

0900574 [2009] RRTA 304 (22 April 2009)

DECISION RECORD

RRT CASE NUMBER: 0900574

DIAC REFERENCE: CLF2008/136222

COUNTRY OF REFERENCE: India

TRIBUNAL MEMBER: Ms Philippa McIntosh

DATE: 22 April 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of India, arrived in Australia [in] August 2008 and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] September 2008. The delegate decided to refuse to grant the visas [in] January 2009 and notified the applicants of the decision and their review rights by letter dated [the same day].
3. The delegate refused the visa application on the basis that the first named applicant was not a person to whom Australia had protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] January 2009 for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.
9. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

10. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail

himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

11. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
12. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
15. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
16. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
17. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

18. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
19. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

20. The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
21. [The applicant] appeared before the Tribunal [in] April 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Gujarati and English languages.
22. Claims to the DIAC
23. Only [the applicant] made claims to be a refugee.
24. On the protection visa application forms he provided some biographical information. This included that his parents and a brother were currently living in India. He was a Hindu. He had lived at a single address in Gujarat from 1977 until his departure from India. He had completed 23 years of education in India, having studied civil and criminal law between 1998 and 2001. He had been employed as a clerk/cashier at a bank in Gujarat from 1999 until "current[ly]".
25. He stated that he feared persecution in India because of his political opinion, being a "voice against child labour".
26. He had left India legally via Mumbai using his Indian passport, which was issued [in] June 2008.
27. In written submissions and during an interview with the departmental officer he claimed that he and his wife were from Gujarat. He claimed that he had been awarded a Bachelor of Laws in 2001, having been active as a student in social welfare issues.
28. He claimed that in 1999 he had begun working in a bank and had raised donations for charity.
29. He claimed that he had been particularly active in the fight against the use of child labour in Gujarat, having become involved in a campaign against the exploitation of child labour while in law school. As a student he had been assigned a project with other students, who continued with it. It involved going to villages and speaking to parents about the law prohibiting the use of labour of children under 14. He and his colleagues also spoke to the parents about proper rates of pay. He and his fellow students did this every evening initially. After he got the job at the bank in 1999 he went on Saturdays and Sundays. He had contact with various non-government organisations and trade unions who opposed the use of child labour. As a result he became an enemy of child labour contractors. In June 2007 a labour contractor arrived in the village with a group of armed men. [The applicant] narrowly escaped. He did not report

this incident to the police because the family he was visiting would not support his complaint as their child worked for this particular contractor.

30. He claimed that a labour contractor also subsequently complained to his employer about his activities. In May 2008 this contractor and several farmers confronted [the applicant] as he was leaving work at the bank and threatened to kill him if he continued to campaign against them. This man had demanded to see the applicant outside but the applicant had escaped on the instructions of the manager. Again he did not report the incident, on that occasion because his manager told him he should not because was related to [the applicant's] private activities. He did not leave time for one month after that because he was so scared, then he returned to work.
31. He also claimed that he skidded off his motorbike in the course of escaping from an attempted attack. He reported the traffic accident to the police but did not report the threats from this labour contractor. That was because the contractors had political connections and were very powerful. He claimed that even if he moved to another part of India, they would be able to find him and kill him.
32. He had decided he must leave India to save his life. He claimed the Gujarat police could not protect him.
33. One of the contractors in particular was looking for him and was said to have weapons he would use against him.
34. Further evidence provided to the Tribunal by the applicant
35. [The applicant] submitted no further details of these claims or supporting documentation before the Tribunal hearing. At the hearing it was agreed that he could submit any further material he wished by 12 noon [on a date in] April 2009.
36. In his oral evidence he confirmed that he spoke Hindi and Gujarati equally fluently.
37. He also confirmed that he was living at a single address in Gujarat throughout his life until he came to Australia. He lived there with his parents, brother and wife. His parents and brother continued to live there now.
38. He confirmed that he had gained a law degree in 2001. He said that he had asked his family about a month before the hearing to send him confirmation of this. As to why he had waited so long to ask them for the documents, he said that he had been asked at the time of the DIAC interview for these documents. He had told his family he needed them but had asked them not to send them until he had an address to which to send them. When he received a letter from this Tribunal he had asked his family to post the documents. They had not yet arrived.
39. As to why he had continued to work as a cashier and clerk in a bank until 2008 if he had a law degree, he said that his was a government job. He had got it during his second year of studying law, had then studied part-time and had then continued to work there. As to why he had not worked in the legal profession after graduating, he said that he had never intended to become a lawyer. He had begun studying law because he had no job, and just wanted to understand the Constitution and so on. Then he got the job as a clerk. He was told that the Tribunal had some doubts about whether he had graduated in law at all, and offered to submit documents proving this. He said it took three weeks for documents to come by post from

India. The Tribunal noted that he had received the Tribunal's letter inviting him to the hearing, containing the Tribunal's address, over a month before the hearing, yet no documents had arrived from India. There seemed some doubt that any documents were coming at all. [The applicant] stated that he would have documents sent by fax from India and would submit them by 12 noon [on a day in] April. He also said that he had asked for documents from India concerning his activities with the NGO and his employment, at the bank, and offered to submit these by the same deadline.

40. He confirmed that he had been working as a volunteer for a "national" NGO in Gujarat for about 10 years. Invited to tell the Tribunal its name, he responded that he had worked for three years with the "[Organisation]", after which he and five friends had started an NGO. It had no name. They had run it for five years, until he came to Australia. He said that for two years, from 2001 to 2003, he and some 10 bank colleagues had also donated money for charity in a bank employees' credit society and had distributed fruit and other items at a local hospital.
41. The Tribunal noted his written claim to the DIAC that he had raised money for an NGO. He responded that the group he had set up with friends did not raise money for itself. If they got money they gave it to the "[Organisation]". His group had just done social work. It did not raise money, but if the group members needed money, for example for poor students or other needy people, those members contributed it. The group also counselled needy people. As to with which group he had been involved in child labour issues, he said there was no particular organisation and that he had just done it with his five friends. They had had no money to establish an organisation, and other organisations had discouraged them from working on the child exploitation issue. As to why he had written in his submissions to the DIAC that he raised donations to fight child exploitation, he said that he had indeed done this, for about four years, from 2004 until he left India. That money was raised through his group with his friends. They contributed the money themselves and also collected donations. Asked to explain why he had earlier told the Tribunal that the group did not raise money, he said that it did not but that in special circumstances they got money from friends and relatives. These special circumstances were, for example, when the poorest people needed money for their children's study, for books and so on.
42. He confirmed that the main aim of his group was to prevent the exploitation of children through labour, and to tell local people about the law and about their human rights.
43. He said that his NGO had no contact with other NGOs working in the area of child labour, but raised money sometimes for "natural disasters", and gave the money to "[Organisation]". The Tribunal asked him to explain why his group had no contact with any of the big NGOs working in the area of child labour. In response he said that there were many such NGOs, but there were many villages where they did not go.
44. As to why he had not volunteered to take the work of a big NGO to such villages, he said that he had started the group when he began to take an interest in these matters. He had been a member of the "[Organisation]" at the time and had discussed this with its president, who had discouraged him from getting involved in this controversial area.
45. Invited to name a major NGO in India working in the area of child labour, he named a group (Manayjyot) but said that it had now stopped functioning because of problems with labour contractors. He said that he did not know the name of any group operating in Gujarat at the time he left India. He said that he himself was just working with small groups of families.

46. He confirmed that child labour was illegal in India. The Tribunal asked him if he could name any international convention to which India was a signatory that related to child labour. He said he could not. He said that he only knew that a child under 16 was not allowed to work, by law. Invited to confirm that he was saying that a 15-year-old could not work legally, he said that he did not know the laws, but knew that under 16s were prohibited from work. He said that he had no expertise in the law. The Tribunal reminded him of his claim that he had a degree in law, and he confirmed that he did.
47. The Tribunal asked [the applicant] what major national legislation there was in India relating to child labour. He said that he did not know, but that he believed that under 16s were not allowed to work. The Tribunal asked him to identify the law on which he based this belief. He responded that he did not know and that he had only studied this area superficially as a student. The Tribunal reminded him of his claim that he had been giving advice to various people about this issue for some years after graduating, querying why he had never found out the name of the law on which he was basing his advice. He responded that he did not know much about it. He was not a legal expert. He only knew that child labour was prohibited if the child was aged under 16.
48. He confirmed that there had been three incidents affecting him as a result of his work in the area of child labour. The first was in June 2007 when a labour contractor and several other armed people came to a house he was visiting. He said that this had happened in the village of [town name and district deleted: s431(2)], at the home of [Person 1]. Cotton was produced in this area. He said he made such visits on weekends or in the evenings. He said that a labour contractor had come and verbally abused him, telling him to stop his activities. [The applicant] had then run away. As to why he had not reported this incident to the police, he said that he was concerned that the family was poor and might have to make a statement to the police. The contractor was powerful and they were scared of him. The contractor had influence with the police and politicians.
49. He confirmed that the next incident was in March 2008, when a customer at the bank, a different labour contractor ([Person 2]), saw [the applicant's] manager outside the bank and said [the applicant] should come out to see him and his group. [The applicant's] manager told him to flee and he left through a back door. As to why he had not gone to the police on this occasion, he said that it was because he had no right to complain, as the incident happened during office hours. Therefore he had asked his manager to make a complaint for him. His manager had not done so because he wanted to retain the business of local labour contractors, so instead had told [the applicant] to give up his social work. [The applicant] also told the Tribunal that he himself did not want to go to the police because Indians fear the police, who did not help people.
50. The third incident was in May 2008, when he was travelling on his motorbike on the 7 km trip from the bank to his home. He said that he had seen [Person 2] and his group "from afar" and had braked, as a result of which he had skidded and fallen off the bike. He had been injured. [Person 2] and his group had approached and shouted that they were sure to kill him. He had then run away. As to why he had not reported this incident to the police, he said that it was again because [Person 2] had connections with politicians and the police. [The applicant] was concerned that, because his own family were only middle-class, any complaint could result in problems for his father, a public servant, and his disabled brother.
51. As to whether there was any other incidents in which he was threatened, he said there were some small incidents. For example they had threatened him on his cell phone, and if they saw

him they told him to stop all his activities. He said he was sure he would get legal help from the police because he was a law student, however then had realised that the police "were not for middle-class people".

52. He confirmed that he had only ever been threatened in and close to his home town. Invited to explain why, if so, he had not simply moved to some other part of India, or even Gujarat, where he would be safe, he said that [Person 2] was from Rajasthan, and that he had political connections, so could catch [the applicant] wherever he went in India. The Tribunal suggested to him that it seemed very unlikely from his evidence that [Person 2] would bother to pursue him like this. He responded that he had hurt [Person 2's] ego and that it was this that would motivate him to search for [the applicant]. The Tribunal suggested to him that it seemed [Person 2] had very little motivation to harm him, given that he had never even come to [the applicant's] home or threatened him there. He agreed that this was so, but said that this was because [Person 2] only had a problem with him and not his family.
53. The Tribunal told him that it appeared from his evidence he would not be at risk of harm if he lived away from his home town. According to his own claims he was a well qualified, middle-class man who spoke Hindi, the language spoken in much of India, and he and his wife were clearly capable of resettling in new environments given that they had come to Australia. India was an enormous and populous country. For these various reasons it did not seem unreasonable for him to settle down in some other part of India away from his home town. [The applicant] agreed that he had not been attacked outside his home town, but said he had never seen all of Gujarat and had not had the luxury of travelling. The Tribunal suggested to him that he would be safe and it would be reasonable for him to move to another part of India He agreed that that was "right if I moved to another state, but if he can come to my state from his, and if other people didn't support me, how can I assume he wouldn't pursue me." He said he was sure he would be killed.
54. The Tribunal also suggested to him that he could probably find work in an NGO in the area of child labour, and would then have the protection of the NGO, as it would have more clout generally, would have access to legal advice, and the police could not easily disregard complaints from its staff. In response he said that [Person 2] had made a huge loss because of him and that this man's ego was hurt. Also [the applicant] had no contact with any NGO who could help him. He just wanted to work with small communities.
55. Invited to add anything he wished, he said that he had had a lot of problems in his family. His father had been in an accident, was in a coma for over a month and continued to be affected by the accident. Also his younger brother was handicapped. The family would be in trouble if something happened to [the applicant]. He denied, however, that he had come to Australia to earn money to help his family, saying that there were no financial problems in the family, that they had enough income, and that he still had his job in India, although he had been told he would be suspended if he did not return soon. He said that anyway he could earn money in India. His safety was the problem.
56. As noted above, he undertook to submit any further information he wished to the Tribunal by midday on [a date in] April 2009. [In] April 2009 he submitted academic records issued to him by [a] University [years deleted: s431] showing that he had undertaken examinations in the subject of law. According to the results of his examinations from March to June 2003 in a Master of Laws, he had failed this examination. He also submitted a document issued on 3 August 2002 by [his employer]. Certifying that he had been employed by this institution as a

"clerk-cum-cashier" in March 2000. He submitted records of his income from this company, indicating that he was employed by them until 2008

57. After the hearing it became apparent to the Tribunal that, in error, the final 35 minutes of the hearing had not been recorded. Thus, [in] April 2009, the Tribunal provided the applicant with its detailed written record of his evidence. Although he did submit material subsequently as set out above, he did not comment on or seek to correct this record.
58. Evidence from other sources
59. According to the ILO's International Programme on Elimination of Child Labour (IPEC) ("National Legislation and Policies Against Child Labour in India"
<http://www.ilo.org/public/english/region/asro/newdelhi/ipecc/responses/india/national.htm>, accessed 3 April 2009):

The Constitution of India (26 January 1950), through various articles enshrined in the Fundamental Rights and the Directive Principles of State Policy, lays down that:

- No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment (Article 24);
- The State shall direct its policy towards securing that the health and strength of workers, men and women and the tender age of children are not abused and that they are not forced by economic necessity to enter vocations unsuited to their age and strength (Article 39-e);
- Children shall be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth shall be protected against moral and material abandonment (Article 39-f);
- The State shall endeavour to provide within a period of 10 years from the commencement of the Constitution for free and compulsory education for all children until they complete the age of 14 years (Article 45).

Child labour is a matter on which both the Union Government and state governments can legislate. A number of legislative initiatives have been undertaken at both levels. The major national legislative developments include the following:

The Child Labour (Prohibition and Regulation) Act, 1986: The Act prohibits the employment of children below the age of 14 years in 13 occupations and 57 processes that are hazardous to the children's lives and health. These occupations and processes are listed in the Schedule to the Act;

The Factories Act, 1948: The Act prohibits the employment of children below the age of 14 years. An adolescent aged between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor. The Act also prescribes four and a half hours of work per day for children aged between 14 and 18 years and prohibits their working during night hours.

An important judicial intervention in the action against child labour in India was the 1996 Supreme Court judgement, directing the Union and state governments to identify all children working in hazardous processes and occupations, to withdraw them from work, and to provide them with quality education. The Court also directed that a Child Labour Rehabilitation-cum-Welfare Fund be set up using contributions from employers who contravene the Child Labour Act.

60. India is a signatory to the ILO Forced Labour Convention (No. 29); ILO Abolition of Forced Labour Convention (No. 105); UN Convention on the Rights of the Child (CRC). The report goes on to say of government programmes and policies that:

In pursuance of India's development goals and strategies, a National Child Labour Policy was adopted in 1987. The national policy reiterates the directive principle of state policy in India's Constitution. It resolves to focus general development programmes to benefit children wherever possible and have project based action plans in areas of high concentration of child labour engaged in wage/quasi-wage employment. The National Child Labour Policy (NCLP) was adopted following the Child Labour (Prohibition and Regulation) Act, 1986.

The Ministry of Labour and Employment has been implementing the NCLP through the establishment of National Child Labour Projects (NCLPs) for the rehabilitation of child workers since 1988. Initially, these projects were industry specific and aimed at rehabilitating children working in traditional child labour endemic industries. A renewed commitment to fulfil the constitutional mandate resulted in enlarging the ambit of the NCLPs in 1994 to rehabilitate children working in hazardous occupations in child labour endemic districts.

The strategy for the NCLPs includes the establishment of special schools to provide non-formal education and pre-vocational skills training; promoting additional income and employment generation opportunities; raising public awareness, and conducting surveys and evaluations of child labour.

The experience gained by the Government in running the NCLPs over several years resulted in the continuation and expansion of the projects during the Ninth Five-Year Plan (1997/02). Around 100 NCLPs were launched across the country to rehabilitate children working in hazardous industries such as glass and bangles, brassware, locks, carpets, slate tiles, matches, fireworks, and gems. The Central Government made a budgetary allocation of Rs 2.5 billion (about US\$57 million) for these projects during the Ninth Five-Year Plan. The Government of India has committed to expand the coverage of the NCLPs to an additional 150 districts and increase the budgetary allocation to over Rs 6 billion (about US\$131 million) during the Tenth Five-Year Plan (2003/07).

Contribution by national institutions

A number of national institutions such as the V.V. Giri National Labour Institute (VVGNI) and the National Institute of Rural Development (NIRD) and some state level institutes have played an important role in the areas of training and capacity building of government functionaries, factory inspectors, officials of panchayati raj institutions, NCLP project directors, and heads of NGOs. These institutions have also made a significant contribution in the areas of research and surveys, awareness raising and sensitization, thus bringing the discussions on this issue to the forefront.

FINDINGS AND REASONS

61. Only [the applicant] made claims to be a refugee. The applicant wife made no claims and none were implied in the oral or written evidence presented. The Tribunal's findings and reasons therefore relate only to [the applicant].
62. [The applicant] has claimed to have given advice about their rights to families in villages whose children were child labourers for approximately 5 years, through a group he established whose primary aim was to combat the exploitation of child labourers, and that before that he successfully completed a law degree. However his level of knowledge about the law in relation to this issue was minimal, and certainly not consistent with his having been active in this particular area of the law. He was unable to identify the law on which he based his belief that child labour was illegal, and was unable to identify any international Convention to which India was a signatory relating to this issue. He said that there were

many NGOs in India working in this particular area but was also unable to name any that were operating at the time he left India.

63. The Tribunal accepts that he may have been involved in doing some charitable activities with [Organisation] between 2000 and 2003, and may also have collected or donated money for charitable purposes at his workplace at some point. He does not claim to fear persecution for doing these things.
64. Of his claim to have been a member of a group active in combating child labour, the Tribunal is not satisfied that he was, nor that he was an activist working in the area of child labour at all, because his level of knowledge of this subject was so limited
65. His claim to have attracted the attention of two labour contractors involved in the exploitation of child labourers, and to fear being seriously harmed by one of them, is implausible given that, as he was not a child labour activist, contractors would have no apparent motivation to harm him.
66. However it is also implausible because he took none of the obvious and immediate steps to protect himself from the harm he claims to have feared, such as moving away from his family home, avoiding his workplace, reporting the threats to the police, or seeking advice about how to get protection through (for example) non-government agencies working to combat child labour who would presumably have had experience in dealing with such threats. For all these reasons the Tribunal is not satisfied that [the applicant] was targeted for harm in India by labour contractors involved in illegally employing child labourers.
67. [The applicant] does not claim to fear harm in India in future for any reason other than that labour contractors want to harm him because of his work as an activist in the area of child labour. The Tribunal does not accept that he was targeted for this reason before he left India and finds that he does not have a well-founded fear of being persecuted in India in the reasonably foreseeable future for any reason, including the Convention reason of political opinion, associated with having been an activist in the above area.
68. The Tribunal therefore finds that [the applicant] does not have a well founded fear of Convention related persecution in India.

CONCLUSIONS

69. The Tribunal is not satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore he does not satisfy the criterion set out in s.36(2)(a) for a protection visa.
70. The other applicant applied on the basis of her membership of the first named applicant's family. The fate of her application depends on the outcome of his application. As the first named applicant does not satisfy the criterion set out in s.36(2)(a), it follows that the other applicant cannot satisfy the relevant criterion set out in s.36(2)(b) and cannot be granted the visa.

DECISION

71. The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer's I.D. prrt44