war ended, and the Maoists were in power, the abuse continued. He claimed that despite the government rhetoric the Maoists were still harassing and targeting ordinary people like him. The applicant claimed that he left [Village A] to avoid the Maoists but they followed him to [Village B] and demanded money from him He stated that he complied until in 2009 they told him that they wanted 300,000 rupees and he was unable to pay them The applicant claimed that the Maoists assumed he had money because he ran the small business. He stated that he missed the deadline for payment and they burnt down his house He stated that his son and wife were injured in the attack. He claimed that the police were informed but they indicated to him that they would not or could not take any action against the Maoists.
39. The Tribunal commented that the applicant's difficulties in Nepal appeared to be confined to a particular place and time. He was asked if he could be safe from the Maoists by relocating to another part of the country such as where his wife is now living or to a major town like Kathmandu He stated that his wife was effectively in hiding and he could not be in hiding and earn a living to support the family. He claimed that even in Kathmandu he would be targeted by Maoists because his family has been in conflict with the Maoists since the civil war started. The applicant stated that he could be safe for a while but then they would find him and harass him again. He stated that they were determined to ruin him (financially). The Tribunal asked the applicant to provide information regarding other family members in Nepal. He stated that his parents left the village when the land was divided and then moved to the other side of Nepal. He stated that they subsequently lost contact with each other and he has not been able to find them. He stated that he had relatives on the border with India, where his wife was currently staying, but they found it difficult to survive there.
40. The Tribunal indicated to the applicant that it will have to consider whether he can avoid the harm he anticipates in [District 1] region by relocating to another place within Nepal The applicant stated that the Maoists are targeting their opponents, people such as him who have a history of conflict with the Maoists, with impunity. He stated that they can target anyone and

there is no recourse to assistance or protection from the authorities. He stated that the authorities in [Village A] and [Village B] knew of the difficulties he was having with the Maoists, and they sympathised with his predicament, but they could not intervene. He stated that the Maoists could do whatever they wanted to do.

41. The Tribunal discussed with the applicant how money was demanded from him and how the transactions were made. He stated that he received notices from the Maoists essentially stating that the central command of the party required his assistance. He stated that he would be given a sum to pay which the Maoists thought he could pay. The applicant stated that they would then come to his house, take the money, and issue him with a receipt. He stated that it was done in way which gave the impression that it was a legitimate donation. He stated however that it was extortion. The applicant stated that when he received the demand for 300,000 he told the Maoists that he did not have the money and he could not pay it. He stated that they did not believe him. The Tribunal asked the applicant how he could finance his journey to Australia if he did not have the 300,000 to pay the Maoists. He stated that he borrowed money from a money lender to pay for his journey to Australia. He stated that the money lender told him that if he was using the money to go overseas (and work) he could have the loan otherwise he could not have the money.
42. The applicant stated that he tried various ways to avoid targeting by the Maoists but he and his whole family have been harassed, physically assaulted, and financially ruined, by the Maoists. He stated that if he returns to Nepal he may be killed by the Maoists and the authorities can do nothing to protect him. He claimed that the young Maoists, the youth wing, are more vicious in their attacks than the older Maoists. He stated that they burnt down his house.

Information from external sources

43. The Tribunal considered information from external sources relating to human rights conditions and security in Nepal. The reports indicate that whilst human rights conditions have improved since the end of the civil war, the Maoists are still targeting opponents. The reports further indicate that the authorities have not demonstrated an ability to provide adequate protection for persons or organisations targeted by the Maoists. The information indicates that the violent youth wing of the Maoists, the YCL, is continuing to harass and intimidate opponents with impunity. The Tribunal has considered the following information:
 - United Nations Office of the High Commissioner for Human Rights 2007, *Human Rights in Nepal: One year after the Comprehensive Peace Agreement*, 12 December;
 - US Department of State 2009, *2008 Country Reports on Human Rights Practices*, Nepal, February;
 - US Department of State 2010, *2009 Human Rights Report: Nepal*, 11 March;
 - UN High Commissioner for Human Rights 2008, *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office, including technical cooperation, in Nepal*, A/HRC/7/68, UNHCR Refworld, 18 February 2008;

44. The majority of the reported attacks against Maoists opponents were undertaken by the Youth Communist League. Sources state that Maoists used threats and intimidation against opposition political parties and were implicated in violent activities and human rights abuses. A 2006 report by the *Asia Centre for Human Rights* on Internally Displaced Persons (IDPs) in Nepal states that a majority of IDP'S are cadres from political parties opposed to the Maoists (Asia Centre for Human Rights 2006, *Nepal: One Year of Royal Anarchy*, 30 January, p.76).
45. The US Department of State reported that Maoists were implicated in violent activities and that political parties had complained of ongoing threats and intimidation by Maoists (US Department of State 2007, *Background Note: Nepal*, US Department of State website, May, <http://www.state.gov/r/pa/ei/bgn/5283.htm> – Accessed 25 May 2007).
46. The UK Home office reported that Maoist rebels were implicated in human rights abuses since the ceasefire, “including killings, abductions, torture, and extortion” and forcible recruitment of “child soldiers” (UK Home Office 2007, *Operational Guidance Note: Nepal*, European Country of Origin Information Network website, 23 March, http://www.ecoi.net/file_upload/432_1175069868_nepalogn.pdf - Accessed 4 June 2007).
47. The Youth Communist League has undertaken ongoing coercive activities against political opponents, including intimidation and physical attacks. Sources claim that the YCL contains ex-Maoist combatants and is being used by the Maoists to maintain an intimidating presence throughout Nepal and outside the scope of United Nations scrutiny. The major political parties have raised concerns regarding the aggressive behaviour of the YCL (‘Young Communist League, Nepal’(undated), *Wikipedia*, http://en.wikipedia.org/wiki/young_communist_league,_nepal – Accessed 31 May 2007).
48. *Scoop Independent News* reported that the YCL was implicated in aggressive attacks against political opponents (Rajat, K.C. 2007, ‘Young Communist League Or Young Criminal League’, *Scoop Independent News*, 24 May, <http://www.scoop.co.nz/stories/hl0705/s00430.htm> – Accessed 31 May 2007).
49. An article by the South Asia Analysis Group described the YCL as a “law unto themselves”. According to the report the YCL has been used as a deliberate strategy by the Maoists to “create disturbance and to keep the country in an unsettled condition” (Chandrasekharan, S. 2007, ‘NEPAL: Law & Order should be restored first before CA elections are thought of, Update No.127’, *South Asia Analysis Group website*, 26 May, <http://www.saag.org/%5cnotes4%5cnote385.html> – Accessed 31 May 2007).
50. The UN Security Council reported in October 2008 and January 2009 that the most immediate challenge for Nepal is to integrate and rehabilitate Maoist army personnel. The reports indicate that, on a national political level, there is a lack of cooperation between the CPN-M and the National Nepali Congress Party (NCP) (the main opposition party). The NCP and other political parties continue to accuse the Maoists of using terror tactics to achieve their goals. The NCP has demanded that the Maoists disband the paramilitary structure of the YCL and return seized lands. The Maoists have promised to disband the paramilitary structure of the YCL but media reports indicate that the YCL continues to be active. The January 2009 UN Security Council report states that the proliferation of militant youth groups “increases the risk of local violence and, when such groups engage in purported law-enforcement activities, runs counter to efforts to re-establish the rule of law” Political leaders have expressed doubts as to whether the Maoist leadership actually has control over the YCL.

There are also allegations that the central Maoist leadership are “unable to control incidents of intimidation, threats and extortion carried out by party workers” (*IRIN*, 24 December 2008) (for the UN Security Council reports, see: UN Security Council 2009, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, S/2009/1, ReliefWeb website, 2 January [http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/TUJA-7N57TG-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/TUJA-7N57TG-full_report.pdf/$File/full_report.pdf) – Accessed 13 January 2009 and UN Security Council 2008, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, S/2008/670, UNHCR Refworld website, 24 October <http://www.unhcr.org/refworld/docid/4909c3052.html> – Accessed 9 January 2009; Sarkar, S. 2009, ‘Nepal: Maoists face UN criticism’, International Relations and Security Network website, 12 January <http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/?lng=en&id=95232> – Accessed 13 January 2009; ‘YC pledges to implement pact’ 2009, *eKantipur*, 3 January <http://www.kantipuronline.com/kolnews.php?&nid=173439> – Accessed 8 January 2009; ‘Former Maoist rebels causing trouble’ 2008, *IRIN*, 24 December <http://www.irinnews.org/Report.aspx?ReportId=82081> – Accessed 8 January 2009).

51. Nepal's Maoist Prime Minister Prachanda resigned in 2009. This crisis was based in part on accusations by the army that the Maoists have not fulfilled their commitment to dismantle the paramilitary structure of their feared youth wing (*ABC News*, 2009, Nepal's PM resigns triggering political crisis, 4 May, at <http://www.abc.net.au/news/stories/2009/05/04/2560683.htm>).
52. The US State Department previously noted that Maoists regularly extorted money. When individuals or organisations could not, or refused, to pay, “Maoist recrimination frequently was violent or implied the threat of violence.” (Freedom House 2009, *Freedom in the World 2009 – Nepal*, 16 July <http://www.unhcr.org/refworld/topic,4565c2254d,,4a6452972d,0.html> – Accessed 27 November 2009).
53. The UN Office for the Coordination of Humanitarian Affairs reportedly stated that “there were occasional credible claims that Maoists interfered with the operations of international NGOs” (US Department of State 2009, ‘Section 4’ in *Country Reports on Human Rights Practices for 2008 – Nepal*, 25 February). The UN reportedly stopped moving their vehicles in one district of Nepal after a UNICEF vehicle was seized by Maoists (Bhatta, Shivaraj 2009, ‘Bandh disrupts vehicles in Kailali’, *Himalayan Times*, 25 December).
54. DFAT has advised that there are increasing reports of threats and abductions throughout Nepal mainly targeting those people who are known to have enough funds to pay ransoms. The DFAT advice indicates that the attacks are not related to any discrimination or religious affiliation (DIAC Country Information Service 2009, *Nepal: Country Information Report No. 09/58 – CIS Request No. NPL9770; Discrimination*, (sourced from DFAT advice of 3 August 2009), 5 August).
55. The US Department of State *2009 Human Rights Report: Nepal* states that “Maoist militias engaged in arbitrary and unlawful use of lethal force and abduction. Violence, extortion, and intimidation continued throughout the year” The report states that “impunity of human rights violators” was one of several serious problems facing the citizens of Nepal.

The Treaty of Peace and Friendship

56. The Tribunal considered information regarding the *Treaty of Peace and Friendship* between India and Nepal. The treaty enables the citizens of one country to live in the other. Advice was sought from the Department of Foreign Affairs and Trade (DFAT) regarding the operation of the treaty. DFAT stated that many citizens of Nepal live in India. DFAT was asked whether the treaty has been incorporated into India's domestic law. DFAT advised that the treaty has not been incorporated into domestic law in India (Department of Foreign Affairs and Trade 2006, *DFAT Report 554 - RRT Information Request IND30728*, 23 October).
57. The *BBC News* reported in April 2008 that the treaty faced an uncertain future in the light of the Maoists election win. According to the October 2008 UN Security Council report, the Governments of India and Nepal have agreed to set up a committee to review, adjust and update the treaty (Majumder, S. 2008, 'India worries over Nepal's future', *BBC News*, 14 April http://news.bbc.co.uk/2/hi/south_asia/7347227.stm – Accessed 13 January 2009; UN Security Council 2008, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, S/2008/670, UNHCR Refworld website, 24 October <http://www.unhcr.org/refworld/docid/4909c3052.html> – Accessed 9 January 2009).

FINDINGS AND REASONS

58. The applicant claims to be a citizen of Nepal. The Tribunal has considered the evidence he provided relating to his identity and nationality, including his passport, and it accepts that the applicant is a citizen of Nepal.
59. The applicant claims that he was targeted by Maoists in Nepal and the authorities were unable to protect him. He claims that he faced life-threatening harm by the Maoists, and in July 2009 his house was burnt down, because he could not meet their demands. The applicant claims that he and members of his family were threatened after the house was burnt and they found it necessary to flee and go into hiding. The Tribunal accepts these claims.
60. The applicant claims that an adverse political opinion has been attributed to him by the Maoists because of his family background and the ongoing conflict that his family has had with the Maoists. The applicant claims that members of his family were targeted as opponents of the Maoists. He claims that he will face life-threatening harm by Maoists in Nepal, including the youth wing (the YCL), for reasons of political opinion. The applicant claims that he will not have access to meaningful protection by the state as the Maoists can pursue their opponents with impunity.
61. The Tribunal is satisfied that significant and positive political developments have taken place in Nepal since the end of civil war in 2006. The Tribunal is satisfied that Maoists and the authorities no longer commonly subject civilians to human rights violations as they did during the civil war. The Tribunal finds that in general both sides have demonstrated a willingness to end the hostilities in Nepal and the Tribunal is satisfied that there is sufficient evidence to support the view that security will continue to improve in the reasonably foreseeable future.

62. However, despite positive human rights and security developments in Nepal, the Tribunal finds that Maoists continue to target their opponents with impunity. The Tribunal is satisfied that persons such as the applicant who are seen as opponents or enemies of the Maoists are at risk of serious harm by the Maoists.
63. The Tribunal accepts the applicant's claim that he was subjected to persecution by the Maoists when his house was attacked and burnt to the ground. The Tribunal has formed the view that the applicant was targeted for money and revenge but the essential and significant reason for the targeting was his political opinion and the political opinion that has been attributed to him by the Maoists. The Tribunal finds that the Maoists in general, and the YCL in particular, targets opponents with impunity and the applicant faces the risk of serious harm by the Maoists because of real or imagined political opinion. The Tribunal finds that the applicant cannot currently, or in the reasonably foreseeable future, safely return to Nepal or express his views regarding the Maoists without attracting the adverse interest of the Maoists.
64. The Tribunal considered information from external sources regarding the government's ability to protect persons who are targeted by the Maoists. The Tribunal has formed the view that the government has not been able to provide adequate protection to individuals or organisations targeted by the Maoists. The Tribunal accepts the applicant's claim that the government will not be able to provide him with a reasonable level of protection if he is targeted by the Maoists.
65. The Tribunal has considered whether the applicant can avoid harm in Nepal by relocating internally. The Tribunal has formed the view that the most immediate danger for the applicant is in the [District 1] region where he is known by the local Maoists. Relocation for the applicant within the country could in the Tribunal's view reduce the risk of harm substantially. Nevertheless, the Tribunal finds that even with relocation the applicant's views regarding the Maoists, and the long conflict he has had with the Maoists in his region, will continue to place him at risk of harm. The Tribunal accepts the applicant's claim that Maoists are active throughout the country and his political views alone will attract the adverse interest of the Maoists.
66. The Tribunal has considered whether the applicant can avoid persecution in Nepal by living in India under the terms of the *Treaty of Peace and Friendship*. The Tribunal is satisfied that the applicant has the right to enter and reside in India under the terms of the treaty as he has done previously. Nevertheless, the Tribunal is not satisfied that this right to enter and reside in India is a legally enforceable right and the Tribunal cannot be satisfied that the applicant will be able to remain in India indefinitely while he is still at risk of persecution in Nepal.
67. Accordingly, the Tribunal finds that there is a real chance that the applicant will suffer serious harm amounting to persecution by Maoists in Nepal for reasons of political opinion.

CONCLUSIONS

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

DECISION

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer's I.D. prrt44