

1418645 (Refugee) [2016] AATA 3828 (5 May 2016)

### DECISION RECORD

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1418645
<b>COUNTRY OF REFERENCE:</b>	India
<b>MEMBER:</b>	James Jolliffe
<b>DATE:</b>	5 May 2016
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 05 May 2016 at 2:51pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

## 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 visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of India applied for the visa [in] February 2014 and the delegate refused to grant the visa [in] October 2014.
3. The applicant appeared before the Tribunal on 19 April 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages.
4. The applicant was represented in relation to the review by his registered migration agent.

### Relevant Law

5. The criteria for a protection visa are set out in s.36 of the Act and 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 in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
6. 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 in respect of 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).
7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
8. 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 in respect of 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').
9. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for

protection status determination purposes, to the extent that they are relevant to the decision under consideration.

## **CLAIMS AND EVIDENCE**

10. The Tribunal has before it the Department and Tribunal files relating to the applicant together with information from a variety of sources
11. The issue in this case is the applicant claims to fear harm if he returned to India because he claims to have converted to Christianity.
12. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed
13. In his protection Visa application which was filed in February 2014 the applicant claimed that he was also known by the name "[name]". He claimed to have been born in the Punjab in India on [date]. He claimed that he was of the Christian faith. He claimed that he was married [in] October 2005. He claimed that he had no right to enter or reside temporarily or permanently in any other country apart from India. He claimed to have arrived in Australia on a "short term business" visa [in] March 2013. He claimed to have been issued with an Indian passport in [month] 2005. He claimed that he had lived in [Country 1] between October 2011 and March 2013 and in [Country 2] between February 2003 and February 2007. He claimed to have been educated in India and to have obtained a [qualification] in [year]. He claimed to have worked as a [occupation] in [Country 1] and in India. In documents provided in support of his application he claimed his wife and [children] were in India. He claimed he had a brother in Australia and other family members in India
14. In his protection Visa application the applicant claimed that he left India for business purposes and was not able to return to India because of "compelling and compassionate circumstances which are beyond my control". He claimed to have serious concerns for his safety and well-being and that he would suffer grievous "body harm" or death if he returned. He claimed to fear harm from his brother-in-law and members of his brother-in-law's right wing "fanatic organisation". He attached a statement to his application. In that statement the applicant said that he had come to Australia for business purposes. He claimed that he was intending to return home [in] March 2013 and had been shopping [in] March 2013 when he collapsed. He claimed as a result of the medical situation he could not travel. He said he was keen to return to [Country 1] where he had a business but because of his medical condition he could not travel. He claimed to have been actively involved in his family business activities in India and that he had always worked [in a certain occupation] in India and in [Country 2]. He claimed that his wife who had been in [Country 1] returned to India and that she had given birth to another child since she has returned to India. He claimed that because of his prolonged absence his business in [Country 1] suffered and that his business partner improperly took cash from the business.
15. The applicant claimed he had become depressed because of all these issues and that his relationship with his wife suffered. He sought to have a medical treatment Visa provided in Australia but was unsuccessful. He claimed in the statement that he had been out walking when he met a man who spoke to him about Jesus Christ. He claimed he told the man about his personal problems. He claimed the man told him to ask for help from Jesus. He claimed the man gave him some literature about Jesus Christ. The applicant claimed to have studied the literature and to have done some research on Christianity. The applicant claimed he went to church a couple of times. The applicant claimed that as a result he became very interested in Christianity and "realise the Christianity was my calling". The applicant claimed that he started to consider himself as a Christian and that he told his parents that he was going to convert to Christianity. He claimed his parents were "furious" at him and tried to



convince him not to convert from his Hindu faith to Christianity. He claimed that they were unsuccessful and that his parents then broke "their ties with me". He claimed that shortly afterwards his wife contacted him and told him that she was leaving him and taking their children. He claimed shortly after that his brother-in-law called him and threatened him not to convert to Christianity. The applicant claimed "my in-laws are right wing fanatic Hindus" and that his brother-in-law is an active member of a right-wing Hindu organisation. The applicant claimed that organisation was anti-minorities and lead violent actions against Christian missionaries. The applicant claimed the organisation was responsible for burning a Christian missionary and his son to death in India. The applicant claimed his brother in law threatened to kill him if he returned to India after he converted to Christianity. The applicant claimed that his brother-in-law's organisation has support from the BJP (political party) in India and that there have been anti-Muslim riots in states in India that are under the control of this party. He claimed that party had a background with another right-wing Hindu organisation called RSS. He claimed that organisation and his brother-in-law's organisation are closely related and opposed to the conversion's of Hindus to Christianity and other faiths. The applicant claimed that the BJP could win the next parliamentary elections in India and that the Prime Minister in that case would be a person who was well known for notorious anti-Muslim activities and is a right-wing Hindu leader. He claimed that the party had a network of activists who would involve themselves in violence against Christian missionaries and newly converted Christians. The applicant claimed that he was concerned for his life if he returned to India because of the threats from his brother-in-law.

16. The applicant provided a number of documents in support of his protection Visa application. They included his passport and documentation in relation to his baptism in Australia and documentation in relation to some religious meetings that he had attended in Australia. He also provided documentation in relation to his parents apparently disinheriting him.
17. The applicant was interviewed by a department delegate in relation to his protection Visa application. The delegate declined to grant the applicant a protection Visa application and was not satisfied that Australia had protection obligations to the applicant. A copy of the delegates record of decision was provided with the application for a review.

#### TRIBUNAL HEARING

18. The applicant appeared before the Tribunal on 19 April 2016 to give evidence and present arguments. The applicant said his representative was unavailable to attend the hearing but that he was still represented. The applicant produced his Indian passport. He explained to the Tribunal his change of name and that his full name was [name]. His passport reflected his name change/his identity. He explained to the Tribunal that [name] was a family name and that his grandmother had left him a bequest of property in a will in the name [name] and he had changed his name as a result.
19. He said he did not have permission to work in Australia but he told the Tribunal that he earns his livelihood by engaging in [activity] and that as well some friends provide him with meals from time to time. He said his brother who lived in Australia had previously given him food and provided support to him. He said he had not had any real contact with his wife or [number] children in India for about the last two years and that he was getting divorced from his wife. He said he had wider family living in India but that he has no real contact with them and he relies on information from his brother about developments in relation to family issues in India. He told the Tribunal that he was afraid if he returned to India on the basis that he had converted to Christianity and he was also afraid of harm from his brother in law. It appeared to the Tribunal that the applicant's main fear of harm was from his brother in law (his wife's brother). He said that his brother in law had a network of contacts in India who would be able to find the applicant if he returned and he claimed that his brother-in-law had powerful connections within the government BJP party in India and he feared harm on that

basis if he returned to India. The Tribunal asked the applicant if he had any documentation in relation to the divorce proceedings. The applicant said that he thought he had previously provided those. The Tribunal indicated that it was unable to locate that documentation on the files. The applicant said that he would provide documentation in relation to the divorce proceedings which he expected would be concluded by later in 2016. He said his wife had commenced the divorce proceedings in India in 2013. She had returned from [Country 1] to India after the applicant remained in Australia. She was pregnant with their [number] child when she returned to India and decided to divorce the applicant after he indicated that he was converting to Christianity. He told the Tribunal that he had not signed the divorce papers in India and he thought his father had signed on his behalf and he said that the court in India allowed a few years before the divorce was finalised. He said that his father had disowned him because of his conversion to Christianity. The notice/affidavit in relation to his father disowning him had been sent by his father to the applicant's brother in Australia.

20. The applicant was asked why he came to Australia and he said he came to explore business opportunities in Australia. He told the Tribunal that in [Country 1] he had been running a successful business and in fact that business was two or three businesses. He said he ran [a] business as well as a [shop] and he sold [goods] and supplied [item] as a wholesale business. He claimed he had a Visa to conduct his business in [Country 1] and had been there for about 18 months and had been intending to return from Australia to [Country 1]. He said he had come to Australia to see if he could start a business importing [items] into Australia. He said when he was in [Country 1] he had not been interested in Christianity but had been concentrating on his business. He said his business partner in [Country 1] was a local [of Country 1]. He said that when he had the medical incident in Australia before he was to return to [Country 1] he had hurt his back and that prevented him from travelling and he also complained that he became depressed. He claimed his partner in [Country 1] improperly took money from the business and that his partner had sold everything and the applicant would have to pay 25,000 [Country 1] dollars in relation to outstanding expenses if he returned to [Country 1]. The applicant claimed that he had been blacklisted by authorities in [Country 1] because his partner had taken money and the banks had then blacklisted the applicant. He claimed that the contracts for the business were in the applicant's name and that money was owing in relation to leases in relation to the company businesses.
21. He also claimed that Indian authorities in Australia refused to renew his Indian passport on the basis of a visa issue. He claimed that he was told by a man that he had met in the club that the Australian government would give him a temporary travel document to return to India if his claim for protection was not accepted.
22. The Tribunal asked the applicant about any medical documents that he had regarding his medical conditions. The applicant claimed that he had provided these earlier when seeking a removal of visa conditions (an apparent reference to the condition 8503 in relation to his temporary business Visa). He said he would provide documents regarding his medical conditions that he had in 2013. He subsequently told the Tribunal that he was currently not receiving any medical treatment and that he had finished medication at the end of 2013. He said he was currently taking a tablet for an allergy. He claimed that he had medication for depression before but that had ended in late 2013. He said he had seen a doctor once in 2014 and once in 2015 and had not seen a doctor at all in 2016.
23. He told the Tribunal that his religion was "Christian" but did not indicate that he belonged to any particular Christian denomination. He said he converted to Christianity because he had been depressed and he saw the hope of a new life and converted to Christianity three months after he met the man in the street at [Suburb 1]. He told the Tribunal he still believed in Hinduism but that he was attracted to Christianity and that he was now a Christian. He confirmed that he had become baptised in June 2014 and had been baptised by "[pastor]" from [church] at [suburb]. He said that before he became baptised [pastor] had tried to give

him some background information about Christianity and he claimed that these were in 30 minute sessions every week and those sessions had started in November 2013 and had continued until June 2014. The applicant said that he stopped attending at [church] about eight or nine months before the Tribunal hearing and he said he stopped attending because he could not afford to travel from his home address to the church because his brother was no longer providing support to him. He said he had been attending at a church at [Suburb 2] but he did not know the name of the church. He said he had also attended at a church at [Suburb 3]. He could not name the church at [Suburb 2] but told the Tribunal that it was in [name] Road but did not know the denomination of the church but he claimed that he had been attending there for four or five months and had attended the Sunday before the Tribunal hearing. The Tribunal raised its concern about the credibility of the applicant's claims about attending this church given that he claimed that he had been attending it for about five months but did not know the name of the church or the religious denomination of the church. He told the Tribunal that the [Suburb 3] church that he had attended was in [name] Street, [Suburb 3] and he called it the "the Jesus church" and he said he attended that church each week for 12 months and stayed at that church between 20 and 50 minutes each time. He said he did not know the religious denomination of that church.

24. The Tribunal noted that the applicant had lodged his protection Visa application in February 2014. He described his Christian religious beliefs as being with Christianity and following Jesus Christ and he thought it was his "new work". He was asked if he regarded himself as a Protestant but he said he was just following Jesus and the applicant did not appear to recognise the "Protestant" reference in terms of Christianity. He told the Tribunal that he practised Christianity by celebrating Christmas and celebrating Easter and that he had a book in Punjabi about Jesus and he tried to follow Jesus in his life. He said the book in Punjabi was named "message of love". He told the Tribunal that his religious beliefs were that Jesus was punished for the applicant's sins and that the applicant had been given a new life because of Jesus. He told the Tribunal that following Jesus allowed him to walk again and that he is living because of Christianity. The Tribunal initially found the applicant very vague when he was asked to discuss his Christian religious beliefs. He was asked if he knew any particular Christian prayers and he said he did not know any particular prayers but responded to a question from the Tribunal about the Lord's prayer by saying that he had heard of it. He did not have any knowledge of Christ's apostles. He said he did not know about the apostles. He was asked if he knew about any of Christ's miracles. He knew that Mary was the mother of God. He said that there had been a blind man who was treated by Christ and had been able to see again. He said there had been a "herd" of fishes who had been stuck and had been saved by Jesus. He said he knew of the story of people who had been stuck inside a shop and who had been saved by Jesus. He referred to a festival where there had been no wine and that a miracle had occurred and wine was produced and that there had been insufficient food but then a miracle had occurred and enough food had been produced. He told the Tribunal that he had a book at his home where he had written down miracles.
25. He said when he attended [church] that it had been mostly attended by [nationality] people and the services conducted in [language]. He said there was one person from [country] who organised functions at that church and he said that the services would tell people about Jesus Christ and the services would be in [language] and English and then the [nationality] person would explain in [language] to the applicant about the services. The applicant said that he attended at [church] every Wednesday and Sunday but as indicated had ceased attending at that church about eight or nine months before the Tribunal hearing. He said he did not attend any other religious activities but had handed out brochures to passers-by on two occasions about [church]. He said at that church there had been many functions and they included [nationality] cultural programs and dinners. He said the religious services were usually about 1 1/2 hours and they focused on teaching people about Jesus Christ and his life and his purpose. The Tribunal indicated to the applicant that he had not provided very



much detail to the Tribunal about the services that he said he attended at [church]. The Tribunal also noted that no statement in support of the applicant's application had been provided by [pastor]. The applicant had told the Tribunal that [pastor] had been a significant figure in the applicant deciding to convert to Christianity. The applicant said his lawyer had told him it was not necessary to get a statement from the pastor as the applicant had a baptismal certificate. The Tribunal told the applicant that it was a matter for him and his lawyer to determine what materials would be provided in support of the applicant's protection Visa application but that the Tribunal would allow the applicant time to provide further information and documentation to the Tribunal. He also told the Tribunal that the pastor travelled a lot. The applicant also told the Tribunal that he had lost the pastor's telephone number.

26. He claimed that he owed his brother in law 50,000 [Country 1] dollars as a result of the applicant's failed business in [Country 1]. He said he could repay that money to his brother-in-law but that he really feared his brother-in-law because he said his brother-in-law belonged to an extremist Hindu organisation in India called Bajrang Dal. He claimed that organisation was associated with the RSS and other Hindu extremist organisations and was associated with the BJP government party in India. He told the Tribunal that his fear was 80% based on harm from his brother in law and 20% based on a fear of harm from other authorities in India and including the police and the RSS who he claimed were connected to his brother-in-law. The Tribunal found the applicant vague in discussing these claimed connections between other organisations and his brother-in-law. He claimed that he would be arrested by the police if he returned to India because his brother in law had connections with the police and that the police might harm him because of his brother-in-law. He claimed he could not relocate outside the Punjab to avoid harm in India because his brother-in-law had a network of contacts "all over India".
27. He told the Tribunal that his brother in law was a member and political activist in the Bajrang Dal and in that role he was responsible for one of [number] areas in Jalandhar city. He said his brother in law had been charged about four years ago with two murders and the applicant claimed that he had heard that the brother in law had been charged with other murders. The applicant claimed that the brother-in-law carried out these activities and also damaged public property in his role working for the party and also organised protests for the party. He claimed his brother in law had not been convicted in relation to the murder charges and was still facing proceedings in India. The Tribunal noted that the applicant was suggesting that his brother-in-law was a well-known and notorious figure and in those circumstances the Tribunal expected or assumed that there would be some media material that could be provided in relation to the brother-in-law's activities. The applicant said that his brother-in-law's name was [name]. The applicant claimed that there was some historical Internet material about his brother-in-law but to obtain any more current information about charges in relation to his brother-in-law the applicant and his family would need to bribe the police in India to obtain that information and documentation. The Tribunal said it was only interested in receiving publicly available and lawfully obtained material and information in relation to the applicant's claims.
28. He told the Tribunal that his brother in law had spoken to him in a telephone conversation around August 2013. The applicant said that he had called his brother-in-law because the applicant wanted to resolve issues with his wife regarding the divorce. The applicant claimed his brother-in-law threatened him and claimed that he said he would kill the applicant and said that he was safe while he was in Australia. The applicant claimed his brother-in-law was angry and was swearing at the applicant and the applicant claimed he terminated the call.
29. The Tribunal asked the applicant how he became involved in Christianity. He largely repeated the claims that he had made in his statement in support of his protection Visa application and told the Tribunal that he had met a man when walking down the street in

[Suburb 1]. He said he had been recovering from his medical condition and he was depressed at the time. The Tribunal referred him to his claims in his statement about this incident. The Tribunal asked the applicant about meeting this man in [Suburb 1]. The Tribunal found the applicant very vague in discussing his claims about meeting the man and becoming interested in Christianity. He said he thought the man was from [country] and that the man had travelled from [city] to [city]. He said the man introduced him to [pastor] in [Suburb 1] on the same day that he met the man. He said initially that he had met the man in around April or May 2013 but said he could not remember the dates and confirmed that his interest in Christianity started when he met the man in the street in [Suburb 1]. The Tribunal referred the applicant to his statement in which he said that he had met the man in [Suburb 1] about a month before (in terms of his statement in support of his protection Visa application which was lodged in February 2014) and the Tribunal indicated that meant it would have been around January 2014 when he met the man and not in April or May 2013. The applicant said that his lawyer had made a mistake in putting that timeframe in the applicant's statement. The applicant then said that he met the man some time between June and November 2013 and he thought it was August or September 2013. The Tribunal indicated its concern about the credibility of the applicant's claims given the vagueness of his evidence about this meeting which he claimed was the cause of him becoming involved with Christianity. The applicant claimed that he still had religious materials in different languages that the man had given him when he met him. The applicant claimed that he started attending [church] two or three times initially after meeting the pastor but from November 2013 he claimed he attended that church regularly.

30. The Tribunal asked the applicant about his Christian religious activities and beliefs and knowledge. He was asked about the significance of Christmas to Christians and he said that Jesus was born on that day and he was asked how he celebrated Christmas. He said he said God's name and prayers and then distributes gifts to his Indian friends. He was asked about the prayers that he said at Christmas. He said that he thanks Jesus who gave his life for his sins. He was asked about the significance of Easter to Christians. He said that Jesus was crucified and was born again and that Jesus then had a second life. The applicant said he read the Bible. He was asked if he knew any Bible stories and he referred to the birth of Jesus and that Jesus was baptised after his birth and that there had been lightning after Jesus' birth and a pigeon had come and sat on Jesus' shoulder.
31. The Tribunal asked the applicant about the brochures that he had provided in support of his application in relation to religious meetings that he had attended in 2014. Those meetings had been in March, April and June 2014. He said he had attended those meetings and two of those had been at [church]. The Tribunal noted that two of the functions appeared to involve [nationality ] religious persons. Another of the meetings was a meeting arranged by the [religious group]. He said he had a friend who had invited him to that meeting and he went because he thought he would learn something new and that most of that service had been in English and the friend had explained a few things but the applicant claimed that he already knew about those issues.
32. The Tribunal raised a concern with the applicant in terms of s.91(R) (3) of the Act. The Tribunal noted that much of the materials provided by the applicant in relation to his claimed Christian religious activities had occurred after he lodged his protection Visa application in February 2014. The Tribunal noted that the applicant was baptised in June 2014. The Tribunal noted that the religious "flyers" that the applicant had forwarded in relation to religious meetings that he claimed to have attended related to events after he had lodged his protection Visa application. The applicant had claimed that he had started attending [church] at [suburb] around November 2013 on a regular basis. The applicant had given some vague and inconsistent evidence to the Tribunal as to when he said he first became interested in Christianity. The Tribunal during the course of the proceedings had referred the applicant to his statement in support of his protection Visa application which indicated that he had first



met the man in [Suburb 1] in around January 2014. The applicant said that date was a mistake made by his lawyer. The applicant had claimed that he had met the man in [Suburb 1] in around August or September 2013 (and had then claimed to have met [pastor] on the same day) but as indicated elsewhere in these reasons he had earlier told the Tribunal that he thought he may have met the man in [Suburb 1] around April or May 2013. The Tribunal told the applicant that it was concerned that many of his activities in terms of his claimed interest in Christianity were after he had lodged his protection Visa application in February 2014 and in those circumstances the Tribunal was concerned that the applicant had engaged in these religious activities for the sole purpose of strengthening his protection Visa application. The Tribunal indicated to the applicant during the hearing that if the Tribunal formed that view that it would disregard those activities and that evidence in assessing his protection Visa application. The applicant in response said that his intention in terms of becoming involved in Christian activities was different than for the purpose raised by the Tribunal and that he had undertaken activities before he lodged his protection Visa application.

33. The Tribunal referred the applicant to the Department delegate's comments in the delegate's record of decision and referred to the delegate's findings on page 9 of the record of decision and that the delegate had not accepted that the applicant had converted to Christianity or that the applicant had been threatened by his brother-in-law as he had claimed. The Tribunal also referred the applicant to the delegate's findings that the applicant was not entitled to protection in Australia. The applicant was invited to comment on the delegate's findings and the applicant said that in India someone could be bribed to kill another person and that Indian authorities did not pursue religious killings or religious violence and that Indian society was dominated by Hindus. The applicant also claimed that the delegate had said that all the applicant's documents in support of his protection Visa application were false and that the delegate referred to the availability of obtaining fake/false documents in India
34. He claimed that he could not relocate in India to avoid harm because his brother in law had a national network in India and that network would be able to find and harm the applicant anywhere in India. He also claimed that he would not be able to get state protection because the Indian government would not protect him because of its connections with his brother-in-law and the police in India could not protect him from his brother in law. The Tribunal had noted during the hearing that it had not been provided with any documents in relation to the applicant's claims that he was getting divorced in India. The applicant said that he had thought he had already provided those documents previously.
35. He was asked if he had anything further that he wished to tell the Tribunal in relation to his claims and he said that he had been intending to return to [Country 1] to resume his business before he had been injured in Australia and that his business had been doing well. He said he had previously worked in [Country 2] before he started the business in [Country 1]. He said his changed circumstances had caused him to remain in Australia.
36. The Tribunal noted the reference to country information contained in the delegate's record of decision in relation to the applicant's claims (see pages 11 to 12 of the delegate's record of decision) and to information contained in the DFAT country report for India dated 15 July 2015. The Tribunal in referring to the DFAT report noted in relation to the applicant's claims that India maintains separate laws for different religious communities with the purpose of allowing freedom to practice religion but that the United States commission on International religious freedom in its 2014 and 2015 reports noted that laws intended to prevent religious conversions by inducement or fraud to had resulted in few arrests and no convictions and had created a hostile atmosphere for religious minorities and particularly Christians. The Indian Constitution prohibits discrimination against any citizen on the grounds of religion. The report indicates that in relation to Christians in India that approximately 24 million people identified as Christians in the 2001 census. The report noted the Christians have generally

coexisted peacefully with members of other religious groups in India but that there have been more recent reports that right-wing Hindu organisations allied with the BJP have begun conducting ceremonies in which Christians and Muslims are reconverted to Hinduism and that some participants in those ceremonies have allegedly been threatened with violence if they did not participate. The report indicates that these incidents have raised considerable concern among some Indian Christians of an increasing atmosphere of religious intolerance in India. The report overall indicates these incidents of violence represent a moderate risk of social discrimination and violence although generally speaking most Christians can go about their lives without incident.

37. The report also indicates that the BJP was able to form a national government in the 2014 general election in India. The report also indicates that in relation to state protection that the Indian Constitution provides for arrangements for maintaining law and order in India. The report refers to police arrangements in India and notes that a 2009 human rights watch report and other sources indicate that the capacity of India's police forces is limited by poor infrastructure, insufficient personnel, inadequate training and a variety of other factors. The DFAT report indicates that allegations of human rights abuses carried out by police in India are frequent. The report notes that in relation to internal relocation that the Indian Constitution guarantees citizens the right to move freely throughout the territory of India subject to reasonable restrictions in the interests of the sovereignty and integrity of India and the security of the state. The report notes that there is a high rate of internal mobility within India however the report also notes that in practice options for internal relocation can be limited by a range of factors and the Department assessment is that there are a range of viable internal relocation options for individuals seeking protection from discrimination or violence. The report notes that document fraud is a significant industry in India and the complete packages of fake documents can be arranged and provided by an organised network of professional agents. Indian law creates offences in relation to forgery and making false documents.
38. The applicant was asked if he wished to comment on the country information and he said that he was afraid of his brother-in-law who he said had powerful connections in India. The applicant said he accepted that document fraud occurred in India.
39. The Tribunal raised with the applicant concerns that it had about his claims and his evidence. The Tribunal told the applicant that it was concerned that he had a well-founded fear of harm if he returned to India. The Tribunal told the applicant it was concerned that he was a Christian as he claimed. The Tribunal said it was concerned about the credibility of some of the applicant's claims and also indicated that it was concerned about document fraud in India in terms of any documentation provided by the applicant in support of various claims sourced from India. The Tribunal said it was also concerned about the applicant's delay in applying for a protection Visa in Australia. The Tribunal noted that the applicant had not provided any documents in relation to his claimed divorce proceedings in India. The Tribunal found that the applicant had been vague in giving his evidence about dates and events in relation to his claims. Those aspects have been raised with the applicant during the hearing. The Tribunal raised its concern that the applicant had not provided very much detail in discussing his religious activities in Australia. The Tribunal raised its concern about the applicant's claims that his brother in law was a violent and powerful person in India but no documentation/media information had been provided in support of these claims. The Tribunal raised its concern as it had done in the hearing that the applicant had engaged in religious activities in Australia for the sole purpose of strengthening his protection Visa application. In that regard the Tribunal noted that the applicant had been baptised after he lodged his protection Visa application and had also engaged in other religious activities after he lodged his protection Visa application. The applicant said he had nothing further to say about the Tribunal's concerns but could only provide documents in relation to his claims.

40. The Tribunal allowed the applicant until the third of May 2016 to provide further documents and any further submissions in relation to his claims. The applicant asked for 40 days to provide any further documents and submissions but the Tribunal indicated that it believed the two weeks was reasonable in all circumstances and referred to the issues raised during the hearing in terms of any documents in relation to the applicant's divorce and any publicly available information about the applicant's claims that his brother in law was a notorious criminal figure. The Tribunal had also referred during the hearing to any further documents that the applicant might provide in relation to his claimed Christian religious activities in Australia and in particular any further statements that might be provided in terms of those activities.
41. The Tribunal received correspondence from the applicant's representative dated [in] May 2016. In summary in that correspondence the representative referred to documentation which was attached which related to information about the applicant suffering from depression and also attached documentation in relation to the applicant's divorce proceedings in India. The letter also referred to the applicant having tried to obtain a letter from [pastor] in support of his claims but had been unable to obtain any letter because the applicant said that when he had gone to the church the pastor had not been available. The letter also said that the applicant had been unable to locate any information online to prove the connection of his brother-in-law to "Bajranj Dal". The letter said that if the Tribunal wanted the applicant "to get any evidence from India he needs at least couple of months for that". The letter attached a copy of a medical certificate dated [in] January 2014 which referred to the applicant having presented with clinical features "[details deleted]". A short letter dated [in] January 2014 was also attached from a registered psychologist which referred to the applicant having attended at the psychologist for counselling and therapy. The letter in part refers to an assessment that the applicant had revealed "[details deleted]". The letter referred to the applicant being likely to receive ongoing counselling for at least six months and that he was also taking medication for depression.
42. The letter from the representative also attached a copy of an affidavit that was apparently from the applicant's wife in India and had been provided in the divorce proceedings relating to the applicant in India. In summary in that affidavit the applicant's wife referred to the marriage to the applicant and referred in paragraph 4 of that affidavit to "the respondent (the applicant in the tribunal proceedings) treated the petitioner with cruelty and used to give beatings on the very first week of married life". In summary the affidavit refers to difficulties in the marriage and including claims that applicant had beaten his wife while intoxicated and that he was also involved in gambling. The affidavit refers to the applicant having a "lust for gambling" in paragraph 4 and that the respondent had deserted the petitioner in January 2013 in [Country 1] and she had tried to contact the respondent but was unsuccessful and had returned to India. The affidavit also refers to the parents of the applicant telling the applicant's wife that he no longer had any love or affection for her he and hated her and did not want to live with her. In paragraph 5 of the affidavit a claim is made that the applicant treated his wife with cruelty and that the applicant had deserted his wife. The Tribunal notes that the affidavit does not refer to any claim that the applicant's wife decided to divorce the applicant because he said he was going to convert to Christianity.

#### CONSIDERATION OF CLAIMS AND EVIDENCE

43. On the basis of the materials and information provided to the Department and to the Tribunal the Tribunal accepts that the applicant is an Indian citizen and his identity is as he claims it to be. The Tribunal, without any evidence to the contrary, accepts on the basis of the information and materials provided that the applicant does not have a right to enter or reside temporarily or permanently in any other country apart from India. The Tribunal accepts that India is the applicants country of nationality for convention purposes and is the receiving country for complementary protection purposes. The Tribunal notes the applicant's evidence



that Indian authorities in Australia declined to renew his Indian passport. His evidence about that appeared to be linked to a Visa issue and not to any suggestion that the applicant is not an Indian citizen.

44. The Tribunal is not satisfied as to the applicants claims that he has a well-founded fear of persecution if he returned to India based on his claims and his evidence to the Tribunal. The Tribunal also does not accept the credibility of a number of the applicant's claims and his evidence in support of a number of his claims.
45. The applicant's claims to fear harm are referred to elsewhere in these reasons. His claims are based on his fear that because he converted to Christianity he will be at risk of harm if he returned to India and that in particular he will be harmed by his brother-in-law because he converted to Christianity.
46. The Tribunal has referred elsewhere in these reasons to the applicant's claims about becoming involved with Christianity in Australia. The Tribunal's overall assessment of the applicant's evidence in relation to these claims is that the applicant was vague about why he claimed he became involved in Christianity and was overall vague in terms of his claims about his Christian religious beliefs. His evidence about meeting a man in [Suburb 1] that caused him to become involved in Christianity was overall vague and inconsistent in relation to the dates and sequence of events surrounding that claim. The Tribunal has referred to inconsistencies between the applicant's written statement in support of his protection Visa application about the timing of these events and to the evidence he gave to the Tribunal. He provided inconsistent evidence in relation to when he first became involved with Christianity in terms of meeting the man in [Suburb 1] and his subsequent meeting with [pastor]. He gave evidence about attending at [church] but provided very little detail about the religious activities that occurred at that church. In essence he said that many of the church activities had been conducted in [language] and English and he relied on many occasions on another [nationality] person to provide him with information about those religious services. He claimed to have attended other churches apart from [church] but he could provide very little detail about the names of those churches and referred to the churches by reference to physical locations rather than the name of the churches. He did not display any knowledge about the religious denomination of those churches. He essentially described himself as a Christian and did not display any awareness in his evidence of the concept of particular denominations of Christians. He displayed some basic knowledge of Christian beliefs. He claimed to have undertaken some training with [pastor] before he became baptised in June 2014. His evidence to the Tribunal about this training did not provide any detail as to what [pastor] had instructed him about in terms of preparation for baptism. The Tribunal notes that the applicant's representative in the letter [in] May 2016 told the Tribunal that the applicant had been unable to contact [pastor] to provide any letter in support of the applicant's claims.
47. The Tribunal also notes the applicant's explanation for why he did not apply for a protection Visa sooner after he arrived in Australia and that there was a delay of almost 11 months before he applied for his protection Visa application after he arrived in Australia in March 2013. The Tribunal has considered the applicant's evidence about the delay and has also had regard to the applicant's claims and his evidence that he was fearful of returning to India because he had converted to Christianity and that his brother in law had threatened to kill him in a telephone conversation in August 2013 because he was intending to convert to Christianity. The Tribunal notes that the applicant produced a baptismal certificate showing that he was baptised in June 2014.
48. As indicated the applicant claims that his brother in law is a right-wing Hindu fanatic and that his brother-in-law is a violent and dangerous and influential person in India . As indicated the applicant claims that his brother in law threatened him with death in August 2013 for becoming a Christian and yet the applicant did not lodge a protection Visa application until

February 2014. The Tribunal's assessment is that the applicant overall provided vague and brief evidence in relation to these claims. The Tribunal notes that at the core of the applicant's claims to fear harm if he returned to India is his fear of his brother-in-law. In those circumstances the Tribunal believes that it is reasonable for it to assume that the applicant would have provided significantly more detailed evidence in support of his claim to fear harm from his brother-in-law because of his conversion to Christianity, if in fact, he feared harm from his brother in law. The Tribunal notes that the applicant claimed that he was afraid that the police might arrest him and harm him because he claimed his brother in law had connections with the police. The applicant claimed that his brother in law also had political connections with the Indian government and that as a result the applicant would be at risk on that basis if he returned to India. He claimed his brother in law was charged with a number of murders in India but had never been convicted of those murders. Apart from telling the Tribunal his brother-in-law's name the applicant provided no other material in support of these claims other than his evidence to the Tribunal.

49. The applicant also provided no further information or evidence about the organisation Bajrang Dal or any other Hindu extremist organisation in terms of why he would be at risk of harm from members of those organisations. He also provided no further information or evidence about his claim that he would be at risk of harm from the police in India other than his claim that his brother-in-law had connections with Indian authorities and including the Indian police. The Tribunal notes the information contained in the letter [in] May 2016 forwarded by the applicant's representative that the applicant had been unable to find any information online to support his claim that his brother-in-law was connected to the extremist organisation Bajrang Dal.
50. The Tribunal has considered the applicant's evidence and claims that his wife is engaged in divorce proceedings against him because of his conversion to Christianity and that his family has disowned him because of his conversion to Christianity. The Tribunal's overall assessment is that the applicant provided vague and brief evidence in relation to the circumstances surrounding these claims. The Tribunal notes that the affidavit from the applicant's wife which was provided to the Tribunal under cover of the letter [in] May 2016 does not refer to any claim that the applicant's wife was divorcing him because he had decided to convert to Christianity. The Tribunal has also considered the applicant's evidence about his claims for remaining in Australia and not returning to [Country 1] to continue his business after he claimed that he suffered an injury in Australia that prevented him from travelling. Again the Tribunal found that the applicant's evidence in relation to these claims, other than his evidence in relation to the type of businesses he conducted in [Country 1], was overall general and lacking in detail.
51. The Tribunal has considered the applicant's overall evidence and his claims. The Tribunal has considered, and discussed, the overall circumstances in which the applicant claims to have become interested in Christianity and his claim that he converted to Christianity.
52. The Tribunal's overall assessment of the applicant's claims and his evidence that has been considered and discussed causes the Tribunal to not be satisfied that the applicant engaged in religious activities in Australia otherwise than for the purpose of strengthening his protection Visa application and in those circumstances the Tribunal disregards that evidence in considering the applicant's protection Visa claims in terms of the Refugee Convention .
53. The Tribunal's overall assessment of the applicant's evidence and his claims is that the applicant is not a credible witness. The Tribunal has referred to aspects of the applicant's claims and his evidence about those claims where he was both vague and inconsistent and where he provided very general or brief evidence in support of those claims. Those issues relate to his delay in seeking a protection Visa in Australia and also relate to his claims about developing an interest in Christianity and his Christian religious activities in Australia. Those

issues also include his claims to fear harm from his brother-in-law in India because of his conversion to Christianity and also about his claims that his wife is divorcing him in India because of his conversion to Christianity and that his family have disowned him in India because of his conversion to Christianity. Those issues also include the applicant's general claim that he feared harm from the police and members of Hindu extremist organisations like Bajrang Dal . Those issues also include his claims that he would be at risk from the Indian government if he returned to India and that he would not be able to obtain state protection or safely relocate in India. As indicated the Tribunal after considering the overall evidence does not accept that the applicant is a credible witness.

54. The Tribunal after considering the applicant's claims and his evidence and submissions made on his behalf and its assessment of the applicant's credibility does not accept that the applicant has a well-founded fear of harm if he returned to India on the basis of his claim that he is at risk because he converted to Christianity. The Tribunal is prepared to accept that the applicant engaged in a baptismal ceremony in June 2014 and that he was involved in some Christian church activities in Australia. However as indicated the Tribunal is not satisfied that the applicant engaged in those activities otherwise than for the purpose of strengthening his protection Visa application. The Tribunal does not accept on the basis of its assessment of the overall evidence and its assessment of the applicant's credibility that he developed an interest in Christianity as a result of meeting a man in the street in [Suburb 1]. The Tribunal for the same reasons does not accept that the applicant was threatened with death by his brother-in-law in around August 2013 because he was thinking of converting to Christianity or that his wife is divorcing him in India because of his claimed conversion to Christianity. The Tribunal also does not accept that the applicant was disowned by his family in India on the basis of his claimed conversion to Christianity. The Tribunal has considered the documentation provided in relation to the applicant's family disowning him in India but that documentation does not alter the Tribunal's overall assessment of the applicant's claims or its assessment of his credibility in relation to his claims. The Tribunal's overall assessment of the applicant's evidence, which has been discussed and considered, is that the applicant does not have an interest in Christianity. The Tribunal also does not accept, based on the evidence before it, the applicant's claim that the applicant is at risk of harm because his brother-in-law is a notorious and violent criminal. The applicant provided no further evidence in support of this claim apart from his evidence to the Tribunal. The Tribunal, on the basis of the evidence before it, also does not accept the applicants claim that he is at risk of harm from members of Hindu extremist organisations like Bajrang Dal.
55. The Tribunal accepts that the DFAT July 2015 country report that has been referred to provides comparatively recent and credible and relevant information in relation to the applicants claims in terms of Christian religious practitioners in India. The Tribunal notes that the DFAT country report, in discussing more recent incidents of violence in relation to Christians, indicates that these incidents represent a moderate risk of social discrimination and violence although generally speaking most Christians can go about their lives without incident in India. As indicated the Tribunal accepts that the applicant has engaged in certain Christian activities in Australia but it is not satisfied that he has done so otherwise than for the purpose of strengthening his protection Visa application. The Tribunal's overall assessment of the applicant's evidence about his interest in Christianity and his Christian religious activities in Australia does not suggest to the Tribunal that the applicant, if he returned to India, would engage in Christian religious activities. The Tribunal also does not accept on the basis of the evidence before it and its assessment of the applicant's credibility that the applicant became interested in Christianity because he was injured and became depressed.
56. The Tribunal after considering the applicant's claims both individually and cumulatively does not accept on the basis of the evidence and materials and submissions and information



before it that the applicant faces a real chance of serious harm for a convention based reason if he returned to India either now or in the reasonably foreseeable future.

57. The Tribunal has considered whether there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to India that he faces a real risk of significant harm. The Tribunal has considered the applicant's claims and the evidence and available and relevant country information in relation to the applicant's claims and submissions made on his behalf. The Tribunal has referred elsewhere in these reasons to its assessment of the applicant's claims and the evidence and the available and relevant country information. The Tribunal accepts that the applicant has engaged in some Christian church activities since he has been in Australia. As indicated the Tribunal notes the DFAT country report information that has been referred to in relation to Christians in India. The Tribunal has referred to more recent reports of violence directed towards some Christians and Muslim people being reconverted to Hinduism. The Tribunal notes that in this regard the applicant indicated in his evidence that he still believed in Hinduism but he was attracted to Christianity. He told the Tribunal that there had been a recent incident where a person who had changed his religion had been beaten up because he converted to Christianity. The Tribunal notes that some aspects of the DFAT country report information indicates that some right-wing Hindu organisations have carried out acts of violence and have threatened converts if they did not participate in reconversion ceremonies. However the country report in terms of considering the totality of these incidents indicates that these incidents represent a moderate risk of social discrimination and violence although generally speaking most Christians can go about their lives without incidents. The Tribunal finds, based on its overall assessment of the evidence and the applicant's credibility and its assessment of the country information, that if the applicant returned to India that he would not engage in Christian religious activities. The Tribunal does not accept on the basis of its assessment of the overall evidence and country information and the applicant's credibility that the applicant faces a real risk of significant harm if he returned to India on the basis of his claim that he has converted to Christianity in Australia and that he fears harm from his brother-in-law and his brother in law's associates/connections in the Indian government and its instrumentalities or from Hindu extremist organisations.
58. The Tribunal has considered the definition of significant harm contained in s.36(2A) of the Act as well as the relevant definitions contained in s.5(1) of the Act. The Tribunal after considering the totality of the evidence and the submissions and available and relevant country information and for the same reasons that have been considered and discussed does not accept that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to India that there is a real risk that he will face significant harm because of his Christian religious activities in Australia. The Tribunal does not accept that there is a real risk that the applicant will be subjected to any form of harm that would be the result of an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on the applicant for the reasons specified in paragraphs(a) to(e) of the definition of torture in the Act. The Tribunal is not satisfied that there are substantial grounds for believing that there is a real risk that the applicant will suffer harm that would involve the intentional infliction of severe pain or suffering, either physical or mental, or pain or suffering, whether physical or mental, intentionally inflicted on the applicant so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature, such as that would meet the definition of cruel and inhuman treatment or punishment in the Act. The Tribunal is also not satisfied that there are substantial grounds for believing that there is a real risk that the applicant would suffer such harm as to meet the definition of degrading treatment or punishment in the Act which refers to an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable. The Tribunal is also not satisfied that there are substantial grounds for believing that there is a real risk that the applicant would suffer arbitrary deprivation of his life or the death penalty.

## Overall Summary

59. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
60. 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 in respect of whom Australia has protection obligations under s.36(2)(aa).
61. 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).

## DECISION

62. The Tribunal affirms the decision not to grant the applicant a Protection visa.

James Jolliffe  
Member