

1104336 [2011] RRTA 837 (30 September 2011)

DECISION RECORD

RRT CASE NUMBER:	1104336
DIAC REFERENCE(S):	CLF2010/104206
COUNTRY OF REFERENCE:	Nepal
TRIBUNAL MEMBER:	Paul Millar
DATE:	30 September 2011
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Nepal, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] June 2010 and applied to the Department of Immigration and Citizenship for the visa [in] August 2010. 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 file relating to the applicant.

Primary application

20. The applicant made the following claims in her primary application documents.
21. The applicant was born on [date deleted: s.431(2)] and comes from [District 1] Nepal. She lived in a town in that district from [date deleted: s.431(2)] until May 2010. From May 2010 until June 2010 when she left Nepal, she lived in Kathmandu. From [date deleted: s.431(2)] until April 2010, she was self-employed in a small business in the town of [Town 2] in [District 1] district.
22. The applicant departed Nepal [in] June 2010 and she arrived in Australia [in] June 2010. She used the passport of her sister-in-law to leave Nepal and travel to Australia. She holds a Nepal passport issued to her [in] July 2010.
23. In her protection visa application form, the applicant stated that she left Nepal and is afraid to return there because the Maoists have threatened her life and liberty; they ask for unaffordable amounts of money and they will harm her. This is because she is a supporter of the Rastriya Prajatantra Party (“the RPP”).
24. [In] October 2010 the department received from the applicant a statement signed by her [in] September 2010 in which she put forward the grounds of her refugee claim. They can be summarised as follows:
 - The applicant's family aligned themselves with the RPP; the applicant’s father being a life member of that party. The applicant's grandfather was personally selected to be a leader in [District 1] by the former King Mahendra and won an election as a regional member serving until [year deleted: s.431(2)].
 - Maoists have been responsible for violence in her native area of Nepal. They killed her uncle [name deleted: s.431(2)]. When she lived in Nepal, the Maoists asked her to join them; in 2001 they attacked and confiscated her parents’ home and property following which they went to live in Kathmandu and the Maoists asked the applicant for donations in 2002 and 2003.
 - The applicant supported her relation [Mr A] in the constitutional assembly elections, her relative being a candidate for [District 1]. Although he lost that election, the applicant

continued to lead the party in her village development committee, the applicant having received a nomination to head that committee from the district office of the RPP.

- On [Date B] May 2010, Maoists came to the applicant's home demanding one million rupees presenting her with a letter to that effect and demanding payment within one week. As she and her husband could not raise that amount of money, on [Date C] May 2010, they gathered their belongings and arrived in Kathmandu on the following day.
- Within one month of their arrival there someone from the applicant's village came to Kathmandu and said she had to leave as the Maoists were trying to kill her. For that reason, the applicant used the passport of her sister in law to leave Nepal and come to Australia. She fears that if she returns to Nepal the Maoists will harm her.

25. In support of the application the following documents were lodged:

- Copies of pages from a Nepalese passport issued to the applicant [in] July 2010 (folios 4; 44; 75 - 77)
- Copies of pages from a Nepalese passport issued to the applicant's sister-in-law [in] September 2008 (folios 2 -3; 40 - 43)
- Document dated [August]2010, issued by the Chairman of the RPP District Work Committee, [District 1], regarding the applicant's support for that party and harm she received from Maoists (folios 62 – 63).
- Membership identity card issued to the applicant's father by the RPP central office in Kathmandu (folio 61).
- Donation Receipt issued [in] May 2005 by the Nepal Communist Party (Maoist) District Committee, [District 1] to the applicant and her husband (between folios 61 and 60).
- Document issued [in] June 2010 by the Nepal Communist Party (Maoist) District Committee, [District 1], entitled "Last Threatening Letter" addressed to the applicant and her husband regarding a demand to pay money to that group (folios 59 – 60).

26. On the department file are the following documents:

- Forensic document examination report dated [September] 2010 (folios 45 – 47) according to which the photograph in the passport issued to the applicant's sister-in-law had been altered.
- Report dated [September] 2010 by a counsellor from the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors who stated that he assessed the applicant on that date and concluded that she reported a range of signs and symptoms associated with post-traumatic stress and anxiety (folio 49).

27. The applicant was interviewed by the delegate [in] October 2010 with the assistance of an interpreter in the Nepalese and English languages. The Tribunal has listened to an audio recording of that interview. At the interview, the applicant discussed her fear of harm from Maoists in Nepal and her political activities.

28. In a decision made [in] April 2011, the delegate refused the application on the ground that the applicant could avoid harm from the Maoists by living in Kathmandu.

Review application

29. The applicant did not nominate a registered migration agent, authorised representative or recipient in relation to the review.

30. 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.

31. The following is a recitation of claims made by the applicant at the hearing. An assessment of the credibility of the applicant's claims and evidence appears further below in this decision.

32. The applicant was born in the town of [Town 3] in [District 1]. The applicant is married and her husband and their three children live in Kathmandu. They live there with the applicant's brother and sister-in-law. The applicant has another brother who is living in [Town 3]. The applicant has one sister who has been living in [country deleted: s.431(2)] for the last two years where she lives with her husband. The applicant's parents also live in Kathmandu in the home of her brother and sister-in-law.

33. The applicant's father used to work as a farmer in [District 1] but approximately nine or ten years ago he and the applicant's mother fled to Kathmandu because of problems with the Maoists. In that regard, from 2001, the Maoists threatened the applicant's father and then came and took over his house which they have been using as an office ever since. They also beat her father on that occasion.

34. The Maoists treated the applicant's parents that way because her father had previously helped the RPP by going to people's homes and talking about the party. At election times he gathered people together for small meetings for the party and he was a leader in the area. The applicant also had an uncle who had been involved with the RPP and who had been killed by the Maoists a number of years ago.

35. After the applicant married her husband they moved to the town of [Town 2] in [District 1] where they ran a small convenience store. The applicant was asked a number of times when she commenced her political activities and she first said that she began in 2008. Later in her evidence, she said that she began from the mid-1990's after she married. However, after being reminded of her initial evidence, she confirmed that she began her political activities for the RPP in 2008.

36. She did not have any position in the party as such; she was an ordinary member. Around election time leaders came to the area and the applicant would go and tell people in the neighbouring villages to come to party meetings and to vote for the party.

37. The applicant had a relative [Mr A] who was standing for the national elections in 2008 but lost. She assisted the party for that election. Her political activities for the party also included helping with elections that were held in the village development committee.

38. The applicant did activities for the party whenever she had time as she had children to look after and her shop to manage. When people came into the shop she would also canvass for the party with them. Her husband helped the party in the same way as her from 2008. He

was an ordinary member like her but he went to more villages than she did for the party. The applicant did not continue her political activities after the national elections in 2008.

39. At some stage after she and her husband opened their small convenience store business, Maoists would come and demand that they give them food. The applicant would provide that for them, they would eat and then leave. She never refused those requests as she was afraid they would beat her. They made these visits and requests over the years she and her husband lived in that area running the shop and they would come sometimes each year. From the time they began coming and asking for food they would also ask the applicant to join them.
40. In 2002, Maoists came to the applicant's shop and demanded money. On that occasion, she gave them 50,000 rupees. In 2003 the Maoists again came to the shop demanding money and she gave them the same amount.
41. The next occasion on which they came to the shop and demanded money was some years later on a date she gave as [Date B] May when they asked for ten lakhs (1 million rupees). On this occasion, they came at night and there were 10 or 12 of them. They had a receipt and they made a docket and gave it to her saying that if she could not pay the amount demanded within 10 to 15 days her life was at risk and anything could happen. The applicant tried to "organise" the money they demanded but could not accumulate that amount.
42. One week after the visit, she and her family ran away to Kathmandu and from that time began living with her brother and sister-in-law. They abandoned their shop in [Town 2]. After one month someone from the village came and said that the Maoists were looking for her. Her sister-in-law at that time had returned from a trip to Australia and so it was decided that the applicant would insert her photograph into the passport of her sister-in-law and use that to travel to Australia where the applicant would be safe.
43. Since her arrival in Australia, the applicant has been in contact with her family in Nepal. They have not told her that the Maoists are looking for her and she thought that was because the Maoists would know that she was in Australia.
44. The applicant said she cannot return to Nepal as her life would not be safe there; she would be killed by the Maoists; perhaps she did not express herself properly but what she said was true; she had been here without a job and hoped she could stay.
45. The applicant has stayed with a friend who is also from Nepal but whom she met in Australia. She has seen a doctor once for a health check paid for by the Australian Red Cross. She said that the health check was required by the department. That is the only time she has seen a doctor.
46. The Tribunal asked the applicant if she had seen a psychologist or counsellor. In response, the applicant said that sometimes she did not feel well because of her fear of the Maoists and so the Red Cross sent her to see a counsellor. She has only seen that person once because they did not call her again; she did her medical check and was told that everything was satisfactory and she felt the Red Cross could not keep paying for her to see a counsellor.

Credibility concerns

Timing of the demand to pay 10 lakhs and her decision to flee her village and Nepal

47. In her initial evidence, when discussing the occasions on which Maoists came and demanded money from her, the applicant said that, after the occasion on which they demanded money from her in 2003, the next time they demanded money was in 2008 on which occasion they, for the first time, asked for the amount of 10 lakhs (the applicant stating that this was the equivalent of one million rupees). She said they came and made this demand after the elections held in Nepal in 2008.
48. When asked what happened on that occasion, the applicant described a group of Maoists coming at night with a receipt and a docket saying that if she and her husband did not pay within 10 to 15 days their lives were at risk and anything could happen to them. The Tribunal asked the applicant what she did about this. The applicant responded that she tried to organise the money; it was [Date C] May but no one gave her money. She said that for one week after that visit from the Maoists she could not organise anything and so she and her family fled to Kathmandu.
49. The applicant said that she stayed in the home of her brother and sister-in-law in Kathmandu, one month passed by and then someone from her village in [District 1] came and told her that the Maoists were looking for her and her husband. She then said that her sister-in-law had gone to Australia, returned to Nepal and the decision was made for the applicant to insert her photograph into the passport of the sister-in-law and travel to Australia where she would be safe.
50. The applicant said she travelled to Australia in 2010 and so the Tribunal again asked her to confirm that it was in 2008 that she and her family went to live with her brother in Kathmandu as she had previously said. In response, the applicant said that was correct. She said that it was one month after they arrived in Kathmandu that the villager came and said that Maoists in her local area were looking for her. The Tribunal asked the applicant how long after being given that news she left Nepal. The applicant said that she left Kathmandu [in] July 2010. When asked how long she stayed in Kathmandu, the applicant said one month.
51. The Tribunal asked the applicant how she could have lived in Kathmandu for only one month when she claimed to have gone there to live in 2008 and left Kathmandu and Nepal in July 2010 (a period of almost two years). In response, the applicant said that she did not stay in Kathmandu for two years. The Tribunal asked the applicant how that could be if she went to live there in 2008 and then left the country from there in 2010. In response, the applicant said she got confused about the dates. When asked what month it was she left her local area in [District 1] and went to live in Kathmandu, she said she was not sure when she went; she was confused with dates; possibly 2009 but she was not sure.
52. The Tribunal put to the applicant that she had earlier mentioned (in her statement) the date of [Date B] May when the Maoists came and demanded she pay 10 lakhs. In response, the applicant said that was correct and when asked what year that was she said she was confused with dates; it was [that same date in] May the previous year before 2010 and she was possibly getting confused between the Nepali calendar and the English calendar. The Tribunal put to the applicant that if she could use the date of [Date B] May she could be expected to say

which year in the Gregorian calendar this event occurred. She then said that she thought that she went to Kathmandu in May and left in July of the same year.

53. The Tribunal then put to the applicant that she appeared to be struggling to recall the date of a very important event in her life, which was, receiving a demand from the Maoists to pay a large amount of money which then caused her to flee from her local village and from Nepal for her own safety. The Tribunal put to the applicant that, therefore, she could be expected to give a consistent account as to when this important event occurred. In response, the applicant said that she had never sat and talked as she was in the hearing; sometimes she would try and say something but it just did not come and whatever came was not right.
54. The Tribunal reminded the applicant that in her statement she had said that on [Date B] May 2010 the Maoists came to demand one million rupees or 10 lakhs and that a few days later, she and her family left the village and went to Kathmandu. The Tribunal stated that this was consistent with the evidence she gave in her protection visa application form where she declared that she was employed as a shopkeeper until April 2010 and commenced living in Kathmandu in May 2010.
55. The Tribunal then put to the applicant that this evidence was inconsistent with her initial claim at the hearing that in fact the Maoists demanded this amount from her in 2008 and it was in that year that she and her family left the village and went to live in Kathmandu. In response, the applicant said that she did not know what she was thinking and maybe she said that; the account in her statement was correct.

Evidence contained in documents submitted to the delegate by the applicant

56. The Tribunal reminded the applicant that she had submitted to the delegate a letter dated [August] 2010 signed by the chairman of the RPP, district work committee, [District 1] in which he stated that the applicant had been a member of the party and was kidnapped by Maoists [in] March 2000, physically and mentally tortured by them and then released [five days later].
57. The Tribunal asked the applicant if that was correct. The applicant said it was not correct, she was never taken by the Maoists but only threatened. When asked why this letter would assert that she had been kidnapped, tortured and detained by Maoists for five days, she said that was incorrect and she was only threatened by them.
58. The Tribunal reminded the applicant that she had provided to the delegate a document issued by Maoists in [District 1] dated [May] 2005 according to which the applicant and her husband had given them the amount of 100,000 rupees. The Tribunal put to the applicant that her evidence to that point had been that she gave donations to the Maoists in 2002 and 2003, once each year and not again after that.
59. The applicant said her account to the Tribunal was correct. She was asked why therefore according to this document she gave a donation of 100,000 rupees in May 2005. In response, the applicant said that perhaps the Maoists had made a mistake in writing in English and Nepali as she did not give them a donation in 2005.
60. The Tribunal reminded the applicant that she had produced to the delegate a document dated [June] 2010 purportedly from the Maoists in [District 1]. The Tribunal reminded her that the document was entitled "last threatening letter", it was addressed to the applicant and her

husband and it contained a number of assertions (they had given the applicant letters about donations [in] March and [April] 2010; in those letters they asked for donations of one million rupees; the applicant and her husband had not paid; they were to pay that amount by [June] 2010 failing which physical action would be taken against them and anyone in their family would be murdered).

61. The Tribunal put to the applicant that this appeared to be inconsistent with her account that she was given one note by the Maoists when they came to her home on [Date B] May 2010. In response, the applicant said the Maoists had been saying give money; send letters and that was the last letter they had sent. The Tribunal put to the applicant that the only note or letter she mentioned was the one left at her home on [Date B] May. In response, the applicant said that she had earlier told the Tribunal that when they came at that time they gave a letter and receipt with the amount of money she and her husband had to pay.
62. The Tribunal asked the applicant what the letter left on that date actually said. In response, the applicant said that in this letter the Maoists said that if the applicant could not organise the money it would be dangerous for her and they would kidnap her. The Tribunal asked the applicant if there was a date on the document and she said that there may have been a date but she did not recall.

Evidence as to when the applicant ceased her activities for the RPP

63. The Tribunal asked the applicant when she ceased her activities for the RPP and she said she stopped in 2008 and that included her work in relation to the village development committee. When asked if her political activities therefore were all carried out in just the one year, 2008, she said that was correct because after that she had problems with the Maoists and she left the area. The Tribunal asked her whether therefore she did no activities for the RPP in 2009 and she said that was correct; she only carried out activities for the party in 2008 and only up until the national elections that year.
64. The Tribunal put to the applicant that, in her statement, she referred to supporting her relative [Mr A] in national elections in 2008 and that although he lost she "continued to lead the party in [her] village development committee". The Tribunal put to the applicant that this suggested she did continue her political activities after the national elections in 2008. In response, the applicant said that politics did not just disappear like that altogether; due to the Maoists one had to be low profile and not do things.

Evidence about her grandfather's position in the RPP

65. The applicant said that her paternal grandfather was involved with the RPP. When asked what his role was in the party, she said she did not know; she had heard her father saying that "we should not give up what our own fathers had been doing" but she did not know what the grandfather's role or activities for the party were. The Tribunal asked the applicant if he had an office or position in the party but she said she did not know. She could recall that he helped in the villages for the party but that was all.
66. The Tribunal asked the applicant what happened to her grandfather. In response, she said nothing had happened to him; he had passed away. When asked if he had been harmed by the Maoists, the applicant said she was only little at that time and she did not know much about that.

67. Later in the hearing, the Tribunal reminded the applicant of this evidence and asked her to confirm that she did not know what his role was in the party. In response, the applicant said that it was like a leadership position but she did not know what it was called; it was like looking after the village development committee but one could not say that was a big position. She said that her grandfather did not stand for any elections.
68. The Tribunal then reminded the applicant that in her statement she said that her grandfather exercised leadership over 40% of [District 1]; during the rule of King Mahendra he was personally selected by the king to lead; during the rule of King Birendra he contested and won the election as a regional member and served the people in that capacity until [year deleted:s.431(2)]. The Tribunal asked the applicant why she did not mention this information when questioned as to her grandfather's role in the party.
69. In response, the applicant said that when she wrote the statement she was alright mentally and able to put everything down; in the hearing she was "face-to-face" wanting to say something but then saying something else or forgetting things.

FINDINGS AND REASONS

70. The Tribunal finds that the applicant is a national of Nepal (see the copies of pages from her passport on the department file).
71. The Tribunal has the following concerns about the credibility of the applicant.
72. The demand made by the Maoists for the applicant to give them the amount of 10 lakhs or one million rupees is a significant event in the applicant's account because it led to her and her husband abandoning their business and home in their native area, coming to Kathmandu during which time the applicant was told that Maoists were looking for her and as a result of which she then decided to flee from Nepal.
73. However, the applicant's evidence as to when that particular event occurred was inconsistent. She initially said the demand was made in 2008, the family fleeing to Kathmandu approximately one week later. She said that she remained there for one month until she left Nepal. When pointed out to her that in fact she left Nepal in 2010, and so must have been in Kathmandu for two years, the applicant denied that but struggled to give the Tribunal an approximate date as to when this demand was made and when she abandoned her home and went to live in Kathmandu.
74. She only settled on a date in 2010 after being reminded of her account in her statement according to which the demand was made in May 2010, the applicant fleeing to Kathmandu at that time and then leaving Nepal in July that year. The Tribunal acknowledges the applicant's claims that she could have been confused in giving dates in the Gregorian calendar as opposed to the Nepali calendar. However, she has used the Gregorian calendar in her statement and she gave at least the year in the Gregorian calendar for various events. The Tribunal does not accept that her inconsistent evidence as to the date of this important event is due to any confusion as claimed.
75. The Tribunal also considered her claim that during the hearing she either forgot things or did not recall things correctly. However, this demand by made by the Maoists is the event that led to her decision to not only leave her native area but her own country. The Tribunal does

not accept that the applicant would forget or fail to recall correctly when this event occurred, where she relating a truthful account.

76. In addition, the account put forward by the applicant at the hearing differed from the evidence contained in documents she submitted in support of her application. She denied ever having been kidnapped and detained by Maoists a claim made in one of the documents she submitted (the letter from the chairman of the RPP district committee in [District 1]). She denied ever giving the Maoists a donation in 2005, a claim made in another document she submitted (the document dated [May] 2005 issued by the Maoists in [District 1]).
77. The account related in the document dated [June] 2010 from the Maoists in [District 1] differs markedly from the account the applicant gave about the demand made by the Maoists in May 2010 (the date she eventually gave for that event). When asked why this document from the Maoists referred to other letters containing demands for money being given to the applicant in March and April 2010, the applicant vaguely said they did send letters and the letter or note they left when they came on [Date B] May was the last one.
78. However, the document she submitted with her application is dated [June] 2010 and, further, the applicant, in her earlier evidence, made no mention of ever receiving any other letters apart from this one in May 2010. The document dated [June] 2010 reads as the final demand for money in view of their two previous demands not being met. The applicant made no claim that the document left at her home when the Maoists came in May 2010 was preceded by previous written demands for that amount of money.
79. The applicant told the Tribunal she ceased her political activities after the national elections in 2008 but in her statement she indicated that she continued those activities after that time. Her responses that “politics did not just disappear” and that to avoid harm from the Maoists one had to keep a low profile do not explain this discrepancy. On one account, she claims to have continued her political activities after the elections in 2008 and, on another account, she claimed to have ceased her activities from that time.
80. While not determinative by itself, the Tribunal also finds that the applicant’s failure to give the Tribunal an account of her grandfather's role in the party, as she had described it in her statement, to also reflect poorly on her credibility. In her statement, she asserts her grandfather played a significant role yet when questioned about that at the hearing, she was vague saying that he was a leader but she knew nothing else about it.
81. While the grandfather may have been politically active when the applicant was young, she has nevertheless made certain claims in her statement as to the prominent role he had. The Tribunal does not accept, as the applicant claimed at the hearing, that she failed to mention this information to the Tribunal because she was nervous or forgetful.

Overall credibility findings

82. The applicant gave inconsistent evidence as to the date (or even the year) of a significant event in her life, namely, when Maoists came and demanded the sum of one million rupees or ten lakhs. Her account to the Tribunal was inconsistent with her account in her statement as to when she ceased her political activities and also about her grandfather’s position, a prominent position according to the statement. The applicant has given an account that was inconsistent with documents that she has submitted to corroborate her claims to have been politically active and at risk of harm from Maoists in Nepal.

83. Considered cumulatively, these issues lead the Tribunal to conclude that the applicant is not a witness of truth and her evidence is not credible. Therefore, the Tribunal disbelieves the applicant's claims that she supported and carried out activities for the RPP; that she, her own family and her parents and siblings were ever attacked or threatened by Maoists; that her parents home was taken over by Maoists; that Maoists demanded food or money from her or ever threatened or asked her to join them; that the applicant has relatives who stood as candidates for the RPP or who held positions in the party or who were killed by the Maoists; that she was forced to flee from her native area because of demands from Maoists to pay money; that Maoists in Nepal are looking for her as she claimed to have been told when she was in Kathmandu.
84. The Tribunal put to the applicant that it may not give weight to the documents she had submitted to support her claim if the Tribunal found she was not a credible witness. In response, the applicant said that she could not return to Nepal; her life was at risk; she did not meet the demands made by the Maoists; they could kill her at any time and no one would protect her. Further, she said that because she loved her life and because of her family's love she was in Australia and could not return to Nepal.
85. For the reasons given above, the Tribunal does not believe her claims to be at risk of harm from the Maoists and, accordingly, does not give weight to the documents she submitted to the delegate in support of her application. While the Tribunal does not give weight to those documents, it does find, as discussed above, that the inconsistency between her claims to the Tribunal and the claims made in those documents are grounds upon which the Tribunal finds that she is not a witness of truth, the applicant having submitted those documents to corroborate her claim to be at risk of persecution in Nepal.
86. The Tribunal notes that on the department file is a report dated [September] 2010 by a counsellor from the service for the Treatment and Rehabilitation of Torture and Trauma Survivors who assessed the applicant as displaying symptoms associated with post-traumatic stress and anxiety, an assessment based on a consultation with the applicant by that person. There is no other evidence that the applicant sought any psychiatric or other medical treatment.
87. The Tribunal has carefully considered the extent to which the applicant's mental state as assessed by the counsellor would have impacted on her ability to give evidence at the Tribunal hearing. To the Tribunal's observation, the applicant gave her evidence without difficulty over a range of subjects relevant to her refugee claim. The Tribunal is satisfied she understood the nature of the proceedings and was in a position to give evidence.
88. The Tribunal's impression of the applicant from conducting the hearing with her was that she was not under any mental disadvantage such that she was denied an effective opportunity to give evidence and present arguments. The Tribunal finds that the issues on which her credibility is impugned are due to her untruthfulness as a witness and not her mental state as assessed.
89. The Tribunal accepts as credible only that the applicant is a married woman from Nepal and operated a convenience store business in [District 1]. There is no other credible evidence before the Tribunal as to the applicant's life in Nepal and, in particular, the reasons she fled the country and does not wish to return there. There is no credible evidence before the Tribunal that Maoists or any other sector of Nepal society including the Nepalese authorities, have any interest in this applicant.

90. The Tribunal notes that the applicant has used the passport of her sister-in-law to travel from Nepal to Australia but the applicant did not claim to fear persecution on that ground. Further, the fact that she used that passport for travel does not demonstrate that her account of her reasons for leaving Nepal is true. For the reasons given above, the Tribunal finds that account to be false.
91. There is no credible evidence that if the applicant returns to Nepal there is a real chance that she will suffer persecution based on any Convention ground. There is no credible evidence that the applicant has a well founded fear of persecution based on any Convention ground.

CONCLUSIONS

92. 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

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