

1200078 [2012] RRTA 321 (4 May 2012)

DECISION RECORD

RRT CASE NUMBER:	1200078
DIAC REFERENCE(S):	CLF2011/81105
COUNTRY OF REFERENCE:	Nepal
TRIBUNAL MEMBER:	James Silva
DATE:	4 May 2012
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Nepal, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] January 2009 and applied to the Department of Immigration and Citizenship for the visa [in] May 2011.
3. The delegate refused to grant the visa [in] November 2011, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

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

Refugee criterion

5. Section 36(2)(a) 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 Refugees Convention.
6. 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.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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.

15. 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.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Primary application

20. According to information in his protection visa application, completed with the assistance from [name deleted: s.431(2)], the applicant is a male born in [Village 1], Myagdi, Nepal in October 1978. He speaks, reads and writes Nepalese and English. He describes himself as an ethnic Magar, and a Hindu.
21. The applicant attended school in [Village 1], Myagdi from [years deleted: s.431(2)], and worked on the family farm from that time until his departure for Australia.
22. The applicant's wife and 2 [children], aged [ages deleted: s.431(2)], remain in Nepal. He states that he is in contact with relatives in Nepal by telephone, post and internet. His parents and a [sibling] remain in Nepal, and a brother lives in [Country 3]. (He later indicates that his [other sibling] died in [2011].)
23. The applicant holds a Nepalese passport issued in July 2008, valid for 10 years. A partial photocopy of the passport is attached to the application form. He claims to have no other nationality. He obtained a Student subclass 572 visa in New Delhi [in] December 2008, and

arrived in Australia [in] January 2009 He claimed that he departed Nepal illegally, because a 'false marriage document was used.'

24. He entered Australia as a student dependent. He claims never to have travelled outside Nepal previously.
25. The applicant married in Nepal in [2000].
26. The applicant's refugee claims are set out in brief comments on the application form:

Why did you leave [Nepal]? I am an ordinary member of the Rastriya Prajatantra Party, Nepal, and opposed to the Maoists and Maoist YCL. I was forced to leave Nepal to avoid harm from the Maoists and for my safety. [He refers at this and several other points to a later statement with more details.]

What do you fear may happen to you if you go back to [Nepal]? I fear I will be harmed or killed. I will be abused in my political rights.

Who do you think may harm/mistreat you if you go back? Maoists, Maoist YCL and other political party hardcore members who destroyed the monarchy in Nepal.

Why do you think this will happen to you if you go back? Because I refused to join and support the Maoists. I always strongly supported the monarchy.

Do you think the authorities of [Nepal] can and will protect you if you go back?
No.

27. The applicant gave a more detailed statement of his refugee claims in a handwritten note in Nepalese, with a certified English translation. The Tribunal's summary of these claims follows:
 - The applicant grew up in a rural area of [Village 1] and, after 10 years schooling, worked as a farmer on a family farm. He also worked as a community worker in the village, but never had paid employment.
 - The situation in the countryside deteriorated after the Maoists declared the 'people's war' on 13 February 1996.
 - The applicant's father was an ex-Gurkha Indian Army officer, and loyal monarchist. The applicant shared his views, and during 2007, became interested in the Rastriya Prajatantra Party - Nepal (RPPN), He learned about the party from his father and his father's friend, who was the village secretary. The applicant was not politically active at that stage.
 - In December 2007, he joined the RPPN, and became active – attending meetings and rallies, and handing out pamphlets. He had 'a leading role' in the [Village 1] Village Development Committee. This led to him receiving threats and intimidation, from the Maoists and other anti-monarchists. They demanded that he quit politics and leave the RPPN. The applicant ignored them, and continued these activities.
 - On 7 July 2008, he invited villagers, supporters and RPPN members to a party to celebrate the King's birthday. On 8 July 2008, at 9 pm, Maoist YCL cadres came to the applicant's home and held him for an hour. They threatened to kill him if he did not stop

his support for the monarchy and the RPP Nepal. Terrified, the applicant asked the district police to protect him, but they responded that they cannot provide 24 hours security.

- The applicant feared being killed after this incident. He went to Kathmandu, with the help of an uncle, and stayed in his father-in-law's home in [Town 2], Kathmandu, until he left Nepal. His brother in [Country 3] provided him with financial assistance to leave Nepal. He came to Australia as a student dependant, on a false marriage certificate arranged through an agent whom he met in Kathmandu (via a distant relative), and to whom he paid Rs 650,000.
- The applicant seeks Australia's protection as he believes that the Maoists will kill or harm him because of his political opinion.

Other documents on the Department file

28. The Department file includes papers relating to the grant of the applicant's subclass 572 visa, which the applicant claims was made on the basis of a false marriage certificate. A note dated [November] 2008 gives the woman's personal and study background, noting simply that her spouse (the applicant) is accompanying her, and the original marriage certificate had been provided.

Department interview

29. The applicant attended a Department interview [in] November 2011. The Tribunal has listened to a recording of the interview, which is on the Department file. The applicant restated his refugee claims, and gave some further details, including the following:
 - His family are farmers, and own a small plot of land that meets their basic needs. They are pro-monarchists.
 - The Maoists have controlled his area for some 18 years now. The Maoists collect donations from his father and threaten his parents, but do not take more serious action against them. The Maoists do not pursue all RPPN supporters, only those people who are politically active.
 - The applicant joined the RPPN in late 2007 because his grandfather and father had supported the party, and because of his own pro-monarchy views. He wishes to adhere to this political view. The traditional July 2008 King's birthday celebrations were larger and better organised than in the past. The day after, some 10 to 12 young men came to his home and took him away.
 - When the applicant was in Kathmandu, he was not working. His parents remain in the village; neighbours farm their land and help out when necessary.
 - The applicant thought that the RPPN office in Kathmandu could protect him, but not in the longer term. While he realised that he could go into India easily, so could the Maoists. They have well-networked, and would present a danger to him there, too.
 - The applicant presented his Nepalese passport, which he said was genuine. He obtained a student visa through an agent, who arranged a false marriage certificate. He believes the other person is in Melbourne, but has not had contact with her since March 2009. He has

worked in [northern Queensland] and Sydney, sending money back to his family in Nepal.

- The applicant did not seek protection in Australia earlier, because he already had a valid Australian visa and, in any event, he did not know about refugee protection.
- He fears that the Maoists and the YCL will harm or kill him if he returns to Nepal, for refusing to make donations and to join them.

Decision under review

30. The delegate did not accept that the applicant fled Nepal because of any conflict with the Maoists, and was not satisfied that the applicant had a political profile that would put him at risk of persecution if he returned to Nepal. She took into account, among other things, the significant delay in his application for protection.

Review application

Tribunal hearing

31. The applicant appeared before the Tribunal [in] April 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Nepali and English languages. The applicant was unrepresented in this matter.
32. The Tribunal, in its introduction, included an overview of the law concerning refugee protection and complementary protection.
33. The Tribunal asked the applicant about his personal and family background. He said that he is from [Village 1], Myagdi¹ district, in mid-western Nepal, some 700 to 800 km from Kathmandu. He lived there all his life. He attended school until Year 10, and then undertook general farming. He grew corn, potatoes and similar crops on a farm; this was seasonal activity. Asked about any other income in Nepal, the applicant said that he ran a small shop that met his family's basic needs. His father occasionally helped out with some of his pension money.
34. The applicant said that his parents arranged for him to marry when he was [age deleted: s.431(2)] years old, hence around 2000. His wife and 2 [children] are in Kathmandu. They moved there together with the applicant about 6 or 7 months before he came to Australia, staying with relatives. About 5 months after he left, they moved to rented premises; the applicant sends them money from Australia. The [children] attend school in Kathmandu.
35. The applicant's father, formerly in the Indian Army, receives a pension, and is also a simple farmer. The applicant's younger brother is a [Country 3] citizen, and works there as a barman. His elder [sibling] died sometime after the applicant's arrival in Australia. The applicant occasionally contacts his parents; local communications are not reliable. He has some contact with other people in Kathmandu, such as his wife's uncles.
36. The applicant said that, after his family first moved to [Town 2] (where his wife's uncle lives, in Kathmandu), they received 2 or 3 threatening calls from Maoists. The uncle then moved them to another location in Kathmandu, where they now live. As for whether his wife and

¹ Also written 'Mayagdi'

children faced any additional risk, living alone, the applicant replied that they were unknown in their current location.

37. The Tribunal asked the applicant about his political opinion in Nepal. He said he believes it is important that Nepal returns to being a monarchy. He is a member of the RPPN, because it and the RPP are the only parties advocating a return to the monarchy. The applicant said that the king and his ancestors ruled Nepal for centuries, and there were no adverse circumstances that justified their removal. He said that he had been interested in politics for a long time. His father and friends supported the monarchy, and the applicant joined the RPPN in 2007.
38. Describing his political interests further, the applicant said that he was always drawn to the king, and even as a child enjoyed celebrating his birthday. The RPPN organised programs in his village on 2 or 3 occasions, and he found himself drawn to them, when aged around [ages deleted: s.431(2)]. He said that the RPPN and the original RPP were active in his village, both before the Maoists declared the People's War (hence, 1996) and in the following period.
39. In response to the Tribunal's questions, the applicant said that the RPP was formed on 29 May 1990. The RPP and the RPPN originate from the same party. The applicant said he supports the RPPN, under Kamal Thapa's leadership, which was set up in 2006. He understood that the party emerged in order to strengthen their political position. Kamal Thapa comes from a different area (from the RPP leadership), enabling him to appeal to the local people there. The applicant described the RPPN's flag.
40. The applicant said that he became an RPPN member around the end of 2007 (he used the Nepalese calendar, and the interpreter helped determine the corresponding Western calendar dates). He said that he joined the party while it was still in its infancy. He was about [age deleted: s.431(2)] years old at the time. As for any previous political involvement or incidents, he said that he had experienced some instances of discrimination (implicitly because of his pro-monarchist views), but they were minor and he ignored them. Things came to a head in 2007/2008.
41. At that time, there were 4 or 5 RPPN members in his village, which had some 1600 to 1700 residents. The local RPPN office, headed by Chairman Bahal Bahadur Khatri, was in [Town 4]. He said that at least 50 per cent of the adults in his village supported the monarchy, and the RPP; most of them moved over to the RPPN when it was set up. The Maoists found support among the young people, 'brainwashing' them, and they intimidated or brainwashed some older people. The applicant's political role was to persuade these people to support the monarchy and the RPPN. He said that, during the 2008 elections, his party's efforts met with limited success, because the Maoists intimidated the local people.
42. The applicant said that, in the 2008 elections, the RPPN won 4 seats in the Constituent Assembly, mainly in urban areas such as Kathmandu, and the RPP won 8 seats.
43. The applicant spoke about the incident [in] July 2010, the day after the King's birthday. He said that the Maoists had won a majority in the elections in April, but the RPPN decided nonetheless to continue their tradition of celebrating the King's birthday, to increase its membership. A few people tried to interrupt the program, but the applicant and some others argued with them, and the proceedings continued without further incident.
44. The following day, after dinner, some 8 or 10 people came to the applicant's home looking for him. He recognised some; others wore masks. They carried sticks and other weapons. The applicant initially tried to avoid any confrontation with the intruders. Like his parents and his

wife, he was scared. They dragged him out of the house, shone a torch in his face and asked him menacingly why he had defied them the previous day. They detained him for about an hour, near a public toilet. They demanded that he leave the RPPN and stop promoting the monarchy. They slapped and humiliated him, but did not seriously assault him. They warned him that, if he continued his political activities, they would harm him or his family.

45. The applicant, his wife and his 2 [children] went to [Town 4] the following day, and visited the RPPN district office there. On advice from the party, he reported the matter to the police. They told him that, because his village is so remote, they would not be able to offer him effective security there; they were not confident that they could even protect themselves. They advised him not to return to his village. At the end of the hearing, the applicant said that he did not receive a written police report; he had made only a verbal complaint.
46. The Tribunal queried whether the applicant's father, who still lives in the village, also experienced problems. He replied that the Maoists forced them to vote for them, and collect donations from them, threatening to seize their land or property if they fail to comply. His father is attached to the area, and has avoided leaving. The applicant said that he, as a young man, faces more serious problems. Asked whether the other RPPN members in his village (the 4 or 5 that he had referred to earlier) had faced similar problems, the applicant said that they did not, because they had not been outspoken like him. He noted that a few elderly people had voiced opposition to the Maoists early on, but they were now quiet.
47. Asked about his subsequent contact with the RPPN office in [Town 4] (after he initially reported his problems to them), the applicant said he met them when they visited Kathmandu. He did not deal personally with the RPPN's Kathmandu office, because he did not have a profile or influence of interest to them. He was expected to contact them through the hierarchy, hence through the [Town 4] office.
48. The applicant agreed with the Tribunal's observation that at face value, the police appeared to have responded reasonably to his complaint, given their resources and limited capacity to provide security in a remote area. He added that the Maoists handled security in his local area.
49. The applicant said that, after he left his village, the Maoists called on his father, asking his whereabouts. They said that they knew of his approach to the police, and that the applicant would not be spared if they caught him. The applicant did not experience any further direct harm.
50. As for possible residence in [Town 4] or Kathmandu, the applicant said that he would probably be able to stay in [Town 4] just a few days, as it is a small city and the Maoists would soon learn about his presence there. He could perhaps live in Kathmandu for 6 months or so, but the Maoists would also discover his presence there. He said that he cannot 'disappear' for his whole life. The Maoists control the government and have an excellent network. He said that the Maoists completely control his village now.
51. The Tribunal asked the applicant whether, since 2008, he has had any contact with the RPPN. He replied that he stays in touch with a political contact, who is also a friend, in [Town 4], by telephone. The Tribunal expressed surprise that the applicant had not continued any political engagement since leaving [Village 1].

52. The applicant presented his Nepalese passport. He has never held another travel document, or made trips abroad apart from his visit to Australia. He said that to obtain the passport, he needed proof of citizenship and a recommendation from the village development committee, detailing the family's origins. He arranged the paperwork in [Town 4], Myagdi. The passport issuance itself took as little as 2 days.
53. Asked about his Australian student visa, issued on the basis of a purported spouse relationship with a female student, the applicant said that he feared harm in both his village and in Kathmandu. His wife's uncle introduced him to an agent, who arranged for the applicant to obtain a visa as a student dependant. In reply to the Tribunal's questions, the applicant said that he had applied unsuccessfully to obtain a visa for [Country 3]. Needing to leave Nepal urgently, he was fortunate to obtain an Australian visa. He did not apply for visas to other destinations.
54. The Tribunal noted that there appeared to be a significant gap between the claimed incident and the applicant's departure from Nepal. The applicant agreed, adding that he was looking for opportunities to leave Nepal. He needed time to arrange documents, and for the visa processing time. Asked for further details about the documents, he said that he gave the agent his passport, and the agent then produced documents to demonstrate the relationship, such as a few photographs of the applicant and the other person together.
55. The applicant presented original documents, in Nepalese only, which he said his RPPN party friend in [Town 4] had sent him. He said that they were an RPPN membership receipt, a membership certificate, and a letter from the party certifying his membership. The letters, he said, confirm the applicant's RPPN membership, but do not mention any problems he had. The Tribunal advised that he should provide a translation of the documents, if they contained further relevant information.
56. The Tribunal put to the applicant country information concerning the prevalence of false documentation from Nepal. This was, it noted, particularly relevant given the applicant's earlier evidence that he had relied on fabricated documents to obtain his Australian student visa. It alerted him that it would need to consider carefully all aspects of the documents he had now provided, in determining what weight and meaning to attach to them. The applicant said, in response to the Tribunal's questions, that his friend in [Town 4] gave the documents to a named person who recently brought them to Australia, [in] March 2012. Asked why these documents (such as the receipt) were not with his family, the applicant replied that his parents in [Village 1] were not mobile, and his friend in [Town 4] was the most suitable person to approach the party.
57. The Tribunal also put to the applicant country information indicating that the RPP and the RPPN have minimal political support. It may infer from this information that the Maoists do not regard these parties as serious opponents, and, furthermore, that they would not put priority on pursuing, in Kathmandu, an RPPN supporter from a remote area. The applicant agreed that the RPP and RPPN are currently minor parties now, but said that a majority of the population continue to support the monarchy, even if they are fearful now. He said that the King would be returned to power if there were free and fair elections, and that the monarchy will eventually be brought back.
58. The applicant said that, in Australia he worked for 6 or 7 months on a farm, until he had back problems. He then moved to Queensland, where he did housekeeping. A year later, he returned to Sydney.

59. The Tribunal asked the applicant whether he could safely and reasonably relocate to Kathmandu, where his wife and children currently live, if he has problems in [Village 1]. He replied that, although Kathmandu is large, the Maoists would eventually find him.
60. The Tribunal observed that the applicant came to Australia in 2009 (as evidenced by his passport), and asked why he waited so long before seeking protection if that had been his original reason for coming here. He replied that he was ignorant about Australian law; he held a valid visa at that time; and he was reluctant to approach anyone for fear of deportation, because he had relied on fraudulent documents to enter Australia. Eventually, he learned from some friends that Australia offers refugee protection. The Tribunal expressed scepticism that a person who evidently had access to good resources – he had relied on an agent in Nepal, has a brother in [Country 3] and had travelled long distances in Australia – was unaware of refugee protection for so long. The applicant reiterated that he had been reluctant to discuss his circumstances with anyone.
61. The applicant confirmed that he had presented all his claims and evidence. The Tribunal flagged its concerns that the applicant had referred to just one incident in a remote part of Nepal, and, even taken at face value, it was difficult to imagine that he faces a credible threat from the Maoists in [Town 4] or Kathmandu. His significant delay in seeking protection added to its concerns. On the question of whether one incident could give rise to an ongoing threat, the applicant said that he knew of a similar incident in Myagdi some 7 or 8 years ago, involving a young Nepali Congress member. The Maoists captured and beat him to death when he returned home.
62. The Tribunal advised that it had significant doubts about the applicant's refugee claims, and supporting evidence, and asked if he feared significant harm for any reasons apart from those discussed thus far (hence, complementary protection). He said that he had presented all his evidence relating to his fears.
63. [In] April 2012, the Tribunal received a submission with translations of the 3 documents that the applicant had provided at the Tribunal hearing (see paragraph 56 above). The translations are summarised below:
- 1) RRP-N Membership Certificate, issued in [Town 4] [in] April 2007: - this states the following: 'This membership certificate has been given to [the applicant], [age] years of age [family and residential details are provided] with the hope that he will fulfil the responsibility given to him by being committed to the ideals, values and principles of the [RPPN].'
 - 2) RRP-N District Working Committee certification dated [November] 2011: This states that the applicant 'became interested in the [RPPN] and was inspired by [the party's principles and values], and also as he was encouraged by his family, he took a membership of the party and became a member of the [RPPN] on [date] April 2007. [...] He played an important role in extending the organisation by being involved at various levels and activities of the party as well as being actively involved in various programs conducted by the party after he took a member of the party.'
 - 3) RPPN membership receipt, dated [April] 2007, which acknowledges his membership and his commitment to the party's ideals. [This appears akin to a membership card, rather than receipt for monies paid.]

Country Information

64. The Tribunal has had regard to country information in the delegate's decision, including the general political situation in Nepal, and published RRT Country Advices NPL37309 and NPL37203, which address, with reference materials, the political situation in Myagdi province, Maoist and YCL activities there, the role of the RPP and the availability of State protection. The Tribunal also drew on the following background material.

Myagdi – General background and political situation

65. Myagdi Province is one of 75 provinces in Nepal, and is located in the western Dhawalagiri zone, in the middle of Nepal. The provincial capital is [Town 4].² The province contains the world's deepest gorge, and is very mountainous. The province is poor³ and sparsely populated.⁴

Maoists and the monarchist parties

66. In Nepal, between 1996 and 2006, Maoist rebels led an insurgency against the royalist government, calling for the establishment of a democratic republic. A Comprehensive Peace Agreement was signed in 2006, and Nepal was subsequently declared a republic in 2007 with the abolition of the monarchy. The Maoists often accuse their political opponents of attempting to reinstate the monarchy.⁵ According to DFAT, monarchists in Nepal can include members of pro-monarchy political parties such as the RPP (and its offshoot the RPPN), as well as prominent individuals with links to the former royal family who are not politically active.⁶
67. The Maoist youth wing, the Young Communist League (YCL), was re-activated in 2006 in order "to provide the Maoists with muscle in everyday politics".⁷ Reports by the United Nations, DFAT, Freedom House, Amnesty International and the US Department of State indicate that Maoist militias such as the YCL harass and carry out violent attacks against political opponents, including monarchists and ordinary members of the RPP.⁸

² Myagdi District Map, 'Nepal Information Platform', *United Nations*, <http://www.un.org.np/maps/district-maps/western/Myagdi.pdf>

³ <http://www.ictregulationtoolkit.org/en/PracticeNote.aspx?id=3176>, and 'Poverty Density', United Nations Office for the Coordination of Humanitarian Affairs, <http://www.fao.org/docrep/010/ah869e/ah869e09.gif>

⁴ 'Population Density Map 2006', *United Nations Office for the Coordination of Humanitarian Affairs*, <http://www.un.org.np/reports/maps/OCHA/2009/2009-02-18-Nepal-Population-Density-2006-A4.pdf>

⁵ DIAC Country Information Service 2009, *Country Information Report No. 09/58 – Nepal: Discrimination – CIS Request No. NPL9770*, (sourced from DFAT advice of 3 August 2009)

⁶ DIAC Country Information Service 2009, *Country Information Report No. 09/58 – Nepal: Discrimination – CIS Request No. NPL9770*, (sourced from DFAT advice of 3 August 2009), 5 August

⁷ International Crisis Group 2010, *Nepal's Political Rites of Passage*, Asia Report N°194, 29 September, pp.4-5, 7-10; The Carter Center 2011, 'Political party youth wings in Nepal', The Carter Center website, 28 February, pp.1, 25 http://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/nepal-political-party-youth-wings-022811-en.pdf.

⁸ DIAC Country Information Service 2009, *Country Information Report No. 09/58 – Nepal: Discrimination – CIS Request No. NPL9770*, (sourced from DFAT advice of 3 August 2009), 5 August; US Department of State 2011, *Country Reports on Human Rights Practices for 2010: Nepal*, 8 April, Introduction, Section 1g; Freedom House 2010, *Freedom in the World – Nepal (2010)*, June <http://www.freedomhouse.org/template.cfm?page=363&year=2010&country=7885> – Accessed 10 September 2010; Amnesty International 2010, *Annual Report 2010: Nepal*, 28 May; US Department of State 2010, *Country Reports on Terrorism for 2009*, August, p.156; United Nations Security Council 2010, *Report of the Secretary-General on the request of Nepal*

for United Nations assistance in support of its peace process, United Nations Mission in Nepal (UNMIN) website, 28 April, p.5 <http://www.unmin.org.np/downloads/keydocs/SG%20Report%20April%202010.pdf> ;

68. As Myagdi is relatively remote, the large Maoist presence in the area has tended to dominate reporting, together with the attendant insecurity and acts of political violence. No specific information was found on RPP members being attacked in Myagdi. However, there are reports that Maoist groups and the YCL have attacked Village Development Committee and District Development Committee officers,⁹ as well as journalists,¹⁰ in the district. In addition, a Myagdi man was reportedly abducted by YCL cadres in May 2010.¹¹

Rashtriya Prajatantra Party

69. The Rashtriya Prajatantra Party (RPP – National Democratic Party) is a monarchist political party that advocates constitutional monarchy and economic liberalism. The party's three main ideological pillars are nationalism, democracy and liberalism. The RPP was established in the 1990s with the merger of two right-wing pro-monarchist parties led by S.B. Thapa and L.B. Chand. Tensions between the two leaders led to the resignation of Thapa and the formation of his own party, the Rashtriya Janshakti Party (RJP), in March 2005. As noted above, in the April 2008 elections, the RPP won eight seats in the 601 seat Constituent Assembly. In June 2009, the RPP joined the Communist Party of Nepal-Unified Marxist-Leninist (CPN-UML) led government. The Department of Foreign Affairs and Trade (DFAT) advised in 2009 that: 'the RPP...is not seen to be a significant political force'¹²

Rastriya Prajantantra Party - Nepal

70. In January 2006, a pro-monarchy off-shoot of the RPP known as the Rastriya Prajatantra Party-Nepal (RPP-N) was formed after RPP leader Chand indicated that the party would support 'pro-democracy agitation'. In Nepal's most recent elections, held in April 2008, the RPP-N won four seats in the 601 seat Constituent Assembly.¹³

United Nations Security Council 2009, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 2 January, pp.2, 10 <http://www.unmin.org.np/downloads/keydocs/2009-01-09-UNMIN.SG.Report.to.SC.ENG.pdf>

⁹ United Nations Office for the Coordination of Humanitarian Affairs 2010, 'Nepal – Reported Security Incidents Involving VDC and DDC Staff, Period covered 1 January – 31 July 2010', United Nations Nepal Information Platform website http://www.un.org.np/reports/maps/OCHA/2010/2010-08-05-VDC_Secretary_Jan-July_A4_11082010_v02.pdf; Prasad, M. 2010, 'Maoist mine blast kills 5 cops', *Indian Express.com*, 17 July <http://www.indianexpress.com/news/maoist-mine-blast-kills-5-cops/647832/> 'UN concerned about threats to VDC secys' 2010, *The Himalayan Times*, 7 August, <http://www.thehimalayantimes.com/fullNews.php?headline=UN+concerned+about+threats+to+VDC+secys+&NewsID=249180#>; 'Myagdi VDC secys back to business' 2010, *The Himalayan Times*, 29 July <http://www.thehimalayantimes.com/rssReference.php?headline=Myagdi+VDC+secys+back+to+business&NewSID=248178>

¹⁰ 'Media person attacked' 2009, *eKantipur.com*, 24 November, <http://www.ekantipur.com/2009/11/23/0/Media-person-attacked/303339/#>; Untitled 2009, *South Asia Media Net*, source: *Himalaya Times*, 24 March http://www.southasianmedia.net/Archive_full.cfm?nid=567246

¹¹ 'Abduction charge on YCL men' 2010, *eKantipur.com*, 10 May, <http://www.ekantipur.com/2010/05/10/capital/abduction-charge-on-ycl-men/314039/#>

¹² DIAC Country Information Service 2009, *Country Information Report No. 09/58 – Nepal: Discrimination – CIS Request No. NPL9770*, (sourced from DFAT advice of 3 August 2009), 5 August

¹³ 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 'Rastriya Prajatantra Party (RPP)' (undated), Nepal Election Portal website <http://deannepal.org/election/EN/political-parties/partydetails/rpp.php>; DIAC Country Information Service 2009, *Country Information Report No. 09/58 – Nepal: Discrimination – CIS Request No. NPL9770*, (sourced from DFAT advice of 3 August 2009)

71. As the Tribunal put to the applicant at hearing, support for the former King, Gyanendra, or for monarchy in general, seems to be relatively modest in Nepal. Nonetheless, the ICG believes that the RPP-N deliberately links the end of the monarchy with the end of Nepal as a Hindu state: '[r]oyalists are trying to link their issue with the end of Nepal as a Hindu state; uneasiness with the latter is more widespread than nostalgia for the king'¹⁴ This suggests that the RPP-N is attempting to broaden its appeal by capitalising on common religious anxieties. A Nepalese media article in May 2011 claimed that the RPP-N has only 'meagre popular support'.¹⁵

YCL and pro-monarchists

72. The Young Communist League (YCL) is the youth wing of the Unified Communist Party of Nepal-Maoist (UCPN-M), and is the largest of the political party youth wings. Reports by the United Nations, the Department of Foreign Affairs and Trade (DFAT), Freedom House, Amnesty International and the US Department of State indicate that Maoist militias, such as the YCL, harass and carry out violent attacks against pro-monarchists.¹⁶ The United Nations Mission in Nepal (UNMIN) reports indicate that some Maoist cadres, mainly those belonging to the YCL, have engaged in acts of violence against monarchists, including abduction, torture, and murder.¹⁷
73. A 2010 report by the Carter Center indicates that despite an overall decrease in violence perpetrated by youth wings since the elections, the YCL has continued to use 'intimidation and violence to control political space'.¹⁸ Both the International Crisis Group and the United Nations suggest that the violent activities of the Maoists and the YCL have significantly decreased since the 2008 elections. The Maoist government's treatment of opponents, including pro-monarchists, following the elections consisted of isolated violent incidents by some cadres rather than widespread targeting of political opponents.¹⁹ Reports indicate that

¹⁴ International Crisis Group 2011, *Nepal: Identity Politics and Federalism*, Crisis Group Asia Report N°199, 13 January, p.20

¹⁵ '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>

¹⁶ DIAC Country Information Service 2009, *Country Information Report No. 09/58 – Nepal: Discrimination – CIS Request No. NPL9770*, (sourced from DFAT advice of 3 August 2009); US Department of State 2011, *Country Reports on Human Rights Practices for 2010: Nepal*, 8 April, Introduction, Section 1g; <http://www.freedomhouse.org/template.cfm?page=363&year=2010&country=7885>; Amnesty International 2010, *Annual Report 2010 – Nepal*, 28 May; US Department of State 2010, *Country Reports on Terrorism for 2009*, August, p.156 ; United Nations Security Council 2010, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 28 April, p.5 <http://www.unmin.org.np/downloads/keydocs/SG%20Report%20April%202010.pdf>; United Nations Security Council 2009, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 2 January, pp.2, 10 <http://www.unmin.org.np/downloads/keydocs/2009-01-09-UNMIN.SG.Report.to.SC.ENG.pdf>

¹⁷ United Nations Security Council 2009, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 2 January, pp. 2 and 10 <http://www.unmin.org.np/downloads/keydocs/2009-01-09-UNMIN.SG.Report.to.SC.ENG.pdf>

¹⁸ The Carter Center 2011, 'Clashes Between Political Party Youth Wings Have Decreased But YCL And UML Youth Force Continue To Seek Financial Gain', The Carter Center website, 28 February, pp.3-4 http://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/nepal-political-party-youth-wings-022811-en.pdf

¹⁹ International Crisis Group 2009, *Nepal's Faltering Peace Process*, Asia Report N°163, 19 February, p.6; United Nations Security Council 2008, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 24

pro-monarchists held demonstrations in 2011. These resulted in clashes with the police, and on one occasion members of the RPP-N were reportedly arrested for “chanting ‘improper’ slogans”.²⁰

State protection

74. According to the US Department of State 2010 Report on Human Rights Practices in Nepal, ‘although the Maoists announced the dissolution of their parallel government structures and courts in 2007, according to police and NGO reporting, they continued to function in some districts, particularly in rural areas.’ The same report indicates that impunity for human rights violators continued.²¹

Document fraud

75. The applicant stated that he relied on a fraudulent marriage certificate to obtain his Australian student visa. Reports indicate that document fraud is widespread. For instance, a Canadian official was quoted as saying: ‘My experience is that any Nepalese document can be obtained by fraud. These may include falsely, forged or complete counterfeits’²²

FINDINGS AND REASONS

76. The applicant entered Australia in January 2009 on a passport issued by the Nepalese authorities, in his own name, in July 2008. The Tribunal has sighted the passport and, on the basis of that and the applicant’s evidence as a whole, accepts that he is a national of Nepal. It therefore assesses his claims against Nepal as his country of nationality.
77. The applicant claims to fear persecution on the basis of his political opinion, as a pro-monarchist supporter and member of the RPPN. He claims that the Maoists and YCL youth cadres control the area around his local village, extorting and threatening all locals, but in particular targeting active RPPN members and other opponents. He claims that he fled his home village in July 2007, after YCL cadres detained, mistreated and threatened to kill him. District police were unable to protect him. Local Maoists have asked the applicant’s father in the village about the applicant’s whereabouts. They also made several threatening calls to the relatives in Kathmandu, where the family first stayed. The applicant fears that the Maoists and YCL will harm or kill him if he returns to Nepal, because of his refusal to join them. He also fears that he will be unable to express his pro-monarchist views in safety.

October <http://www.unmin.org.np/downloads/keydocs/2008-10-29-UNMIN.SG.Report.to.SC.ENG.pdf>; United Nations Security Council 2009, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 2 January <http://www.unmin.org.np/downloads/keydocs/2009-01-09-UNMIN.SG.Report.to.SC.ENG.pdf>; United Nations Security Council 2009, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 26 October <http://www.unmin.org.np/downloads/keydocs/SG%20Report%20Oct%2009.pdf>; United Nations Security Council 2010, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 28 April <http://www.unmin.org.np/downloads/keydocs/SG%20Report%20April%202010.pdf>

²⁰ For clashes with police see: Parajuli, K. 2011, ‘Police and Hindu radicals clash as the nation fears anarchy’, AsiaNews.it website, 28 May <http://www.asianews.it/news-en/Police-and-Hindu-radicals-clash-as-the-nation-fears-anarchy-21690.html> .

²¹ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Nepal*, April

²² See Immigration and Refugee Board of Canada, 2009, *NPL103010.E – Nepal: Prevalence of forged, fake or falsely acquired documents, including identity documents, professional certifications, membership cards and employment records*, 26 January.

78. The Tribunal accepts that the applicant is from Myagdi, a remote and relatively poor district of Nepal that the Maoists have held for many years, and that he worked as a shopkeeper and farmer before moving to Kathmandu in mid-2008. Although the applicant did not provide the marriage and birth certificates that he foreshadowed in his protection visa application, the Tribunal accepts that he has a wife and 2 [children] who are currently living in Kathmandu. It finds that the marriage certificate that he relied on to obtain an Australian student visa was fabricated, as claimed.
79. Beyond these facts, however, the Tribunal has a number of concerns about the truthfulness of the applicant's account of his experiences and circumstances in Nepal, and the reasons for his departure from that country. The Tribunal's assessment of his claims and evidence, and its findings, follow.
80. The applicant spoke with apparent ease and familiarity about political conditions in Myagdi, including the Maoist presence and activities in the area for many years, and about the pro-monarchist RPP and RPPN parties. These were broadly consistent with available country information. Based on the applicant's evidence about his and his family's background and political views, the Tribunal accepts that they favour the return of the monarchy, and support the RPPN in principle.
81. At the same time, some of the applicant's observations about the monarchy and the pro-monarchy parties were surprising. For instance, his comment that he saw no adverse circumstances that justified the abolition of the monarchy in 2008 does not sit well with general country information about the instability and state of emergency in Nepal in the mid-2000s. Even if he meant to say that the overthrow of the monarch was ultimately unjustified or unwise, the breadth of his comment is unsettling. Similarly, as the Tribunal discussed at the hearing, country information does not support his comment that the monarchy enjoys broad or even majority support, notwithstanding the Maoists' brainwashing of youth and broader intimidation of the population. The Tribunal appreciates that these comments might reflect a pro-monarchy perspective and/or local sentiment in Myagdi, and it therefore draws no adverse inferences from the tension between them and broader country information. However, they suggest that the applicant may have exaggerated or mischaracterized his views of the monarchy.
82. The Tribunal has a number of concerns about the applicant's claims to have been an active pro-monarchist, to be a member of the RPPN, and to have fled Myagdi and then Nepal for fear of persecution from the Maoists and YCL cadres.
 - a) The applicant claimed in his protection visa application to have been a pro-monarchist, though not politically active, until the end of 2007, when he joined the RPPN. He appeared to link this with the emergence of the RPPN (which was established in early 2006) and, somewhat less clearly, with the campaign for the April 2008 Constituent Assembly elections. However, he gave little further insight as to how and why a [age deleted: d.431(2)] year old shopkeeper and seasonal farmer assumed, in such a short period, a key role for the RPPN, campaigning for them in the 2008 elections, representing them on the Village Development Committee and, after the election, playing a key figure in the King's birthday celebrations.
 - b) Although the applicant claimed that there were 4 or 5 other RPPN members in his village, he said that the Maoists had not targeted them because they had not been outspoken like him. He appeared to be alluding to the claimed altercation on the King's birthday,

although his protection visa application referred to a wider range of prominent roles in the village and on behalf of the RPPN. In any event, the Tribunal sensed that the applicant had not enquired about the welfare of party colleagues and had not even turned his mind to this. This raises some questions as to whether the applicant was in such a group, as claimed.

- c) The Tribunal has considered the RPPN membership documents that the applicant obtained through a friend in [Town 4], translations of which were provided only after the hearing. The Tribunal flagged at the hearing that it intended to scrutinise these and any further documents carefully, and that it may take into account the applicant's admission that he has previously presented fraudulent documents to the Australian authorities, as well as country information about the prevalence of such practices in Nepal. As for why the applicant had to source these documents from the RPPN office in [Town 4], via a friend, rather than have family members retrieve them from his personal effects, he said vaguely that his parents (in [Town 4]) are elderly and not mobile, but did not explain why he did not keep these documents with him. A further anomaly that has become apparent only after receipt of the translated texts is that, while the applicant clearly stated in his protection visa application and at the Tribunal interview that he was not politically active and did not join the RPPN until the end of 2007, each of the translated RPPN documents refers to [a date in late] April 2007 as his date of membership. This adds to the Tribunal's concerns that, even if the documents were produced on genuine RPPN letterhead, their contents are unreliable. It places no weight on these documents as evidence to support the applicant's claims.
- d) The Tribunal takes into account that the applicant's chronology of events in July 2008 is generally coherent, and tends to support his claims. They set out that he participated in the King's birthday celebration [in] July 2008, was attacked the following day, left his village the day after that, and obtained his passport in [Town 4] [seven days later], after just a few days' wait, before moving on to Kathmandu. However, this alone is insufficient to displace the Tribunal's significant other concerns.
- e) The applicant said that, after leaving [Village 1] with his family [in] July 2008, he visited the RPPN office in [Town 4] to seek their advice or assistance. He gave the name of a person who he said was the head of the office there, and gave a reasonably credible account of his contacts with local police. He characterised the police as being receptive, but unable to protect him given their limited resources and the Maoist dominance in their area. Nonetheless, the applicant said that the police did not record his complaint in writing. In the Tribunal's view, the applicant has given a measured and credible account of police conduct in such circumstances, though it ultimately does not go to the question whether the applicant asked for police assistance [in] July 2008, for the claimed reasons.
- f) The applicant's account of his subsequent contacts with the RPPN since July 2008 and his demonstrated interest in the party are very limited. He referred to one political and personal friend in [Town 4], whom he relied on to approach the party for documents to support this application. Apart from that, the applicant did not appear to maintain political contacts in his home village, despite his earlier claimed activism. Asked about any engagement with the RPPN in Kathmandu, he only referred to seeing RPPN officials from [Town 4] on their visits to Kathmandu, explaining that he did not have the profile or influence that would give him access to RPPN circles in Kathmandu. He did not give any insight as to why the RPPN, or any other political party, would be closed to interested newcomers. The Tribunal acknowledges that a person who, as the applicant claims, is a

recent political activist at the village level and has fled in the face of Maoist threats, may find it difficult to find a political role in a town or city, and indeed may be preoccupied with establishing himself in a new place. However, in this case, the applicant appears to have had minimal involvement or interest in the party at all, apart from the claimed incidents in July 2008.

- g) As the Tribunal put to the applicant at the hearing, the significant delay between his departure from Myagdi and obtaining a passport, in July 2008, and his eventual arrival in Australia, in mid-January 2009, also raises questions about whether the Maoists present a risk to him throughout Nepal, as claimed. The applicant said that it took time to arrange his departure; that he lived with his wife's uncle near Kathmandu; and yet, even there, the family received some threatening calls from the Maoists, prompting them to move to another location. The timing and circumstances of the telephoned threats are unclear. The applicant said at various times that he lived with his family in [Town 2] for some 6 months before leaving for Australia; that they received 2 or 3 threatening calls from the Maoists, which prompted his wife's uncle to suggest they move elsewhere; and also that they moved from [Town 2] about 4 or 5 months after the applicant arrived in Australia. Piecing this together, this suggests that the applicant stayed in Kathmandu ([Town 2]) without receiving any threats. The Tribunal notes the applicant's comments that the Maoists would eventually have located and pursued him, even in Kathmandu; and that he was busy looking for ways of departing Nepal during this period. However, his residency in Kathmandu for almost half a year, focused on securing overseas migration rather than exploring more immediate and accessible options to avoid the Maoists (such as India), casts further doubt on whether he genuinely feared persecution or other harm from them.
- h) The applicant's delay of almost two and a half years before making his protection visa application raises more questions about his claim to have left Nepal for reasons of persecution. As Heerey J noted in *Selvadurai v Minister for Immigration and Ethnic Affairs* (1994) 34 ALD 347, it is legitimate to take into account an applicant's delay in lodging an application for a protection visa in assessing the genuineness, or at least the depth, of the applicant's claimed fear of persecution. In this case, the applicant gave several reasons for the delay: (a) he believed that he had a student visa, albeit a fraudulently obtained one, that permitted him to stay and work in Australia (until May 2011); (b) he did not know about the availability of refugee protection; and (c) in any event, he was afraid of approaching the Australian authorities for fear of them discovering the fraudulent marriage and deporting him. As the Tribunal put to the applicant, he appears to have access to resources and advice, at least through his brother in [Country 3], his past reliance on a Nepalese agent who arranged fraudulent documents, and his travel over long distances in Australia for work. The Tribunal does not believe that the applicant lacked knowledge or the means to make enquiries about refugee protection. The evidence suggests instead that he was seeking to maximise his stay in Australia, on a student visa, before initiating any further process. It is true that this does not necessarily rule out his claim to fear returning to Nepal, but in the Tribunal's view, it casts doubt on the seriousness and urgency, and indeed, the genuineness of any claimed problems there.
83. Taking the evidence as a whole, including the concerns set out above, the Tribunal accepts that the applicant supports pro-monarchist views and the RPPN. However, it does not accept that he is a member of the RPPN or any monarchist party, whether an ordinary member or a more active community leader, as he claimed to have become in late 2007. The Tribunal accepts that the applicant may have taken a keener interest in politics in the lead-up to the

2008 Constituent Assembly elections, and that he may have participated in a celebration for the King's birthday. However, it does not accept that he played a key role in any campaign or other political activities, or that he organized the King's birthday celebrations, or that he had any other significant role in the community (such as the RPPN representative on the Village Development Committee).

84. Return to Nepal – future conduct: The Tribunal finds that the applicant will go to Kathmandu on his return to Nepal, rather than his home village in Myagdi. It therefore assesses his refugee claims with reference to Kathmandu.
85. The Tribunal finds that the applicant will return to Kathmandu because his wife and children are well-established there (for instance, his [children] go to school there), he has potential support from in-laws, and Kathmandu offers more education and job options than Myagdi, which is remote and poor. The pull factors in Myagdi are weak. The applicant said that his father in Myagdi draws a pension, and the local community assists his parents where necessary. According to his evidence, he appears to have only limited contacts with his home area now, apart from a friend in [Town 4].
86. Myagdi - prior place of residence: The Tribunal has considered the circumstances of the applicant's move from Myagdi to Kathmandu in 2007, to determine if he did so in response to a well-founded fear of persecution for a Convention reason in his home district. The question is whether he has in the past had to modify his conduct to avoid persecutory harm (along the principles in *S395*²³), and whether there is a real chance of him needing to do so in the reasonably foreseeable future.
87. The applicant described the general security situation in Myagdi as poor. Local Maoists in Myagdi demand money and intimidate people, sometimes forcing them to vote for them and threatening to take their land or property. This is broadly consistent with reporting that Maoists and YCL cadres intimidate and commit acts of violence against locals, for what may be criminal, personal or political motives. Although the Carter Center²⁴ and other sources suggest that such incidents are decreasing overall, the Tribunal accepts that such practices continue, including in areas such as Myagdi, and that this adversely affects the security environment generally.
88. The Tribunal accepts the applicant's evidence that pro-monarchists and ordinary RPPN members in his home area face some added discrimination and pressure, although he commented that this does not usually involve more serious threats or harm. The applicant claimed that he faced further risks, as a young man and as an outspoken RPPN activist. The Tribunal accepts that young men in Myagdi, as elsewhere, may be perceived to have greater influence and ambition, including in political affairs, than other members of the community. However, for the reasons given above, the Tribunal does not accept that the applicant was a RPPN activist, or that he was motivated to be 'outspoken' Taking into account the applicant's own evidence that he only faced some minor incidents of discrimination before the alleged incident in mid-2007, the Tribunal finds that he did not have a well-founded fear of persecution in Myagdi, as a young man who favours the monarchy, or for any other reason.

²³ *Appellant S395/2002 v MIMA*, (2003) 216 CLR 473

²⁴ The Carter Center 2011, 'Clashes Between Political Party Youth Wings Have Decreased But YCL And UML Youth Force Continue To Seek Financial Gain', The Carter Center website, 28 February, pp.3-4
http://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/nepal-political-party-youth-wings-022811-en.pdf

89. Given the concerns set out above, the Tribunal does not accept that the applicant took on some political role for the RPPN in late 2007 or early 2008; that he hosted or organized the King's birthday celebrations in July 2008; that he had an altercation with YCL cadres during that event; that they detained, mistreated and threatened to kill him on the following day; or that he left [Village 1] together with his wife and children following such an incident. The Tribunal does not accept the applicant's claim that he sought help, first from the RPPN office in [Town 4] and then the local police, who then said that they did not think they could protect him and that he should leave the area.
90. In light of the above findings, the Tribunal does not accept that the applicant and his family left [Village 1] to avoid Convention-related persecution. The evidence indicates, and the Tribunal is satisfied, that a combination of other factors, such as Myagdi's relatively weak economic and security conditions, and its remoteness, led him and his family to move to Kathmandu, for the family's betterment and possible eventual emigration to [Country 3], Australia or elsewhere.
91. Kathmandu: The Tribunal finds that the applicant does not face a real chance of persecution for any Convention reason in Kathmandu, the place to which he will return in Nepal.
- Given the above findings in relation to Myagdi, the Tribunal does not accept that the Maoists or YCL cadres contacted his father after his departure from Myagdi, to signal their ongoing adverse interest in him.
 - For the same reasons, the Tribunal does not accept that the Maoists made 2 or 3 threatening calls to his uncle's home in [Town 2] (Kathmandu), indicating that he was also at risk in the capital city.
 - The Tribunal initially understood that the alleged calls came shortly after the applicant and his family moved to Kathmandu. However, he later said that there had been no adverse incidents during the 6 months of his stay there, before leaving for Australia. The calls came later, and they prompted his uncle to move his wife and children to rented premises in Kathmandu, where they are unknown and feel safe. He said that his family moved some 4 or 5 months after he arrived in Australia, funded by money he sent from Australia.
 - The Tribunal finds that the applicant's family moved to rented premises for reasons unrelated to his refugee claims. It does not accept that they did so in response to threats from the Maoists in Myagdi, who had tracked them down in Kathmandu.
 - The Tribunal therefore does not accept the applicant's claim that there were such calls, and that they show that, while he might be able to stay or 'hide' in Kathmandu for 6 months or maybe longer, the Maoists will ultimately find and seriously harm him.
 - The applicant said that he did not contact the RPPN office in Kathmandu while he was there, because he did not have access to them. He does not appear to have engaged in any other political activities, of any kind, in Kathmandu, apart from his claim to have met some friends visiting from [Town 4]. Even allowing for the applicant's preoccupation at that time with settling his family into a new city and making arrangements for his travel abroad, he appears to have had minimal political interests. The Tribunal finds that, although the applicant generally favours monarchist groups, he does not have a political

opinion that has in the past or that will in the future motivate him to be politically active. The situation therefore also does not arise, where he might have to refrain from political activities or modify his conduct so as to avoid the risk of Convention-related persecution.

92. Having considered the applicant's claims and evidence as a whole, the Tribunal accepts that he supports the monarchy, but does not accept that he is a member of the RPPN, that the Maoists have targeted him in the past, or that there is a real chance of them or anyone harming him if he returns to Nepal. The Tribunal is therefore not satisfied that he has a well-founded fear of Convention-related persecution, now or in the reasonably foreseeable future, if he returns to Nepal.
93. The Tribunal has also considered whether the applicant meets the alternative criterion for complementary protection. In light of the above findings, the Tribunal is not satisfied that the available information provides a basis for finding there are substantial grounds to believe that, as a necessary and foreseeable consequence of his being removed from Australia to Nepal, there would be a real risk that he would suffer significant harm in terms of s.36(2)(aa) of the Act.

CONCLUSIONS

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

DECISION

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