

1500436 (Refugee) [2016] AATA 3918 (30 May 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1500436
COUNTRY OF REFERENCE:	India
MEMBER:	James Jolliffe
DATE:	30 May 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 30 May 2016 at 10:23am

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] April 2014 and the delegate refused to grant the visa [in] December 2014.
3. The applicant appeared before the Tribunal on 5 May 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages.

Relevant Law

4. 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.
5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia 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).
6. 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.

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').

7. 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

8. The Tribunal has before it the Department and Tribunal files relating to the applicant together with relevant information available to it from a variety of sources
9. The issue in this case is the applicant claims to fear harm if he returned to India because of his political support for the Indian National Congress Party (the Congress Party).
10. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed
11. In his protection Visa application which was received in April 2014 the applicant claimed that he had been born in [location] in the Punjab in India on [date]. He claims to be of the Sikh faith. He claims to be married but is now separated. He claimed he did not have any right to enter or reside temporarily or permanently in any other country other than India. He claimed to have arrived in Australia in December 2012 and that he was travelling on an Indian passport that had been issued to him in [2006]. He claimed to have entered Australia on a [temporary] Visa. He claimed to have travelled to [Country 1] between April and May 2009 and remained there for about four weeks. In documentation provided in support of his application he claimed he had a mother living in India. He provided a copy of his passport in a photograph in support of his application. He also claimed to have previously applied for a student Visa.
12. He provided information in support of his protection Visa application and in summary referred to belonging to a Sikh family in India and that his family was a supporter of the Congress party in India. He claimed that in the 2007 elections he supported the Congress party and he had been involved with others in running a campaign in support of the party. He claimed to have been approached many times by Akal Dal party leaders and asked to join that party but he claimed he refused because he believed that party manipulated "things that their own benefits". He said that in 2007 the Akali Dal party won the elections and came into power and tried to get all the supporters of the Congress party into trouble and that party had "grudges with me". He claimed that after the election he was attacked by workers from the Akali Dal that he was able to save his life and he claimed that he had also been attacked by them on other occasions. He claimed that he was followed by those party members and that they tried to humiliate him and that his life had become difficult because of continuing political turmoil and degrading treatment from the ruling party. He claimed that he was considered as a criminal and "looked down upon".
13. He claimed that a fabricated case was made against him in relation to a murder charge. He claimed he tried to explain that he was innocent to the authorities and he claimed that the ruling party were carrying out these activities to "water down my reputation". He claimed that the authorities were acting under the orders of the ruling party in pursuing the murder case against him. He claimed to have been mentally disturbed as a result of these events and he decided to leave India. He referred to coming to Australia on a tourist Visa in December 2012. He claimed that his family was harassed in India after he came to Australia. He claimed "they forcibly entered my house many times to look for me." He claimed that his parents are told him not to return to India as he would be killed by party supporters and he claimed that his parents had been warned many times that he would be killed and that the authorities are supporting the party activists. In summary he claimed that all these events had occurred to him because he had support of the Congress party. He claimed he was unable to return to India and that if he returned he would either be killed or put in jail and is afraid for his personal safety if he returned to India. He claimed that he would be subject to

humiliation and inhuman treatment. He claimed that the opposition party wants to make him a scapegoat so that no one else would speak in opposition against the party or support the Congress party.

14. The applicant did not attend a protection Visa application interview with the department delegate. The delegate declined to grant the applicant a protection Visa. A copy of the delegate's record of decision was provided with the application for a review.

TRIBUNAL HEARING

15. The applicant appeared before the Tribunal on 5 May 2016 to give evidence and present arguments. He was not represented before the Tribunal. The hearing was conducted with the assistance of an interpreter in the Punjabi language.
16. The applicant confirmed his name and personal details. He confirmed that he was of the Sikh faith. He said that he could not speak English notwithstanding that his protection Visa application indicated that he could speak, read and write English. In explaining this claim in the protection Visa application the applicant claimed that he had been depressed when he had completed the protection Visa application. He was asked about the completion of his protection Visa application which was prepared in the English language. He said a friend called "[name]" wrote out the application but that friend had since returned to India. He said he did not know the friend's last name and he did not know where that friend had lived in Australia but he had met that person in [location].
17. He produced his Indian passport to the Tribunal and produced no other documents to the Tribunal in support of his claims. He claimed that he was seeking protection in Australia on the basis of his political opinion and because he belonged to the Congress party in India. He initially told the Tribunal that there was another ground on which he was seeking protection as well and the Tribunal asked him about that claim. In response he indicated that he had been running a [business] in India [and his vehicles] had been attacked by supporters of the Akali Dal because the applicant had used those [vehicles] to transport Congress party supporters. In essence, based on the applicant's comments, this claim also related to the applicant's fear of harm on the basis of his political opinion and the applicant's claimed political activities in India. He also claimed that he feared harm because he was a supporter of the Ram Rahim religious group. He was asked about this claim in terms of whether this was based on religious grounds but the applicant said that that religious group was connected to the Congress party and in essence that claim was also based on the applicant's claim to fear harm in India because of his political opinion.. He told the Tribunal in discussing religious issues that there was some members of the Sikh community in the Punjab who had harmed other Sikh people but this was linked to Congress party support issues. He referred to "strict" Sikhs wanting a separate state and that the Congress party was opposed to that and that created some political tension between the different groups.
18. He told the Tribunal in relation to the [business] that he had acquired the first [merchandise] in 1998 and the business had [number] [merchandise] at one stage but now had [lesser numbers]. He claimed he had to sell some of the [merchandise] because of the pressure that he was under from the Akali Dal. He said apart from the [business] he had also been involved in [Industry 1] work via a family [business] in India. He said he had taken over the [Industry 1] business after his brother's death. He told the Tribunal that he has a wife and [child] in India and that he remains in contact with them. He said his wife and [child] live with his wife's parents. He claimed that a number of the [merchandise] had been sold in 2013 and 2014. The Tribunal in the hearing noted that the applicant had kept the [merchandise] for some time after the incidents that he claimed had occurred and after he had come to Australia. He was asked about any further attacks on the [merchandise] since he had been

in Australia. He said that there had been an incident towards the end of 2013 when his wife had returned to the family home. He claimed that [his workers] often got involved in disputes.

19. The applicant claimed that he thought he would get shot or harmed if he returned to India and he claimed that his brother was once attacked by mistake (on the basis the brother was thought to be the applicant). The applicant told the Tribunal that he could be “finished” if he returned to India. He said he feared harm if he returned to India from the Akali Dal who he described as the “opposite party” and their “hired goons”.
20. He told the Tribunal that he had obtained his first passport in 1996 and it had been renewed in 2006 without any difficulties and he also told the Tribunal that he had not had any difficulties travelling into or out of India.
21. The Tribunal asked the applicant about his migration history. He told the Tribunal that he had tried unsuccessfully to obtain a student Visa in Australia and had sought a review of that decision. He confirmed that he applied for a protection VISA in Australia in April 2014. He had come to Australia on a [temporary] Visa. He said he had worked in Australia [in occupation] but had finished that work about two months before the Tribunal hearing. He said [another] brother runs the [Industry 1] business and [his] business in India and his wife also has some involvement in [his] business. The applicant claimed that he did not currently get any money from the businesses in India.
22. He was asked why he did not attend the interview with the department delegate. He told the Tribunal that he did not know about a second interview and could only remember being invited for the first interview which he did not attend because he was sick. He told the Tribunal that he did not remember reading the delegate’s record of decision but the Tribunal reminded the applicant that a copy of the decision record had been provided to the Tribunal with the application for a review from the decision. The applicant then said that he had read the decision but could not understand much of the decision and claimed that he was stressed at the time.
23. The applicant was asked about his claims in his protection Visa application. He told the Tribunal that things had gotten much worse for him in 2008 after the government had changed in 2007. The harm had come from members and supporters of the Akali Dal party which he said had gone into government in 2007. He told the Tribunal [his] [merchandise had been] attacked and had to be sold and [his workers] were injured and that no one wanted to work for the applicant because [his business was] being targeted. He said that he had sold the [merchandise] because they were expensive to maintain and because of the attacks. As indicated the Tribunal noted that the applicant had not sold the [merchandise] until after he had come to Australia and appeared to have retained ownership of the [merchandise] for some time after the claimed incidents which he said had gotten worse in 2008. The applicant said that the people who attacked the [merchandise] were leaders in the Akali Dal and that they also owned [similar merchandise] and that those people had wanted to finish the applicant’s business. The Tribunal asked why the applicant would have been targeted and he responded with words to the effect “this is what they always do and they wanted to make more profit” and also said in discussing the attackers that they were “jealous of me and my progress”. He told the Tribunal that he bought his first [merchandise] by selling [details deleted]. The applicant claimed that he was supplying [vehicles] for rallies for the Congress party members and that the Akali Dal wanted to stop that happening. The applicant said he used to drive the [vehicles] most of the time as the [Industry 1] work was [deleted]. The Tribunal indicated to the applicant during the hearing that his evidence about these incidents involving [his business] suggested to the Tribunal that they may have been motivated by competition for business between rival [business] owners. The applicant said that Akali Dal owned [similar merchandise]. The Tribunal noted that the applicant had said in

responding to a Tribunal question about the Akali Dal attacks that "this is what they always do and they wanted to make more profit".

24.

25. The applicant was asked about his previous travel out of India. He said he had travelled to [countries] in March/April 2007 for a holiday. He told the Tribunal that he was not having difficulties with opposition political parties in India in 2007. The Tribunal noted the applicant's statement in his protection Visa application had referred to the applicant having had difficulties in 2007 and that he had been attacked a few days after the election in 2007. The applicant confirmed that he had not faced difficulties in 2007. He told the Tribunal that in April/May 2009 his [relative] had died in [Country 1] and he and his family had gone there for one month. The applicant and his family had also travelled to [Country 1] in 2011 for a wedding and had remained in [Country 1] on that occasion for one month.

26. He was asked about his involvement with the Congress party in India. He said he had become involved in the local village committee in 1997 and then in 2002 the Congress party had contacted the village committee and sought the assistance of the applicant and other villagers. The applicant said that he had started contact with the Congress party at a low level and he also thought that it would be good for his business. The Tribunal asked why the applicant had decided to help the Congress party (apart from his claim that it would be good for his business). He told the Tribunal that he thought the Congress leaders were helpful to the people and he thought he would assist. He was asked by the Tribunal if he was a member of the Congress party and the Tribunal overall found that the applicant was vague in discussing his actual association with the Congress party in terms of membership. He claimed that he was a member and had a membership card but did not know where it was. The Tribunal raised a concern about the lack of documentation from the applicant in relation to the applicant's claims regarding his involvement with and membership of the Congress party. The Tribunal noted that the applicant claimed that he had been approached to join Akali Dal when he was in India. The applicant said that sometime in 2009 an approach had been made indirectly to him by some other men and that he had been told that if he joined he would not be harmed. He claimed that this was the first approach to him to join that party and that occurred around March 2009. He told the Tribunal that he would not join that party because he was supporting the Congress party and that the people from Akali Dal were "goons".

27. The applicant was asked questions about his claims in his protection Visa application. He told the Tribunal that the first attack on him by Akali Dal members or supporters was in August 2008 and that he was in a [vehicle] and that the [vehicle] was attacked. He claimed he was hurt by broken glass from the attack on the [vehicle]. He told the Tribunal that he went to a medical clinic because of the cuts that he received on that occasion but that there were no medical records that he could produce in support of this claim because he had attended at a private clinic on that occasion. He claimed that a second attack had occurred in around May 2009 but he was not present on that occasion but his brother was injured when one of the [vehicles] was attacked on that occasion. The applicant said that the third occasion was in July 2010 when he was in his car with his wife and people had stopped the car and threatened him and his wife but that they were not harmed on that occasion. The applicant confirmed that his claim in his statement that when he had been attacked he had been able to save his life referred to the claimed August 2008 incident. He told the Tribunal that the election of the Akali Dal that he referred to in his statement had occurred in February 2007. He said that the first attack on him had been in August 2008 but before that he had been involved in fights and arguments where there had been pushing and swearing between groups of rival supporters but that he did not really regard those as major incidents. He claimed that he had had troubles before the August 2008 incident but that he was not really being attacked but that the Akali Dal was hurting his business.

28. He claimed that as a result of the August 2008 incident that the Akali Dal people had reported the applicant to the police and claimed that the applicant had attacked them. The applicant claimed that the police had lodged a complaint against him and that he was charged with intention to murder. He referred to this as a rule [number] charge. He claimed he was also charged with fighting under other rules. He told the Tribunal that this matter had gone to the High Court in India (presumably in the Punjab) in 2008 and had been finalised in the applicant's favour in 2008 in terms of the charges being dismissed. The Tribunal found overall that the applicant gave some very vague and confusing evidence about this aspect of his claims. He eventually told the Tribunal that the police had taken the matter to the High Court and that he had not been convicted. The Tribunal asked further questions about details relating to this aspect of the applicant's claims. He told the Tribunal that he had not spent any time in prison as a result of these charges but that the police had come to his home looking for him. He said he had complained to senior police about the charges and that the senior police had ordered that he not be arrested till there had been an investigation. He also claimed the police had come to his home to arrest him but he had been able to avoid them.
29. He told the Tribunal that he had been able to escape from the police when they came looking for him and he claimed that he was sleeping "outside" at different places to avoid the police. As indicated the Tribunal found the applicant's overall evidence about this claim to be very vague. He told the Tribunal that he had not been on bail and not imprisoned as a result of the charges. He told the Tribunal that the reference in his statement to being humiliated in society was a reference to him having to live elsewhere and hide from the police who were trying to arrest him. He was asked if there were any documents in relation to these proceedings and charges that he could provide to the Tribunal. The applicant responded by saying that he did not realise that he needed to produce documents to support his claims and he made similar comments to the Tribunal when the Tribunal asked about any membership documents he had for his claim that he was a member of the Congress party. The Tribunal noted that the applicant had lodged his protection Visa application about two years before the Tribunal hearing and that in those circumstances the Tribunal was concerned that the applicant appeared to have taken no action in two years to obtain documents in support of his claims. The applicant said that he thought he had these documents at his home in India but also claimed at one stage in the hearing that he was not sure where the documents were in relation to his membership of the Congress party.
30. He told the Tribunal that he supported the Indian National Congress party at election times by going out and speaking to people in his area and asking them to vote for the Congress party. He said he would also collect funds from friends and families to support the party. He said he was also involved in putting up banners for the party at election time. He told the Tribunal that apart from election support activities he generally supported the party by attending rallies and collecting funds. He said he also helped with transport for [rallies]. The applicant's evidence about his claimed membership of the Congress party was overall vague and has indicated he claimed he had a membership card but did not know where it was. He told the Tribunal he had never been an office holder or candidate for the Congress party. He claimed that he had been targeted by the Akali Dal party because he was helping the Congress party in elections and with transport. His overall claims were that he had had some low-level difficulties before 2008 but that "the trouble started in 2008". The Tribunal noted that the applicant had made no mention of the Ram Rahim religious group issue in his protection Visa application but as indicated claimed that a friend had typed out his statement. The applicant provided no further details to the Tribunal about this particular aspect regarding the religious group and as indicated this claim appeared to be directly linked to the applicant's claim that he feared harm if he returned to India on the basis of his political support for the Congress party. The Tribunal during the hearing suggested to the applicant that his evidence suggested he had a low political profile and his evidence suggested that he had provided low-level functional or operational support and the evidence

did not suggest that he was a high profile political figure and would be at risk in India on that basis. The applicant said that he had helped Congress party area candidates and was at risk on that basis.

31. The Tribunal asked the applicant questions about his trips to [Country 1] in 2009 and 2011. His wife and [child] accompanied him on these trips. He was asked why he did not seek protection in [Country 1] on either of these occasions. He told the Tribunal that he did not think about applying for a protection Visa until it after his father had died. He claimed his father died [in] January 2014. The applicant told the Tribunal that he had returned to India from these trips because he had businesses in India and that his father was in India and he thought things were okay and had “settled down” in India in seeking to explain to the Tribunal why he had not sought protection in [Country 1] on either of the two occasions when he had travelled there.
32. The Tribunal expressed a concern to the applicant that his return from [Country 1] on these two occasions were not consistent with his claims that he feared harm if he returned to India. The Tribunal overall found the applicant’s evidence in responding to Tribunal questions about this issue to be both vague and unconvincing. In essence he told the Tribunal that at the time of these trips that his family and father were not being threatened but that if he returned to India now he feared for himself and his family. However when questioned he told the Tribunal that nothing had happened to his family in India since he had been in Australia.
33. The Tribunal noted the applicant had arrived in Australia in December 2012 but did not apply for a protection Visa until April 2014. The Tribunal asked the applicant why he had delayed in applying for a protection Visa. The Tribunal told the applicant that delay did not seem consistent with the applicant’s claims that he feared harm if he returned to India. The Tribunal overall found the applicant’s evidence about why he had delayed applied for a protection Visa to be both vague and unconvincing. He told the Tribunal that he had been intending to return to India and had told his father that he was going to return to India by the end of January 2014. He claimed his father was tense at that news and that his father had died [in] January 2014. The applicant said that he was upset and disturbed but that his father’s death caused him to apply for the protection Visa. The Tribunal noted that the applicant’s father had died [in] January 2014 and in those circumstances it had difficulty understanding the applicant’s claims that he had been intending to return to India in January 2014 and was still in Australia at the time of his father’s death [in] January 2014.
34. During the hearing when he was being questioned about the delay in applying for his protection Visa he also referred to his family “finishing up” in India and this appeared to the Tribunal to be a suggestion that the applicant’s family was looking at coming to Australia and leaving India. He told the Tribunal that when he had applied for a student Visa in Australia he had been thinking of taking an English language course. He told the Tribunal that he had come to Australia [on a temporary visa] and had decided to seek a protection VISA in Australia after his father died in January 2014. He told the Tribunal that his father had been threatened in 2013 that the applicant would be harmed if he returned to India and that his father had become upset at those threats and told the applicant not to return to India as he would be killed.
35. The applicant told the Tribunal that his wife and [child] lived with his wife’s family in a village about 40 km from the family home and that the wife helps operate the [business]. He said his brother [also looks after the business]. He said his [child] is a student. He confirmed that there had not been any harm to his wife or [child] since he has been in Australia.
36. The Tribunal asked the applicant about further claims in his statement in his protection Visa application. He was asked about the claim that he was morally and mentally disturbed. He said that he had been harassed and his family was harassed in India and he was fearful as a

result. He was asked about the claim that “they” had entered his home in India. The Tribunal understood this to be a reference to Akali Dal supporters or members. The Tribunal found that the applicant provided little detail and was overall vague about this claim other than to say that there had been harassment of his family in India.

37. The applicant was asked about relocating if he feared harm in his local area in India and he told the Tribunal that he could not relocate elsewhere in India because Akali Dal would find him anywhere in India. The Tribunal raised the issue of state protection with the applicant and noted that the applicant had previously given evidence that he had approached a senior police officer when he claimed he had been falsely charged and those circumstances suggested to the Tribunal that he believed that he could seek assistance from police authorities. The applicant responded by saying that the police in India would not protect him because the police were influenced by the government in India. There was some discussion with the applicant during the hearing about the current political situation in India regarding the BJP party and Akali Dal both in terms of national government and in terms of the government in the Punjab. The applicant told the Tribunal that the BJP and Akali Dal were in a joint government arrangement both nationally and in the Punjab.
38. The Tribunal raised with the applicant the delegate’s findings in relation to the applicant’s claims. As indicated the applicant had not attended the interview with the delegate and the delegate was not satisfied that the applicant was entitled to protection in Australia. The applicant had no comments in relation to the delegate’s findings. The applicant told the Tribunal that he was not now taking any medication but had been taking medication several weeks before the Tribunal hearing for a [condition] and that he had some [tests] done and he also suffered from allergy.
39. The Tribunal had raised with the applicant during the course of the Tribunal hearing its concerns based on country information that document fraud was a significant industry in India and that the country information indicated that activity included documentation in relation to political party registration. The Tribunal raised a concern in the context that the applicant had not to date provided any documentation in support of his claims about membership of the Congress party but now that the Tribunal had raised the issue the Tribunal put the applicant on notice that the Tribunal would be critically considering any documents now produced in the context of the country information concerning the widespread use of forged documents in India.
40. The applicant told the Tribunal he had nothing more to say in relation to his claims.
41. The Tribunal raised with the applicant information contained in the DFAT country report for India dated July 2015. In summary the Tribunal noted that India is a federal constitutional democracy and that for much of the post independence era Indian politics has been dominated by the Indian National Congress party but that the BJP had been able to form government with its political partners after the 2014 general election. The Tribunal noted that the security situation in India can vary significantly over time and from place to place but that the overall Department assessment was that notwithstanding the number of incidents referred to in the report that in absolute terms, because of the sheer size and diversity of India that most Indians live their lives with a relatively low risk of violence. The Tribunal noted that the Indian Constitution prohibited discrimination against any citizen on the grounds of religion. However the United States Commission on International Religious Freedoms 2014 and 2015 Reports noted that India had struggled to protect minority communities and provide justice when crimes occurred, due to a lack of political will, corruption, and religious bias by government officials. The Department’s overall assessment was that there is a low level of official discrimination on the basis of religion in India but that discrimination varies considerably between Indian states. The Tribunal noted that the report referred to a number of particular groups in India and that included Sikh people. The report

noted overall that Sikhs in contemporary India have no heightened risk of official or societal discrimination beyond that experienced by the broader community. The Tribunal notes that the report refers to the Akali Dal being founded in 1920 as a representative body to advocate for Sikh rights in British India. The report refers to that party or movement advocating previously for an independent homeland for Sikh people but that those demands had been abandoned. That party has historically been the main political rival to the Congress party in the Punjab. The major faction of that party, which has become highly factionalised, is the senior coalition partner in government in the Punjab with the BJP.

42. The report also indicates that elections in India tend to be peaceful and broadly free and fair but that there have been widespread reports of petty electoral patronage and corruption in India's political system. In discussing attacks or restrictions on government opponents or critics the report notes that in recent years there have been a number of cases where high-profile civil society actors have faced attacks or restrictions and the report refers to a number of particular examples. The report refers to credible reports of torture carried out by central and state police, paramilitary and military forces. Report also refers to the arrangements regarding arbitrary arrest and detention in the report notes that those arrested and detained must be produced before a magistrate within 24 hours. There are exceptions to these guarantees for preventative detention under state and territory laws. The report refers to state protection and refers to the constitutional arrangements in India regarding the authorities responsible for maintaining law and order in India. The report refers to the arrangements regarding police in India and that they have broad powers of arrest of persons suspected in relation to criminal offences. The report refers to the capacity of India's police forces being limited by a number of issues and that there are also frequent allegations of human rights abuses in relation to police in India.
43. The report notes that India has an independent judiciary but that the Indian justice system is notoriously inefficient. The report notes that suspects have a right to legal counsel and must be brought before a magistrate 24 hours of being arrested on this the suspect is considered an enemy alien or is held under a law allowing for preventative detention. The report notes in relation to internal relocation that under the Constitution Indian citizens have the right to move freely throughout 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 very high rate of internal mobility within India and while there might some practical limitations for internal relocation the overall assessment is that there are a range of viable internal relocation options for individuals seeking protection from discrimination for violence. As indicated elsewhere in these reasons the Tribunal referred to the report references to document fraud being a significant industry in India.
44. The applicant had no comments or responses to the DFAT country information referred to by the Tribunal.
45. The Tribunal raised with the applicant its concerns regarding the applicant's claims and the applicant's evidence. The Tribunal told the applicant that it had an overall concern that he did not have a well-founded fear of harm based on his claims if he returned to India. The Tribunal noted its concerns about the lack of documentation in support of certain aspects of his claims. The Tribunal also raised its concerns about the widespread practice of document forgery in India and including in relation to documentation relating to political party registration. The Tribunal raised that concern in the context that the applicant had not previously provided any documentation to support his claims about his involvement with the Congress party but he indicated that he might provide documentation to the Tribunal. The Tribunal raised its concern about document fraud in India both generally and in the context that it would critically examine any documentation that the applicant might provide to it given that such documentation had not been previously provided and it was only now being suggested that it might be provided because the Tribunal had raised the issue during the

hearing. The Tribunal noted its concerns about the applicant's delay in applying for a protection VISA in Australia and the delay suggested to the Tribunal that the applicant was not fearful of returning to India.

46. The Tribunal referred to its concerns about inconsistent and vague evidence provided by the applicant and including about the inconsistencies between his written statement that he claimed happened in 2007 and his claims to the Tribunal that the significant difficulties had occurred in 2008. The applicant had claimed in his statement that shortly after the election in 2007 he had been attacked and his life threatened. However he told the Tribunal this incident occurred in August 2008 and that the election had been in February 2007. The Tribunal also referred to its concerns about inconsistent and vague evidence by the applicant regarding dates of claimed incidents and the details surrounding those claimed incidents. The Tribunal noted that the applicant's evidence suggested that he had only engaged in low-level political activities in India and had no political profile and it did not appear to the Tribunal that he would be at risk of harm on the basis of the activities that he claimed he had engaged in, in India. The Tribunal raised its concerns the applicant had not sought to claim protection in [Country 1] when he had travelled there on two occasions. That aspect had been referred to by the Tribunal during the course of the Tribunal hearing. That suggested to the Tribunal that the applicant was not concerned about returning to India after those two visits to [Country 1]. Those visits were in 2009 and 2011. The Tribunal noted that the applicant had previously sought police assistance when he claimed that he had been falsely charged in 2008 and that was not consistent with his claims that he did not believe that he would be able to obtain state protection in India. The Tribunal indicated that aspects of the DFAT country information that has been referred to did not support aspects of the applicant's claims. The Tribunal indicated that it had an overall concern about the credibility of the applicant's claims. The Tribunal raised its concerns that on occasions the applicant was vague and did not respond or engage with Tribunal questions in relation to certain issues. The applicant did not respond or comment to the Tribunal's concerns.
47. The Tribunal allowed the applicant until 19 May 2016 to comment or respond further or to provide further submissions or documents to the Tribunal. The Tribunal received three documents after the hearing from the applicant. The Tribunal noted that two of those documents referred to the applicant being appointed to the position of "[official]" in relation to the "[name] Congress committee". The two documents were an identification card and a letter dated [in] January 2007 which was said to come from the "[senior official] of the [name] Congress committee AUR (RURAL) [district]". Neither document referred to the "Indian National Congress party". The third document was a letter entitled "to whom it may concern" and which was said to have come from a member of the Legislative Assembly in [town]. That letter referred to the applicant and described him as an "active worker of Indian National Congress. He gave support in party meetings, rallies, while he was in India he has been working with me. Anti Congress party workers harassed him due to his activities in our party. His life is not safe in India and he left India previously." The applicant told the Tribunal in the hearing he had not occupied any office holder position with the Congress party in India. He made no reference in his evidence to the [name] Congress committee or any involvement with that committee or any evidence about the relationship of that committee to the Indian Congress party.

CONSIDERATION OF CLAIMS AND EVIDENCE

48. On the basis of the materials and information provided to the Department and available to the Tribunal, the Tribunal accepts that the applicant is an Indian citizen and that his identity is as he claims it to be. Without evidence to the contrary the Tribunal accepts 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 applicant's country of

nationality for Convention purposes and is the receiving country for complementary protection purposes.

49. The Tribunal is not satisfied as to the applicant's 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 is also not satisfied as to the applicant's credibility in relation to some aspects of his evidence and to some aspects of his claims.
50. The applicant's claims to fear harm are referred to elsewhere in these reasons. As indicated the applicant's claims are based on his claim that he is at risk of harm if he returned to India because of his political opinion of having supported the Congress party in India. He claims to fear harm from members and supporters of the Akali Dal party. The Tribunal has considered the applicant's claims and the applicant's evidence. Those claims and the evidence have been referred to elsewhere in these reasons. The Tribunal has also had regard to available and relevant country information which has been referred to elsewhere in these reasons. The Tribunal accepts that the DFAT country report information that has been referred to provides relevant and credible information in relation to some aspects of the applicant's claims. The Tribunal has referred to its concerns about aspects of the applicant's evidence and his claims. Those concerns include inconsistencies between the applicant's evidence to the Tribunal during the hearing and his written claims that were provided in support of his protection Visa application. The Tribunal has referred in these reasons to significant variations about when the applicant claimed that he first started having difficulties in India and the nature of those difficulties. The Tribunal has also referred to the applicant's significant delay in applying for a protection Visa in Australia. The Tribunal has also referred to the applicant having not sought protection when he was in [Country 1] on two occasions. He travelled to [Country 1] in 2009 and in 2011 with his immediate family. He remained in [Country 1] on each of those occasions for about one month before he returned to India. He did not apply for protection in [Country 1] on either occasion. He returned to India from [Country 1]. Significantly the applicant claimed that he had faced serious difficulties in India because of his political opinion in 2008. His claims about those events in 2008 are referred to elsewhere in these reasons. He travelled to [Country 1] after he had claimed he faced those difficulties in 2008 in India.
51. His evidence about his claimed political activities with the Congress party was indicative or suggestive of someone engaged in very low level political support activities. He occupied no official office with the Congress party and he was not a candidate for the Congress party. He did not produce any documents to the Tribunal before the Tribunal hearing in support of his claimed membership of the Congress party. As indicated elsewhere in these reasons the applicant provided some documents to the Tribunal after the hearing. Those documents have been described elsewhere in these reasons. Two of those documents referred to the applicant as occupying a position of "[official]" with the [name] Congress committee and the third document which was said to come from a member of the Legislative Assembly in [town] referred to the applicant as being an "active worker of Indian National Congress". None of the documents actually referred to the applicant as being a member of the Indian National Congress party as he had claimed. The letter from the member of the legislative assembly said that the applicant had given support in party meetings and rallies but did not provide any significant detail as to his actual activities. He had not claimed in his evidence to the Tribunal that he had been an office holder with the Indian National Congress party or had occupied any office with that party. He had not referred to the [name] Congress committee during his evidence to the Tribunal or its relationship, if any, to the Indian national Congress party. He told the Tribunal that his support for the Congress party was good for his business and he also thought the Congress party people were interested in the people and he did not like the Akali Dal party. The Tribunal's overall assessment of the applicant's evidence about his claimed involvement with the Congress party is that the evidence was very general in nature and did not provide any significant details in relation to his involvement with that

party. His claim that he was at risk because of his support for the Ram Rahim religious organisation was essentially based on his support for the Congress party. He had not previously raised that issue in his protection Visa application before the Tribunal hearing and as indicated after the Tribunal questioned the applicant about that aspect it emerged that it was really part of his claim that he was at risk on the basis of his political support for the Congress party. His evidence that he had previously sought senior police assistance when he claimed that he had been wrongly charged in 2008 with a serious offence was not consistent with someone who claimed that he could not obtain effective state protection in India.

52. His evidence about many aspects of his claims was vague and inconsistent and that included his evidence surrounding the circumstances in which he claimed he was charged with a serious offence in 2008. He claimed he was charged but was not taken before a court and was not on bail and he claimed he had been able to avoid police but at the same time claimed that he had spoken to a senior police officer about the charges. He told the Tribunal that the senior police officer had ordered that he was not to be arrested. However he also told the Tribunal that he evaded the police when they came looking for him and presumably to arrest him. Overall the Tribunal found the applicant to be vague and inconsistent in relation to a number of aspects and that included the dates when events occurred and the details surrounding those events and claims. The Tribunal after considering the totality of the applicant's claims and his evidence and available and relevant country information does not accept that the applicant is a credible witness. The Tribunal does not accept that the applicant, on the basis of his claims, has a well-founded fear of harm if he returned to India either now or in the reasonably foreseeable future. The Tribunal has considered the documentation that the applicant provided after the hearing, and which has been referred to, but the Tribunal's assessment is that that documentation does not alter the Tribunal's assessment of the applicant's credibility. Some of the documentation refers to a claimed role of the applicant with the [name] Congress committee and the third document refers to the applicant as being an "active worker Indian National Congress" but does not provide any significant detail other than to say he gave support in party meetings and rallies. The applicant told the Tribunal he had not been an office holder with the Congress party and had not mentioned any involvement with the [name] Congress committee in his evidence to the Tribunal. The Tribunal's overall assessment is that that documentation does not assist the Tribunal in clarifying the applicant's claims in relation to his involvement with, and claimed membership of, the Indian National Congress Party. The letter from the member of the legislative assembly does not refer to the applicant as a member of the Congress party but only describes him as an "active worker".
53. The Tribunal's assessment is that the applicant may have faced some business difficulties with rival [business owners] in conducting his [business]. The Tribunal's assessment is those difficulties were business difficulties that any [operator] may have faced in a competitive environment. The applicant's evidence to the Tribunal was that the Akali Dal (who apparently operated a rival [business]) had caused him business difficulties and that they "wanted to make more profit" and that they were "jealous of me and my progress". The Tribunal does not accept based on its assessment of the overall evidence and the applicant's credibility that those difficulties were caused because of the applicant's political opinion in terms of his claimed support for the Congress party. The applicant's evidence about his claimed political activities for the Congress party suggested that he was involved in low level and functional activities on behalf of that party. The Tribunal's assessment of his overall evidence about these activities was that it was very general in nature. The Tribunal raised with the applicant its concern that his evidence suggested that he was involved in low level functional and operational activities in supporting the Congress party and would not be at risk on that basis. He claimed he was at risk because he had supported the Congress party and that included carrying out activities during elections and outside elections and providing transport for Congress party members to attend rallies. He also claimed he was at risk because he

supported local area Congress party candidates in elections. The Tribunal's overall assessment of the applicant's claims as to why he would be at risk for his political opinion of supporting the Congress party was that his evidence was unconvincing. The Tribunal noted that the applicant's initial response to the Tribunal about the claimed reason why he became involved in the Congress party was that it was good for his business. He told the Tribunal that he thought the Congress party people were good for the more general community and that he did not wish to be associated with the Akali Dal. In essence that was his evidence about why he claimed he supported the Congress party. He told the Tribunal that he was not an officeholder or had ever been a candidate for public office in terms of his involvement with the Congress party. The Tribunal is prepared to accept that the [applicant may have helped] to transport Congress party supporters but the Tribunal's assessment is that this activity was part of the applicant's operation of his business and that is consistent with his evidence that being involved with the Congress party was good for his business. The Tribunal does not accept that any [activities] that the applicant engaged in, in terms of transporting Congress members [place] the applicant at risk of harm. The Tribunal notes that the DFAT country report for India dated July 2015 in discussing political opinion states that "notwithstanding the scale and complexity of India's political landscape, and noting some exceptions, elections in India tend to be peaceful, broadly free and fair, reflect the will of the electorate, and result in regular transfers of power at Central and state levels". The report also indicates that there are occasional calls in conflict affected areas of India for communities to boycott electoral processes and that there have been incidents where this has led to violence. The Tribunal does not accept that the DFAT country report supports the applicant's claims that he was at risk because of his support for the Congress party or that he was at risk because his [used] to transport Congress party supporters. The Tribunal is prepared to accept that the applicant carried out some low level functional activities on behalf of the Congress party. The Tribunal in this regard notes the letter from the member of the legislative assembly that has been referred to and which refers to the applicant as having helped out in relation to party meetings and rallies but provides no significant detail beyond that broad claim. The Tribunal has also referred to the applicant's evidence about his claimed activities in support of the Congress party.

54. The applicant's evidence about why he had not sought protection in [Country 1] was in the Tribunal's view unconvincing and vague. His evidence about why he had delayed applying for a protection Visa in Australia was also unconvincing and vague and inconsistent. He told the Tribunal that he had been thinking of returning to India in January 2014 and was intending to do so but that the death of his father [in] January 2014 caused him to reconsider and to seek protection in Australia. The Tribunal asked the applicant about his claim that he had been thinking of returning to India in January 2014 and yet had not done so when his father died [in] January 2014. The applicant did not effectively engage with the Tribunal's question about that issue.
55. The Tribunal based on its assessment of the overall evidence and the applicant's credibility does not accept that the applicant carried out any significant political activities for the Congress party in India as he claimed. The applicant's evidence about his activities has been referred to elsewhere in these reasons. The Tribunal assessment of the applicant's overall evidence about these claimed political activities is that the evidence was very general in nature and did not satisfy the Tribunal that the applicant had engaged in any significant support activities as he claimed. The Tribunal believes that it is reasonable for it to assume, in the context of the applicant's claims to fear harm because of his political opinion, that the applicant would have provided significantly more detailed evidence about his activities on behalf of the Congress party had he, in fact, engaged in significant activities as he claimed and would have provided more details about why he supported the Congress party and why he did not support Akali Dal. The applicant essentially claimed that it was his work for the Congress party that placed him at risk if he returned to India. It was inherent in the applicant's claim that he was undertaking a significant role with the Congress party and he

was at risk on that basis. He also claimed that the Akali Dal had tried to recruit him. That claim also implied he had some political influence in his local area. The Tribunal is not prepared to accept based on its assessment of the overall evidence and the applicant's credibility that the applicant was a member of the Congress party. The Tribunal is prepared to accept that the applicant conducted a [business] in India. The Tribunal does not accept based on its assessment of the evidence and the applicant's credibility that the applicant faced any incidents of harm from members and supporters of the Akali Dal party because of his support for the Congress party. The applicant's vague and inconsistent evidence about these claims has been referred to elsewhere in these reasons.

56. The Tribunal in those circumstances does not accept that the applicant was attacked in August 2008 because of his support for the Congress party or that his brother was injured or that the applicant and his wife were threatened with harm or that his [merchandise] were attacked because he supported the Congress party. The applicant gave evidence that the election had occurred in February 2007 and while he claimed he had been involved in groups where there had been pushing and verbal altercations between political supporters he did not claim that he had faced any other serious or significant incident until August 2008. That evidence does not indicate or suggest to the Tribunal that the applicant was at any risk of harm from any claimed support for the Congress party during the election campaign. The applicant gave evidence that he did not sell a number of his [merchandise] until 2013 and 2014 which was well after he claimed that there had been significant incidents involving attacks on the [merchandise] in 2008 and that had made his [business] difficult. The Tribunal is not satisfied that the applicant's difficulties in conducting his [business] was because of any claimed support for the Congress party but that any difficulties he may have faced arose out of business competition. The applicant told the Tribunal that he had faced difficulties in conducting his [business] but the Tribunal notes that the applicant claimed he had only sold a number of his [merchandise] since he has been in Australia. The sale of the [merchandise] took place several years after the applicant's claims there had been attacks on the [merchandise] and after he came to Australia and in that respect the sale of the [merchandise] does not appear consistent to the Tribunal with the applicant's claims that he had faced difficulties in conducting the [business] several years before he sold the [merchandise]. The delay in the sale of the [merchandise] does not appear consistent to the Tribunal with the applicant's claims that he faced difficulties in conducting the business because of his political support for the Congress party.
57. The Tribunal on the basis of its assessment of the evidence and the applicant's credibility does not accept the applicant's claims that he was falsely accused of serious charges in around August 2008 by members and supporters of the Akali Dal and that was because of his support and involvement with the Congress party. In those circumstances and for the same reasons the Tribunal does not accept that he was charged, as he claims, by Indian police in relation to those claims because of his involvement and support for the Congress party. In those circumstances and for the same reasons the Tribunal does not accept the applicant's claims that members and supporters of the Akali Dal have come to the applicant's home looking for the applicant since he has been in Australia or that they made threats to the applicant's father about the applicant since the applicant has been in Australia. The Tribunal for the same reasons does not accept that the applicant's wife and [child] had to relocate from the family home because of any difficulties caused by the applicant's claimed support for the Congress party. The Tribunal, after considering the totality of the evidence and its assessment of the applicant's credibility, does not accept that the applicant faced any risk of harm on the basis of his claimed support for the Ram Rahim religious organisation which he said was an organisation which supported the Congress party. As indicated the applicant gave no detailed evidence in support of this claim and in many respects this claim was merged with his claim to fear harm on the basis of his support for the Congress party.

58. The applicant's inconsistent evidence about the times when he claimed particular events occurred in terms of his written claims and his evidence to the Tribunal is significant when seen in the context that the applicant's overall claim to fear harm. In particular his evidence to the Tribunal about when he claimed the first incident of significant harm occurred was that it occurred in August 2008. In his written claim he said the significant event occurred shortly after the election which he told the Tribunal occurred in February 2007. The Tribunal believes that it is reasonable for the Tribunal to expect, given the applicant's claims, that the applicant would have had a very clear recollection of this significant event, had it occurred as claimed by the applicant. He claimed it was a life threatening event in his written claims. He claimed he was injured in this attack and sought medical assistance but told the Tribunal that he could not produce any documentation about that treatment because it was obtained through a private clinic.
59. The Tribunal does not accept that its assessment of the applicant's credibility is because of any claimed difficulties caused by stress or that the events occurred sometime ago. The Tribunal's assessment of the applicant's credibility is based on its overall assessment of the applicant's evidence and his claims.
60. The Tribunal after considering the applicant's claims both individually and cumulatively does not accept on the basis of the evidence and materials 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. The Tribunal does not accept, based on its assessment of the evidence, that if the applicant returned to India either now or in the reasonably foreseeable future and continued to be involved in the operation of a [business] that he would face a real chance of serious harm on the basis of his claims. The Tribunal also does not accept that the applicant if he returned to India would face a real chance of serious harm either now or in the reasonably foreseeable future on the basis of his claimed support for the Ram Rahim religious organisation on the basis that that organisation supports the Congress party. As indicated the applicant gave no detailed evidence about this claim other than in practical terms to link it to his claim to fear harm on the basis of his support for the Congress party.
61. 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. The Tribunal has considered the definition of significant harm contained in the Act as well as the relevant definitions contained in s.5(1) of the Act. The Tribunal has referred to the applicant's claims and to its assessment of the evidence and its assessment of the applicant's credibility. The Tribunal has considered the applicant's claims that he faced difficulties in conducting his [business] and that it was particularly difficult in 2008. The Tribunal has considered that claim and has also referred to the delay by the applicant in selling some of the [merchandise]. He told the Tribunal he sold several of the [merchandise] in 2013 and 2014 when he was in Australia. The delay in the sale of the [merchandise] does not indicate or suggest to the Tribunal that the business difficulties that the applicant may have had in conducting his [business] was as significant as the applicant had claimed. The Tribunal after considering the evidence does not accept that the applicant faces a real risk of significant harm if he returned to India and conducted a [business] or that he would face a real risk of significant harm on the basis of his claimed support for the Ram Rahim religious organisation or because of his claimed support for the Congress party. For the same reasons that have been considered and discussed elsewhere in these reasons the Tribunal is not satisfied 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 would 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 s.5(1) of 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 person 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 is 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 that there is a real risk that the applicant will suffer arbitrary deprivation of his life or the death penalty stop

Overall Summary

62. 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).
63. 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).
64. 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

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

James Jolliffe
Member