

1104154 [2011] RRTA 718 (18 August 2011)

DECISION RECORD

RRT CASE NUMBER: 1104154

DIAC REFERENCE(S): CLF2011/1734

COUNTRY OF REFERENCE: Nepal

TRIBUNAL MEMBER: Belinda Wells

DATE: 18 August 2011

PLACE OF DECISION: Adelaide

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 on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] August 2010 and applied to the Department of Immigration and Citizenship for the visa [in] January 2011. The delegate decided to refuse to grant the visa [in] April 2011 and notified the applicant of the decision.
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 2011 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, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
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.
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. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection

is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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 and Tribunal's files relating to the applicant. The Tribunal has also had regard to country information available to it from a range of sources.
20. According to the application the applicant is a [age deleted: s.431(2)] male Nepalese citizen of Hindu religion from the Chhantyal ethnic group who was born in [Town 1], Nepal and who arrived in Australia [in] August 2010 using a false Nepalese passport (number deleted: s.431(2)) in the name "[Mr A]", and has also held a Nepalese passport ([number deleted: s.431(2)]) in the name "[the applicant]".
21. The applicant states in the application forms that he has never been married or in a defacto relationship. He states that his parents, two sisters and one brother live in Nepal.
22. The applicant states in his application that since he was born he has lived at [Village 2], [Town 1] and at [Suburb 3], Kathmandu in Nepal. The applicant states that he undertook his school education in Kathmandu and completed secondary school in July 2008. He states that during 2008 he obtained a Grade XII in Management.
23. The applicant states that he is a loan officer, and that from August 2009 until August 2010 he worked as a loan officer for [Employer 4] in Kathmandu.
24. In his application the applicant provides the following response to the question of why he left Nepal:

"I left Nepal because of my safety reasons. I have been targeted by the Maoists YCL because of my political opinion. The Maoists see me an enemy as I am an active and committed supporter of the monarchy in Nepal and I have been targeted by the Maoists for that reason. I left Nepal with the assistance of a Nepalese agent for my safety reasons. Please see the statement which will be forwarded shortly."

25. In response to the question in the application form "What do you fear may happen to you if you go back to that country?", the applicant says: "See my statement which will be forwarded shortly".
26. The applicant states in the application form that he believes that "Maoists YCL and anti-monarchists" may harm him if he returns to Nepal because of his political views.
27. In response to the question in the application form "Do you think the authorities .. will protect you if you go back", the applicant says "Please see the statement which will be forwarded shortly".
28. In support of his application the applicant provided two Nepalese passports. The first passport was issued in the name of "[Mr A]" and included a subclass 572 visa label indicating that the holder was granted a subclass 572 visa [in] January 2009 which allowed multiple entries, and

that the holder entered Australia [in] February 2009 and then again [in] August 2010. The second passport was issued in the name [the applicant] in [Village 2], [Town 1] [in] October 2010.

29. [In] February 2011 the NSW Document Examination Unit within the Department reported that in its view the two Nepalese passports were legitimately manufactured documents that had been fraudulently altered.
30. [In] February 2011 the applicant attended an interview with a Departmental officer. During the interview the applicant said that he had sent a statement to the Department. The Departmental officer said that he had not received the statement. During the interview the applicant said that he would send his identity documents to the Department, including his driver's licence, his Nepalese citizenship certificate, educational documents, and a work reference.
31. [In] February 2011 the Department received a statement from the applicant (written in Nepalese, with an English translation). In the statement the applicant made the following claims:
 - He wants the monarchy to be reinstated in Nepal because he firmly believes that it would play a key role in unifying the nation's culture, and protect the national integrity and geographical diversity of Nepal.
 - In April 2008 he went to his home village in [Town 1] and joined the Rastriya Prajatantra Party, Nepal ("RPP-N") because of his belief in the monarchy. He tried to persuade the villagers to join the RPP-N and held a public awareness program in his village and made a speech.
 - Maoists attacked him on the way home from a RPP-N party meeting which had been held [in] May 2009 in [Town 1] District Headquarters, [Town 1]. The Maoists used bricks and rods during the attack. He stayed for two days in his village and went to Kathmandu due to his fear of being killed by local Maoists.
 - From August 2009 to August 2010 he worked as a loan officer with [Employer 4]. He obtained the job through the assistance of his school friend.
 - Maoists asked him to get involved with their Party and to leave his work and become completely committed to the Maoists. He resisted. He was not able to voice his political opinion in Nepal because of the Maoists' threats.
 - He was forced to resign from his job because the harassment from the Maoists (YCL).
 - The Maoists threatened that they would kill him next time if he continued being a member of the RPP-N and expressed his views in favour of the monarchy.
 - The YCL warned him that they would kill him, and he had been hiding from the YCL. He could get killed anytime if he was found.
 - He went to the police when he received the threat from the YCL and asked the police to protect him, but the police told him that they could not provide him with 24 hour security.
 - He was hiding every day from the Maoists, and lived in constant fear of persecution.

- He came to Australia [in] August 2010 using a bogus passport which he obtained from a Nepalese agent in Kathmandu.
32. [In] February 2011 the Department received various documents from the applicant, including the following:
- Family Relationship Certificate from Office of the Village Development Committee, [Village 2] [Town 1] (in English);
 - Driver's licence for the applicant, with photograph, stating that the applicant's date of birth is [date deleted: s.431(2)] (In Nepalese and English)
 - Letter from the Manager of [Employer 4] in Kathmandu dated [date deleted: s.431(2)] certifying that the applicant worked there as a loan officer from August 2009 to August 2010 (in English);
 - Identity card for the applicant from [Employer 4], dated [date deleted: s.431(2)] stating that the applicant is a loan officer and including a photograph;
 - Letters from the Academic Director and a Faculty Member of [school deleted: s.431(2)], both dated [in] March 2009 and in English, recommending the applicant for further study;
 - Provisional Certificate issued by the Higher Secondary Education Board Nepal on [date deleted: s.431(2)] stating that the applicant passed the Higher Secondary Education Board examination held in [year deleted: s.431(2)] with second division (in English);
 - Character Certificate from [school deleted: s.431(2)] dated [date deleted: s.431(2)] stating that the applicant obtained 56.8% in his course, including a photograph of the applicant;
 - Academic transcript from the Higher Secondary Education Board Nepal issued on [date deleted: s.431(2)] setting out the marks obtained by the applicant in [years deleted: s.431(2)] and stating that for Grade XI and XII the applicant achieved an aggregate mark of 56.8, which is the second division;
 - School Leaving Character Certificate from [name deleted: s.431(2)] [suburb deleted: s.431(2)], Kathmandu (in English) issued [in] July [year deleted: s.431(2)], including a photograph; and
 - Nepalese citizenship certificate for the applicant issued [in] October 2006 (in Nepalese, with an English translation), including a photograph.
33. The delegate refused the visa application [in] April 2011.

The Tribunal review

34. [In] May 2011 the applicant applied to the Tribunal for review of the delegate's decision. The applicant was not represented in relation to the review by a registered migration agent.
35. The applicant did not provide any documentary evidence, or a submission, to the Tribunal.

36. The applicant appeared before the Tribunal [in] August 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Nepali and English languages.
37. The applicant said that when he was answering the questions in the protection visa application form about why he could not return to Nepal, he wrote his answers in Nepali and then the interpreter translated this into English and typed it into the form. He said that the interpreter read the answers over to him before he signed the form.
38. The applicant said that he was born in [Village 2], in [Town 1] district and he lived there with his parents for about 14 or 15 years until he finished [grade deleted: s.431(2)] at school. He said that he then moved to Kathmandu where he undertook [further studies] at school and lived in a school hostel. The applicant said that he did not return to his village at all whilst he was undertaking [these studies] because of the political situation, but after that he used to return quite regularly to visit his parents.
39. The applicant said that after he had undertaken the [school] exam he went to live at his oldest sister's house in Kathmandu. He said that once he had received his exam results he started at College where he undertook [higher grades].
40. The applicant said that he lived with his sister in Kathmandu for about 5 years, right up until he left for Australia.
41. The applicant said that whenever he had vacations he would travel to the village to visit his parents. He said that the village is very remote and it would take nearly 3 days to travel there from Kathmandu. He said that from the village it was necessary to walk for one day, then take a jeep for 4 or 5 hours, and then travel for one day by bus, to get to Kathmandu.
42. The applicant said that he was sent to Kathmandu to [study] because of the security situation in his village. He said that at that time the Maoists used to come to his village and take young people away to fight for them. The applicant said that whilst he was studying [a particular grade], and after he finished [that grade], the commander in his village kept talking to him, trying to pressure him into forming a group of young people to fight. He said that his parents thought that he was at risk from the Maoists and that is why they decided to send him to Kathmandu for the rest of his schooling.
43. The applicant said that the last time that he returned to his village to visit his parents was about one year before he left Nepal to come to Australia. He said it was in Jestha in 2066 in the Nepali calendar.
44. The applicant said that he has two sisters and one brother. He said that one of his sisters lives in the village and the other lives in Kathmandu. He said that his brother is 4 or 5 years younger than him and he has been to the same school as the applicant and will now go to the same College and live with his sister in Kathmandu.
45. The applicant said that his parents are farmers and live in the village by themselves. He provided their names and said that they are both [ages deleted: s.431(2)]. He said that they believe in the King and support the Rastriya Prajatantra Party, Nepal but they do not attend any political activities. The applicant said that his brother and two sisters are not involved in any political activities but they probably believe in the monarchy. The applicant said that none of his family members have had any problems because of their political views but he and his brother had some

problems in the village because of the political situation and that is why they went to Kathmandu to finish their schooling.

46. The applicant said that his brother could have gone to Pokhara for his schooling but their parents decided to send him to Kathmandu because the applicant was there.
47. The applicant said that it takes about two days to get to Pokhara from his village because it is necessary to walk a long distance. The applicant said that he goes through Pokhara when he is travelling to Kathmandu but he has not spent time there. He said that he knows friends from his village who went to study in Pokhara.
48. The Tribunal asked the applicant whether the RPP and/or the RPP-N have quite a bit of support in Pokhara. He said that he had no idea. The Tribunal asked the applicant whether RPP members have been elected as Mayors or Deputy Mayors in Pokhara or as members of the National Assembly representing Pokhara. The applicant said that he does not know about Pokhara.
49. The Tribunal asked the applicant whether he would have the skills to work as a loan officer elsewhere in Nepal. He said that he has.
50. The applicant said that he provided the original copy of all his identity documents, including his Nepalese citizenship certificate, to the Department. He said that the Department later returned the original documents to him, and he has them at home. The applicant described the process that he followed in obtaining the citizenship certificate. He said that he applied for the certificate when he was about 18 years old because it made it easier for him to do a lot of things: for example, he needed it to obtain a driver's licence, to open bank accounts and withdraw money, and a citizenship certificate is required in order to apply for some jobs.
51. The applicant said that he travelled to Australia on a false Nepalese passport issued in the name of [Mr A]. He described the process in which he met with an agent and paid money to an agent. He said that the whole process, from the time that he first met the agent in a café to the day on which he left Australia with a false passport and an air ticket, took one week.
52. The applicant said that he later obtained a Nepalese passport in his own name because one of his friends told him that he would need a passport as well as a citizenship card for identity purposes. The applicant said that he later realised that this was incorrect advice, but by that time he had contacted his father in Nepal and asked him to organise a passport for him.
53. The applicant said that he completed College about two years before he left Nepal. He said that after he finished College he went back to his village and then returned to Kathmandu. He said that he waited 6 months to receive his results, and he did a computing course.
54. The applicant said that he then met a man named [Mr B], who was the vice president of the student union and also an active leader in the RPP-N. The applicant said that he and [Mr B] have the same political views, and believe that the King is like a God.
55. The applicant said that during his first year after finishing College he spent time visiting places with political people. He said that during this time he travelled to his village and organised a Tea Party there, to persuade people about RPP-N principles, and he also attended a mass meeting in [Town 1].

56. The applicant said that after about one year [Mr B] helped him to get a job. He said that he worked for [Employer 4] in Kathmandu as a loan officer for one year, finishing in the same month that he started.
57. The applicant said that he left his job [in] May after YCL workers came to his workplace to collect money. The applicant said that it was three months from the time that he finished his work and the time that he left Nepal.
58. The Tribunal said to the applicant that he has said that he left his job three months before he left Nepal [in] August 2010, but in the written statement which he provided to the Department he has stated that he worked for [Employer 4] from August 2009 until August 2010. The Tribunal asked the applicant to explain the discrepancy in the information that he has provided.
59. The applicant said that when he was writing the statement he knew that he had worked for exactly one year but he couldn't remember exactly when he had started and finished the job. The applicant said that he is confused with the English dates. He said that he left the job at either the end of July or the beginning of August.
60. The applicant said that after [a date in] May 2010 he didn't go to his job regularly. He said that he only went there intermittently because he had problems. He said that he left his paid job in May but he still went to his workplace at times in order to handover to the new person. The applicant said that there was only one week between him finishing the job and travelling to Australia, and even during that week he went to his workplace intermittently.

Political activities

61. The applicant said that he was a general member of the RPP-N. He said that the RPP-N believes that the King should rule the country. The applicant described the philosophy of the RPP-N and why he joined. He described the difference between the RPP-N and the RPP and named the leaders of the two parties. He said that executive members of the RPP-N have a right to vote and general members do not.
62. The applicant said that he became a member of RPP-N in Jestha 2066, which was about 18 or 19 months before he left Nepal. He said that he joined by paying \$10. He said that he has a RPP-N membership card but it is at his sister's house in Kathmandu. He said that he didn't realise that he would need it in Australia.
63. The applicant said that when he was in Kathmandu he met [Mr B] whom he mentioned earlier, who was an active RPP-N leader within the student union. He said that he helped collect people to attend a large meeting which took place [in] Bhadra 2065 in the Nepali calendar. The applicant said that during the course of this meeting he met the central leaders of the Party. The applicant said that this was about two years before he left Nepal.
64. The applicant said that at the time that he became a member he was living in [Suburb 3] in Kathmandu, but he went to [name deleted: s.431(2)] which is a suburb in Kathmandu where the head office of the RPP-N is situated.
65. The applicant said that after he became a member of the RPP-N, the first activity that he participated in was the three day meeting. He said that he helped to advertise and distribute pamphlets to people.

66. The applicant said that the next activity that he participated in was a national rally in June 2009 in Kathmandu, during which the RPP-N made various demands.
67. The applicant said that he then went to his village and he organised a Tea Party, which was disturbed by the YCL. He said that this was about one year before he left Nepal. He said that the YCL have a big influence in his village, and most people in the village support the YCL.
68. The applicant said that about 10 to 15 people attended the Tea Party that he organised. He said that during the Tea Party about 20 people from the YCL arrived. He said that the YCL people told him that he cannot organise any political events here, and they told the people attending that they should go home. He said that as a result of the YCL intervention he was unable to go ahead with the Tea Party.
69. The applicant said that three days after this incident he travelled to [Town 1], which is [a] town in Baglung district, as a RPP-N leader named [name deleted: s.431(2)], who is [official deleted: s.431(2)] of the Party in Baglung district, had asked him to go to a programme there to help spread the party's influence. He said that they planned to develop the Party in every village in the district.
70. The applicant said that after the programme in [Town 1] he was returning to his village, planning to do more things for the RPP-N in his village, when he and his friend [name deleted: s.431(2)] were attacked by YCL supporters at a town called [Town 5].
71. The applicant said that he did not participate in any other RPP-N activities in his village or in Baglung district. He described other RPP-N activities that he was involved in in Kathmandu. He said that he attended demonstrations and protests, and his role was mostly to distribute pamphlets and information. He described one of the large public protests and said that it was attended by thousands of people including many people coming to Kathmandu from other villages. The applicant said that he also joined in some meetings, and attended the annual general meeting for the RPP-N. The applicant said that he was a helper rather than an organiser.
72. The applicant said that the last RPP-N event that he attended was the King's birthday celebration event which took place about one month before he left Nepal. He described this event.
73. The applicant said that he was not a member of the RPP-N at the time of the national elections. He said that the RPP-N did not run an election campaign in Baglung district at the time of the national election because the influence of the Maoists in the district was so strong that people were afraid to campaign against them.
74. The applicant said that he has not been involved in any political activities since arriving in Australia in August 2010 as there are no parties representing the RPP-N in Australia, but he has been involved in some indigenous programmes.

Attack in [Village 5]

75. The applicant described the incident in which he claims that he and his friend [name deleted: s.431(2)] were attacked in [Village 5] on the way home from the RPP-N meeting in [Town 1]. He said that about 10 people with red bandanas around their heads came up to him and his friend and asked his friend whether he had participated in the meeting in [Town 1]. He said that his friend said that he had, and the men then started to beat up his friend and then attacked him. He said that he was punched in the back and he fell forward on his elbows and then they kicked him and

used wooden things on his back. He said that the men also had iron rods but he did not think that they used them.

76. The applicant said that there was a small gap in the circle of people and he managed to escape through that gap. He said that he was chased for a while but he managed to get away. He said that he had scratches on his knees and arms and a lot of bruising on his back but no other injuries.
77. The applicant said that at the time that he and his friend were attacked they had been walking away from [Town 1] for one day. He said that he did not know why the men suspected them of being involved in the RPP-N meeting in [Town 1]. The applicant said that the men may have known that he had been involved in organising the Tea Party in his village. He said that he knew some of the men. He said that some of the men were from [Village 5] and two of the men were from his own village.
78. The applicant said that the men had bandanas on their heads, and on the bandanas was written "YCL".
79. The applicant said that the attack occurred in the afternoon and at about 6pm he got to the medical clinic, and he found his friend there as local people had brought him to the clinic. He said that his friend was more badly injured than him, and had a broken arm. He said that his friend is in Portugal at the moment and has applied for asylum there.
80. The applicant said that that night he and his friend stayed at a village one hour away and then the following day they continued their journey to his village. He said that he stayed overnight at his parent's house and then the next morning he left for Kathmandu. He said that he was afraid that the people who had attacked them might find him in his village and so he only stayed there overnight.

Demands for Money and Threats

81. The applicant said that he had been planning to stay in his village but after the attack in [Village 5] he thought that he could not stay there. He said that one of his friends organised the job in Kathmandu for him.
82. The applicant said that [in] May 2010 the Maoists held a huge protest lasting more than 7 days. He said that during this period they collected money from people.
83. The applicant said that the Maoists / YCL came to his employer's premises to collect money as a donation. He said that there were about 7 or 8 of them, including two YCL commanders whom he named. The applicant said that the men spoke to his boss first, and his boss said that he was not going to give them any money. The applicant said that he also said that they should not give them any money.
84. The applicant said that the situation got very bad and one of the men started to get out a gun, although one of the commanders stopped him. The applicant said that his boss was very afraid of the men and so he promised to give them some money later.
85. The applicant said that whilst this was happening he was in the office, and he was involved in talking to the men. He said that he was saying that his employer should not give them money. The applicant said that later when the situation got worse he kept quiet.

86. The Tribunal said to the applicant that it is hard to understand why the applicant would speak up in this situation, particularly given that he claims that he had previously been attacked by the YCL and he would have known that speaking out would put him at risk. The applicant said that he was aware that he was putting himself at risk but he felt compelled to speak out. He said that he is a member of the RPP-N and a responsible citizen, and it is not easy to get money and the money would go for nothing, and so he expressed his opinion.
87. The applicant said that the men said “We are ready to kill, and ready to die”. He said that the men then left.
88. The applicant said that that night he received a telephone call in which he was threatened because of the incident with the YCL men at his workplace. He said that the caller said to him that he had two options: he must either leave his job or join the Maoist Party, and if he did not do this they could do anything to him anytime. The applicant said that he talked to his boss about this and he told his boss that the whole office was a risk. The applicant said that as a result of this threat he left his job.
89. The applicant said that he did not know how the YCL got his telephone number. He said that it made him feel very scared because he realised that they can get any information they want about him.
90. The applicant said that when he left his job he didn't go to the office for two days, and after that he only went irregularly. He said that later on the YCL became aware that he had left his job and they telephoned him again.
91. The applicant said that he was threatened continuously. He said that they told him that he had to leave his job and join the YCL. The applicant said that the YCL and Maoists came to know more about the RPP-N programmes that he had been involved in and they threatened him about that.
92. The applicant said that he reported the threats to the police at [Suburb 3] police station, but they told him that it is not possible to provide him with security 24 hours per day. He said that he did not ask the police to give him any documentation as evidence that he had reported the matter, as he did not realise that he would need this.
93. The applicant said that he did not know whether the Maoists or YCL came to his employer's office on any later occasion, as he had left his job. He said that he believed that they had not come to the office again to ask for money prior to him leaving Nepal.
94. The applicant said that 15 days before he left Nepal, however, they came to his former employer's office and asked about him. He said he then felt so insecure that four or five days later he decided to come to Australia. He said that he was able to organise a passport within a week.
95. The applicant said that it would not be safe for him to live in another rural area of Nepal, or in Pokhara. He said that he did not believe that he would be safe in any area of Nepal, even in a remote area, because the Maoists and YCL have very good links to other places and wherever he went they would be able to get information about him.

S 424AA – part 1

96. The Tribunal said that the applicant had an interview with a Departmental officer [in] February 2011, and the Department made a record of that interview. The Tribunal said that it will ask the applicant to comment on some of the information in the record of interview.
97. The Tribunal said that the record of interview indicates that during the interview the applicant described an incident in which some Maoists came to the premises of [Employer 4], where he worked, and threatened the Managing Director of the company, pointing a gun at him, and demanded that the company pay them money. The Tribunal said that the record of interview indicates that the applicant also said that the Maoists later asked his company for more money, and also warned him, and that he didn't want to cause trouble for the company and so he left his job.
98. The Tribunal said that this information in the record of interview is relevant because the applicant did not mention these demands for money in his statement, and so the information indicates that during the interview the applicant described the context in which he was threatened by the Maoists in Kathmandu in a way that is different from the way that he described it in his statement. The Tribunal said that this information in the record of interview is also relevant because it indicates that during the interview the applicant said that the Maoists made a second demand for money, whereas during the hearing the applicant said that he did not think that the Maoists had come to his workplace to make a further demand for money prior to him leaving Nepal.
99. The Tribunal said that as a result of this information, and other information, the Tribunal may conclude that whilst the applicant was in Kathmandu the Maoists and the YCL did not threaten him that they would seriously harm him because of his political beliefs. The Tribunal said that it may, as a result of this and other information, decide that there is not a real chance that the applicant would be seriously harmed if he returned to Nepal, and that he does not meet the requirements for a protection visa. The Tribunal asked the applicant whether he would like to comment on the information in the record of interview. The applicant chose to respond immediately.
100. The applicant said that people who donate money to the Maoists can live safely in Nepal. He said that he cannot donate money to them, and so it is unsafe for him to go back. The applicant said that they came back to his workplace again but he did not mention anything about money. The Tribunal asked the applicant whether he was now saying that the Maoists came back to his workplace a second time and demanded money. He said that he was not sure. He said that they may have come, or not come. He said that during his interview he guessed that they might have come and so he said that.
101. The Tribunal said to the applicant that the other issue that the Tribunal was asking him to comment on was that during the hearing he has said that Maoists came to his office and demanded money, but in his written statement he did not mention this. The applicant said that he may not have had time to remember that.

S 424AA – part 2

102. The Tribunal said that it will ask the applicant to comment on some other information in the record of interview.

103. The Tribunal said that the record of interview indicates that during the interview the applicant described an incident in which a group of YCL supporters attacked him and his friend, and the Tribunal asked the applicant how many people attacked him and he said “20 to 25 people”.
104. The Tribunal said that this information in the record of interview is relevant because this information is inconsistent with the information that the applicant has provided during the hearing, when he said that “around 10” people were involved. The Tribunal said that this information in the record of interview is relevant because it may indicate that the attack at [Village 5] did not in fact take place.
105. The Tribunal said that as a result of this information, and other information, the Tribunal may decide that there is not a real chance that the applicant would be seriously harmed if he returned to Nepal, and that he does not meet the requirements for a protection visa. The Tribunal asked the applicant whether he would like to comment on this information in the record of interview. The applicant chose to respond immediately.
106. The applicant said that he is not able to say the exact number of people who attacked him. He said that he had guessed the number. He said that it was a large number of people, but he couldn't say whether there were 10 or 20 or 25 people involved in the attack.
107. The Tribunal asked the applicant whether there was anything further that he wishes to say about the reasons that he cannot return to Nepal. The applicant said that it is not safe for him to return. He said that it is true that it is more politically stable in Nepal now, but there are still Maoists and YCL and there is still violence.
108. The applicant said that he had a good job in Nepal and he wanted to remain in that job, and in Nepal, but he couldn't. He said that he had no choice but to leave. He said that he realises that it is not good to apply as a refugee, but he had to do it. He requested the Tribunal to consider his case fairly. The Tribunal said that it would do so.
109. The Tribunal obtained country information from various sources.

Political background in Nepal

110. The US Department of State's Background Note on Nepal dated 20 December 2010 provides the following information:

“Nepal held its historic Constituent Assembly (CA) election on April 10, 2008. Primarily mandated to draft a new constitution of Nepal, the CA also serves as a Parliament. The Communist Party of Nepal (Maoist), now known as the United Communist Party of Nepal (Maoist), emerged as the largest party securing 229 seats, followed by the Nepali Congress Party with 115 seats, and the Communist Party of Nepal-United Marxist Leninist with 108 seats. The Terai-based Madhesi People's Rights Forum, securing 54 seats emerged as a new political force in Nepalese politics. Twenty-one smaller parties, including 2 independent candidates, received 95 seats. ...

... After the April 2006 cease-fire announced by the government and the Maoists, incidents of human rights violations by the government declined substantially while incidents of human rights violations by the Maoists remained relatively unabated. Even after signing a comprehensive peace agreement with the government in November 2006, Maoists' extortion, abduction, and intimidation remained largely unchecked. Although activities by other political parties have increased significantly in the rural parts of Nepal, political party representatives, police, non-

governmental organization (NGO) workers, and journalists reported continuous threats and intimidation by Maoist or Young Communist League (YCL) cadres.”

Rashtriya Prajatantra Party (“RPP”)

111. Country information sources indicate that the Rashtriya Prajatantra Party (“RPP”), or National Democrat Party of Nepal, was formed in 1990 and advocates constitutional monarchy. The website of the RPP claims that its three main ideological pillars are Nationalism, Democracy and Liberalism, and that it is pro-free market.¹ In Nepali politics the RPP is considered to be right-of-centre and pro-monarchy; however sources indicated that during 2010 the party adopted more centrist political stances on a number of issues.
112. The RPP does not enjoy significant political support in Nepal in comparison to the three main political parties: the Communist Party of Nepal – Maoist (CPN-M), the Nepal Congress (NC), and the Communist Party of Nepal – United Marxist Leninist (CPN-UML). In elections for Nepal’s National Constituent Assembly, held on 10 April 2008, the RPP did not win any seats in directly contested constituencies.² According to Nepal’s Election Commission, the RPP received 263,431 votes, compared to 3,144,204 for the Communist Party of Nepal – Maoist (CPN-M).³ This equates to only 3.01 per cent of the popular vote. However, the RPP was allocated eight seats by the Election Commission based on its proportional vote⁴. In contrast, the CPN (M) won 229 seats,⁵ of which 129 seats were directly elected seats and a further 100 seats were awarded based on its total proportion of votes.⁶
113. Both the RPP and the breakaway Rashtriya Prajatantra Party-Nepal (“RPP-N”) have absorbed smaller, pro-monarchy/Hindu parties in order to remain viable political organisations. In 2010, the RPP reunited with the Rashtriya Janashakti Party (RJP)⁷; the RJP having split from the RPP in 2004. In 2007 the RPP-N “absorbed” the Rashtriya Prajatantra Party (Rastrabadi), also known as the RPP (Nationalist), and the Nepal Bidwat Parishad (NBP).⁸ There also appears to be some movement of officials between the two parties; in 2010, the chairman of the RPP, Shumshere J. B. Rana, was dismissed and has since become vice-chairman of the RPP-N.⁹

¹ ‘About RPP’ (undated), Rashtriya Prajatantra Party website <http://www.rppnepal.com/channels/aboutus.htm> – Accessed 17 July 2007.

² Election Commission, Nepal 2008, ‘CA Election 2064 PARTY WISE PR Results’, CA website, 9 May <http://www.election.gov.np/reports/CAResults/reportBody.php> - Accessed 6 June 2010.

³ Election Commission, Nepal 2008, ‘CA Election 2064 PARTY WISE PR Results’, 9 May [http://www.election.gov.np/reports/CAResults/reportBody.php?selectedMenu1=Party%20Wise%20Count%20In%20Nation\(English\)](http://www.election.gov.np/reports/CAResults/reportBody.php?selectedMenu1=Party%20Wise%20Count%20In%20Nation(English)) – Accessed 6 June 2011.

⁴ ‘EC declares PR results; Maoists bag 100 seats, NC 73 and UML 70’ 2008, *Nepal News*, 25 April <http://www.nepalnews.com/archive/2008/apr/apr25/news08.php> - Accessed 15 November 2010 - cx253386

⁵ Banks, A. et al. 2010, ‘Nepal’, *Political Handbook of the World*, CQ Press, Washington http://library.cqpress.com/phw/document.php?id=phw2010_Nepal&type=toc&num=5 – Accessed 3 May 2011. <http://ntssyd\REFER\Research\INTERNET\Global\Political-Handbook\2010\Nepal.mht>

⁶ ‘EC declares PR results; Maoists bag 100 seats, NC 73 and UML 70’ 2008, *Nepal News*, 25 April <http://www.nepalnews.com/archive/2008/apr/apr25/news08.php> - Accessed 15 November 2010 - cx253386

⁷ ‘RPP, RJP expand committee for unification’ 2010, *The Himalayan Times*, 7 April <http://www.thehimalayantimes.com/fullToday.php?headline=RPP%2C+RJP+expand+committee+for+unificati on&NewsID=237685> – Accessed 14 April 2011.

⁸ Banks, A. et al. 2010, ‘Nepal’, *Political Handbook of the World*, CQ Press, Washington http://library.cqpress.com/phw/document.php?id=phw2010_Nepal&type=toc&num=5 – Accessed 3 May 2011.

⁹ ‘RPP-sacked Rana nominated RPP-N vice chair’ 2010, *Kathmandu Post*, 25 November <http://www.ekantipur.com/2010/11/25/top-story/rpp-sacked-rana-nominated-rpp-n-vice-chair/325590/>.

Rashtriya Prajatantra Party-Nepal (RPP-N)

114. The Rashtriya Prajatantra Party-Nepal (RPP-N) is a breakaway party of the Rashtriya Prajatantra Party (RPP). The RPP-N currently has four seats in the national assembly, allocated on a proportional representational basis.¹⁰ The total number of seats in the National Assembly is 501.¹¹ The 2008 election result indicates that the RPP-N does not enjoy mass political support in Nepal. Indeed, a May 2011 article in the *Telegraph Nepal* describes support for the RPP-N as “meagre”.¹²
115. The RPP-N is the only party that is emphatically pro-monarchy, with a political platform almost solely based on campaigning for a referendum on the restoration of the monarchy.¹³ According to the *Political Handbook of the World*, in 2008 the RPP-N was the only parliamentary party that voted against the re-constitution of Nepal as a republic.¹⁴
116. The International Crisis Group (ICG) reported that the RPP-N campaigned in the 2008 elections on an “explicitly monarchist platform, demanding that the future of the monarchy be decided by a referendum and calling for its continuation as a constitutional entity.” The ICG argued that the RPP and the Rashtriya Janashakti Party (RJP) “are more ambivalent towards the palace” than the RPP-N. The head of the RPP-N, Kamal Thapa, was once the king’s home minister.¹⁵ In 2005, the RPP-N participated in the administration appointed by the king after he dismissed the government and dissolved the National Assembly.¹⁶
117. While there is little apparent nostalgia for King Gyanendra in Nepal, the International Crisis Group (ICG) believes that the RPP-N deliberately links the end of the monarchy with the end of Nepal as a Hindu state, an issue that does concern many in the Hindu majority country.¹⁷ The logic would appear to be that the RPP-N is attempting to broaden its appeal by capitalising on common religious anxieties.
118. In 2011, the ICG reported that the RPP-N maintains close relations with right-wing Hindu groups in Nepal and India, including Vishwa Hindu Mahasangh (VHM) and its youth wing, the Hindu Yuva Sangh (HYS). The HYS reportedly “cooperates closely” with the Shiv Sena, and its members “hold positions in the RPP(N).”¹⁸

¹⁰ ‘EC declares PR results; Maoists bag 100 seats, NC 73 and UML 70’ 2008, *Nepal News*, 25 April <http://www.nepalnews.com/archive/2008/apr/apr25/news08.php> – Accessed 15 November 2010.

¹¹ Banks, A. et al. 2010, ‘Nepal’, *Political Handbook of the World*, CQ Press, Washington

http://library.cqpress.com/phw/document.php?id=phw2010_Nepal&type=toc&num=5 – Accessed 3 May 2011.

¹² ‘Kamal Thapa’s Change of Heart: Distancing from Nepal Monarchy Revival’ 2011, *Telegraph Nepal*, 7 May <http://www.telegraphnepal.com/headline/2011-05-07/kamal-thapas-change-of-heart:-distancing-from-nepal-monarchy-revival> – Accessed 9 May 2011.

¹³ International Crisis Group 2008, *Nepal’s Election and Beyond*, Crisis Group Asia Report N°149, 2 April, p.4.

¹⁴ Banks, A. et al. 2010, ‘Nepal’, *Political Handbook of the World*, CQ Press, Washington

http://library.cqpress.com/phw/document.php?id=phw2010_Nepal&type=toc&num=5 – Accessed 3 May 2011.

¹⁵ International Crisis Group 2008, *Nepal’s Election and Beyond*, Crisis Group Asia Report N°149, 2 April, p.4.

¹⁶ Banks, A. et al. 2010, ‘Nepal’, *Political Handbook of the World*, CQ Press, Washington

http://library.cqpress.com/phw/document.php?id=phw2010_Nepal&type=toc&num=5 – Accessed 3 May 2011.

¹⁷ International Crisis Group 2011, *Nepal: Identity Politics and Federalism*, Crisis Group Asia Report N°199, 13 January, p.20.

¹⁸ International Crisis Group 2011, *Nepal: Identity Politics and Federalism*, Crisis Group Asia Report N°199, 13 January, p.21.

Maoists / YCL in Baglung district and Nepal generally

119. In the April 2008 elections, the Communist Party of Nepal – Maoist (CPN-M) emerged with the largest proportion of seats in the national Constituent Assembly (CA).
120. The Young Communist League (YCL) is the youth wing and main militia of the Communist Party of the Nepal – Maoist (CPN-M).
121. The Carter Centre reported that during 2006 YCL members occupied property belonging to the Nepal Food Corporation in Baglung, turning buildings into YCL camps, and using one site as a CPN- M party office.¹⁹
122. The integrity of the 2008 election organised by Nepal’s Electoral Commission was praised by a number of international government and non-government organisations. However, Freedom House states that intimidation of voters by the CPN-M’s Young Communist League (“YCL”) was widespread; the Electoral Commission and the police were forced to close 33 voting stations across Nepal due to violence and intimidation. Furthermore, three candidates were killed during campaigning.
123. Freedom House argues that YCL cadres were responsible for a large proportion of the incidents of violence and intimidation of both voters and non-Maoist election candidates throughout Nepal.²⁰
124. More recently, YCL cadres are major suspects in the July 2010 murder of Chhabi Lal Karki, a senior leader of the Communist Party of Nepal - United Marxist Leninist (CPN-UML).²¹
125. The Tribunal did not locate any information that indicated that CPN-M and YCL cadres intimidate members of the RPP-N in Baglung district. However, a large number of sources indicate that CPN-M/YCL cadres routinely employ violence and intimidation against their political opponents, including members of the RPP and RPP-N, throughout Nepal. A large proportion of these incidents appear to occur in regional Nepal rather than Kathmandu, particularly in central Terai districts such as Chitwan.^{22 23 24 25 26 27 28 29 30 31}

¹⁹ The Carter Center 2011, ‘Clashes Between Political Party Youth Wings Have Decreased But YCL And UML Youth Force Continue To Seek Financial Gain’, 28 February, Footnote 43, p.19.

²⁰ Freedom House 2010, *Countries at the Crossroads 2010 – Nepal*, UNHCR REFworld, 7 April

<http://www.unhcr.org/refworld/docid/4be3c8ce0.html> – Accessed 19 July 2010

²¹ ‘PM vows action against killers’ 2010, *Himalayan News Service*, 10 July

<http://www.thehimalayantimes.com/rssReference.php?headline=PM+vows+action+against+killers&NewsID=249340> – Accessed 12 July 2010.

²² ‘Incidents of CPN-Maoist targeting other parties since the April 2006 cease-fire’ (undated), South Asia Terrorism Portal website <http://www.satp.org/satporgtp/countries/nepal/database/targetingpartyceasefire.htm> – Accessed 9 May 2011.

²³ ‘Four RPP-N Cadres injured in YCL’ assault’ 2011, *Nepal Mountain News*, 27 April

<http://www.nepalmountainnews.com/cms/?p=25286> – Accessed 1 July 2011.

²⁴ ‘Abduction charge on YCL men’ 2010, *eKantipur*, 10 May,

<http://www.ekantipur.com/2010/05/10/capital/abduction-charge-on-ycl-men/314039/#> – Accessed 8 Sept 2010.

²⁵ Paudel, D. 2010, ‘Local Administration impose curfew in Myagdi’, *MyRepublica.com*, 13 February,

http://www.myrepublica.com/portal/index.php?action=news_details&news_id=15094# – Accessed 6 September 2010.

²⁶ Refugee Documentation Centre (Ireland) 2010, ‘Information on the Youth Communist League (YCL)’, 5 February <http://www.unhcr.org/refworld/pdfid/4b8fcb1e1c.pdf> – Accessed 3 September 2010.

State Protection

126. In 2010 there were at least 50,000 active cadres within the YCL. Country information indicates that they, and also members of the so-called Youth Force of the CPN-UML and the ‘Tarun Dal’ of the Nepali Congress, perpetrate violence against political opponents and, in some cases, members of the police force. Freedom House states that “authorities have made little effort to rein in or punish such violence”.³²
127. The US Department of State reports that this is particularly the case in the Terai. In cases where party cadres were detained, their political leaders often successfully pressured police to release them.³³
128. Human Rights Watch (“HRW”) has also expressed concern at Nepali authorities’ failure to pursue investigations and prosecutions of senior Maoists accused of committing serious crimes during the civil war. In 2010, HRW reported that Agni Sapkota, a senior member of the CPN-M’s Central Committee, had not been arrested for his part in the 2005 murder of Arjun Lama.³⁴ The US Department of State reports that, as of the end of 2010, no government officials or Maoists have been prosecuted for disappearances during the civil war. The Department also reports that none of the approximately dozen members of the YCL who are believed to have been involved in the killing of Youth Force member Anuj Thapa Magar in Biratnagar have been arrested.³⁵
129. Despite the concerns of Freedom House, HRW and the US Department of State, Nepali police have arrested at least some Maoists for violence and intimidation. In August 2010, police arrested Sujit BK, a former district leader in the YCL, for the March 2009 killing of a CPN-UML Youth Force leader, Prachanda Man Thaiba. Five members of the United Communist Party of Nepal–Maoist (UCPN-M) were charged with the 2008 killing of Ram Hari Shrestha in Chitwan. The police have also issued an arrest warrant for senior Maoist leader Kali Bahadur Kham, for his role in the robbery of three Chinese businessmen in Kathmandu.³⁶

²⁷ Paudel, D. 2010, ‘Local Administration impose curfew in Myagdi’, *MyRepublica.com*, 13 February, http://www.myrepublica.com/portal/index.php?action=news_details&news_id=15094# – Accessed 6 September 2010.

²⁸ South Asian Terrorism Portal 2011, ‘Young Communist League’, SATP website <http://www.satp.org/satporgtp/countries/nepal/terroristoutfits/YCL.html> – Accessed 4 July 2011.

²⁹ Untitled 2009, South Asia Media Net website, source: *Himalaya Times*, 24 March http://www.southasianmedia.net/Archive_full.cfm?nid=567246 – Accessed 7 September 2010.

³⁰ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Nepal*, 8 April, Sections 1.a, 1.c.

³¹ ‘Incidents of CPN-Maoist targeting other parties since the April 2006 cease-fire’ (undated), South Asia Terrorism Portal website <http://www.satp.org/satporgtp/countries/nepal/database/targetingpartyceasefire.htm> – Accessed 9 May 2011.

³² Freedom House 2010, *Countries at the Crossroads 2010 – Nepal*, UNHCR REFworld, 7 April, pp.13-14 <http://www.unhcr.org/refworld/docid/4be3c8ce0.html> – Accessed 19 July 2010.

³³ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Nepal*, 8 April, Sect 1.d.

³⁴ Human Rights Watch 2010, ‘Nepal: Investigate Maoists’ Role in Killing US Denied Visa for Senior Maoist Politician’, HRW website, 1 July <http://www.hrw.org/en/news/2010/07/01/nepal-investigate-maoists-role-killing> – Accessed 3 May 2011.

³⁵ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Nepal*, 8 April, Section 1.a, 1.b.

³⁶ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Nepal*, 8 April, Sect 1.a.

130. In January 2010, the International Crisis Group reported that people who have campaigned for the authorities to investigate crimes committed by both the Maoists and the security forces have “faced serious harassment and threats of retaliation.”³⁷
131. Country information sources indicate that many regions in Nepal have little or no police presence. In a 2009 survey it was found that only 54 percent of Nepalis had a police post in their locality. In some regions, such as the mid-western and far western regions of Nepal, 58 percent and 83 percent of survey respondents reported that they had no police post in their communities. Most respondents without a police presence in their communities stated that they rely on posts in neighbouring villages for security, seek help from village security committees, or have no security arrangements at all.³⁸
132. Human Rights Watch describes the Nepali police as poorly trained and ill-equipped, reporting that they often fail to investigate cases, despite legal rulings, and regularly refuse to accept complaints or register cases reported by relatives of victims.³⁹ The US Department of State reports that the police and security forces “have limited resources and lack sufficient manpower to effectively enforce law and order”.⁴⁰ The generally unarmed police fail to respond in most cases of violence involving Maoists and other armed groups, particularly in the Terai region. Considerable discretion in police officers’ enforcement of the law results from the lack of guidance from superior officers, and there are reports of police abuse and bribery.⁴¹

FINDINGS AND REASONS

133. The applicant claims that if he returns to Nepal there is a real chance that he will be seriously harmed by Maoists and the YCL because of his political beliefs. The applicant claims that there is a real chance that he will be killed because he is a member of the RPP-N and expresses his views in favour of the monarchy, and because he refuses to join the Maoists and the YCL.
134. The applicant claims that he became a member of the RPP-N about 18 or 19 months before he left Nepal in August 2010, and during that period he participated in a range of RPP-N activities in Kathmandu, and several activities in Baglung province. The applicant claims that during 2009 he organised a Tea Party in his home village in Baglung province, and a few days later he and a friend were attacked by a group of YCL supporters when they were on their way home from a RPP-N meeting in [Town 1].
135. The applicant claims that [in] May 2010 he was at his workplace when a group of Maoists and YCL members arrived and demanded money from the company, and that he spoke out and said that the company should not pay any money to the Maoists. The applicant claims that he received a telephone call that evening, in which the Maoists/YCL threatened him, telling him that anything could happen to him if he did not immediately either leave the company or join the Maoists.

³⁷ International Crisis Group 2010, *Nepal: Peace and Justice*, Asia Report N°184, 14 January, p.17.

³⁸ Interdisciplinary Analysts and Saferworld 2009, *On track for improved security? A survey tracking changing perceptions of public safety, security and justice provision in Nepal*, April, p.iii-iv.

³⁹ Human Rights Watch 2010, *Indifference to Duty: Impunity for Crimes Committed in Nepal*, December, p.2 <http://www.hrw.org/sites/default/files/reports/nepal1210webwcover.pdf> – Accessed 9 May 2011.

⁴⁰ US Department of State Bureau of Consular Affairs 2011, ‘Nepal – Country Specific Information’, Travel.state.gov website, 10 January http://travel.state.gov/travel/cis_pa_tw/cis/cis_980.html# – Accessed 16 March 2011.

⁴¹ US Department of State 2011, *Country Reports on Human Rights Practices for 2010: Nepal*, 8 April, Sec 1d.

136. The applicant claims that he left his job as a result of this threat, and that once the Maoists/YCL learned that he had left his job he received numerous threats from them. The applicant claims that 15 days before he left Nepal the Maoists visited his former workplace and asked about him, and after that he felt so unsafe that he decided that he would have to leave Nepal, and so he made arrangements to obtain a false passport so that he could leave quickly.
137. The Tribunal considered the applicant to be a credible witness. The Tribunal found that the applicant provided a detailed account of his involvement in RPP-N activities, and of the events which he claimed caused him to fear persecution, and the information that he provided during the hearing was in most respects consistent with the information provided in his written statement and in his Departmental interview.
138. The Tribunal accepts, on the basis of the Nepalese citizenship certificate provided to the Department, that the applicant is a Nepalese citizen and is outside his country of nationality.
139. The Tribunal notes that the Department obtained information which indicated that both of the Nepalese passports provided to the Department were not genuine passports obtained according to lawful procedures. However the Tribunal finds, on the basis of the applicant's detailed account of his family, his educational history, his political activities, and various Nepalese people and places, that the applicant has lived all or most of his life in Nepal. The Tribunal accepts the applicant's explanations for obtaining the false passports, and finds, on the basis of the applicant's evidence, and the various Nepalese identity documents provided by him, that the applicant is a Nepalese citizen.
140. The Tribunal accepts that the applicant was a member of the RPP-N. The Tribunal makes this finding on the basis of the applicant's evidence at hearing and the country information set out above, as the applicant provided information about the RPP-N's platform and about his activities as a RPP-N member, which was very detailed and which was consistent with the country information on the RPP-N.
141. The Tribunal accepts, on the basis of the applicant's evidence, that the applicant was attacked by YCL supporters on the way home from the [Town 1] meeting. The Tribunal also accepts the applicant's evidence that he spoke out during an incident in which a group of Maoists demanded money at his workplace, and that thereafter he received a number of threats from the Maoists or the YCL which caused him to fear that he would be seriously harmed or killed.
142. The Tribunal had some concerns about apparent inconsistencies between the accounts provided by the applicant in his written statement, during his Departmental interview, and in the hearing. During the hearing the Tribunal asked the applicant to comment on the main discrepancies.
143. During the hearing the Tribunal invited the applicant to comment on information in the record of interview indicating that during the interview the applicant said that the Maoists demanded money and also made a second demand for money, as this information appeared to be inconsistent with the applicant's response during the hearing that he believed that the Maoists did not come to the workplace a second time to ask for money.
144. The Tribunal has re-considered the actual questions asked and responses provided during the Departmental interview, and accepts that there is a possible explanation for the apparent discrepancy. The Tribunal accepts that during the Departmental interview the applicant in fact said that the Maoists "asked for more money" and did not state that this was on a second occasion. The Tribunal accepts that the applicant may have been indicating that during the

incident at his workplace [in] May 2010 the Maoists took 10,000 rupees but also demanded that the company pay them more money, and that this would be consistent with the applicant's evidence at hearing that the Maoists did not visit the workplace a second time to demand money.

145. Secondly, the Tribunal considers that the fact that the applicant failed to mention the Maoists' demand for money in his written statement, and the fact that during the hearing he stated that 20 to 25 people attacked him, rather than "around 10", are not sufficient matters to cast doubt on whether the [Village 5] attack and the Maoist workplace visit in fact occurred.
146. The Tribunal finds, on the basis of the applicant's evidence, that the applicant genuinely fears that the Maoists or YCL may seriously harm him or even kill him if he returns to Nepal and continues to support the RPP-N and the monarchy, and refuses to join or support the Maoists or the YCL.
147. The country information on Nepal indicates that the Communist Party of Nepal-Maoist ("CPN-M") is the largest party in the Nepalese government, and the YCL is the CPN-M's youth wing and main militia. Many sources indicate that throughout Nepal CPN-M and YCL cadres routinely employ violence and intimidation against their political opponents, including against members of the RPP and RPP-N.
148. The Tribunal finds that the harm feared by the applicant is harm inflicted by the Nepalese State, or harm in which the State is complicit in that it encourages, condones or tolerates the harm.
149. The Tribunal finds, on the basis of the country information, that the Maoists are in government nationally and that they and their youth wing, the YCL, wield significant power throughout Nepal including through intimidation and violence. The Tribunal therefore accepts the applicant's claim that he would not be safe anywhere in Nepal, and finds that the applicant cannot relocate within the country in order to avoid the persecution that he fears.
150. The Tribunal finds, on the basis of the applicant's evidence and the country information about Maoist and YCL antipathy and violence towards its political opponents, including the RPP-N, that there is a real chance that if the applicant returns to Nepal he will be persecuted by the Maoists or the YCL because of his political views. The Tribunal therefore finds that the applicant has a well-founded fear of persecution by reason of his political opinion.

CONCLUSIONS

151. 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)(a) for a protection visa.

DECISION

152. 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.