

1210091 [2013] RRTA 344 (22 May 2013)

DECISION RECORD

RRT CASE NUMBER: 1210091

DIAC REFERENCE(S): CLF2012/7673

COUNTRY OF REFERENCE: India

TRIBUNAL MEMBER: Clyde Cosentino

DATE: 22 May 2013

PLACE OF DECISION: Brisbane

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of India, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] January 2012.
3. The delegate refused to grant the visa [in] June 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

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

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations 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.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. An applicant will suffer significant harm if they will be subjected to torture: s.36(2A)(c). Torture is exhaustively defined in s.5(1) of the Act as an act or omission by which severe pain or suffering, whether physical or mental, is inflicted on a person. The pain or suffering must be intentionally inflicted. Furthermore, it must be inflicted for one of five purposes: for the purpose of obtaining from the person or a third person information or a confession; for the purpose of punishing the person for an act which they or a third person committed or is suspected of having committed; for the purpose of intimidating or coercing the person or a third person; for any purpose related to one of those purposes; or for any reason based on discrimination that is inconsistent with the Articles of the International Covenant on Civil and Political Rights (the ICCPR).
19. However, torture does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the ICCPR.
20. 'Cruel or inhuman treatment or punishment' for the purposes of s.36(2A)(d) is exhaustively defined in s.5(1) of the Act to mean an act or omission by which severe pain or suffering, whether physical or mental, is inflicted on a person, or pain or suffering, whether physical or mental, is inflicted on a person, so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature. The pain or suffering must be intentionally inflicted.
21. However, 'cruel or inhuman treatment or punishment' does not include an act or omission which is not inconsistent with Article 7 of the International Covenant on Civil and Political Rights (the ICCPR), nor one arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the ICCPR. Article 7 of the ICCPR prohibits torture and cruel, inhuman or degrading treatment or punishment.
22. The final type of significant harm listed in s.36(2A) is degrading treatment or punishment: s.36(2A)(e). Degrading treatment or punishment is exhaustively defined in s.5(1) of the Act to mean an act or omission which causes, and is intended to cause, extreme humiliation which is unreasonable.

23. However, ‘degrading treatment or punishment’ does not include an act or omission which is not inconsistent with Article 7 of the International Covenant on Civil and Political Rights (the ICCPR), nor one that causes, and is intended cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the ICCPR. Article 7 of the ICCPR prohibits torture and cruel, inhuman or degrading treatment or punishment.
24. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

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

Protection visa application

26. The applicant indicated in his application that he was Sikh by religion. He indicates that he is Indian by birth. He indicates that he was married at the Queensland registry office [in] June 2011.
27. He indicates that he arrived in Australia [in] October 2008 on a student visa, after leaving India [the previous day]. He provides details of his Indian passport which was issued [in] August 2006 and which expires [in] August 2016.
28. He indicates that he has lived at [Village 1] Batala Distt. Guardaspur, Punjab from birth to [a date in] October 2008.
29. He indicates that he had 12 years schooling in Punjab. He indicates that he was a student prior to coming to Australia.
30. The applicant indicates that he does not have close relatives who are *not* in Australia at the time of application. He indicates that he is in contact with his relatives in his home country “through phone and internet”.
31. In response to Question 42 of Form C of his application “Why did you leave that country?” the applicant claims:

I left the country (India) as I [and] my family believed...in a sect and the person called Baba Ram Rahim Singh which [unreadable] a religious place near Haryana (Sirsa) called Dera Sacha Sauda. I am Sikh (religion) by birth but we started following this different sect and our relatives and neighbours were anti of [sic] Bab Ram Rahim Singh and started harassing my dad and family and there were riot in 2008 which lead to violence and death of many followers of Baba and we were threatened to leave this sect. Therefore, my father sent me for study to Australia.

32. In response to Question 43 of Form C of his application “What do you fear may happen to you if you go back to that country?” the applicant claims:

As I believe in this religion I fear that if I go back my relatives and neighbours will physically and mentally torture me and force me to leave the present Guru and convert back to the previous religion forcibly and if I don't do it they will harm us by not talking to us, use violence or outcast us from our village which will be hard as all my family agriculture land is in the same village and nobody will buy our land due to our believe [sic] in the Babaji and we have no other property or source of income as we are farmers. I fear my life as many people have been killed in riots and otherwise due to being a follower.

33. In response to Question 44 of Form C of his application “Who do you think may harm/mistreat you if you go back?” the applicant claims:

As many other people and one of my friend, [Mr A], was attacked and he lost his left eye just because he believed in that sect. My father and my family was threatened and warned many times and is still seen as an outcast in the village.

34. In response to Question 45 of Form C of his application “Why do you think this will happen to you if you go back?” the applicant claims:

As it [has] happened with my friend ([Mr A]) and many others who followed the Babaji I strongly believe it will happen with me. My family in India is constantly threatened and bullied [sic] for believing in that religion. My younger brother was also bashed up by village boys due to this as a result he is scared for his life and is planning to leave the country.

35. In response to Question 46 of Form C of his application “Do you think the authorities of that country can and will protect you if you go back? If not, why not?” the applicant claims:

India is a country with lot of religions and sects and religious riots and violence. The police and judicial system is very corrupt, biased and there is a lot of red tapism [sic]. The police and judiciary is for the rich and powerful people not for the common man like me. If you want to file a complaint they ask for a bribe and it takes ages to lodge a complaint and even longer to get justice or protection. We went to the police but they asked for bribe and took the side of the majority party. Justice was delayed to other victims also. Justice delayed is justice denied. I am sure the local authorities will not protect me.

36. The applicant provided his Punjab School Education Board matriculation and senior secondary certificate. He also provided a copy of his passport, a copy of a birth certificate for [name deleted: s.431(2)] and a marriage certificate between the applicant and [name deleted: s.431(2)].

Telephone interview with the Department ([in] June 2012)

37. The applicant indicated that his application for protection was true and correct. He was asked if he wished to make any changes, amendments or deletions to his claims. He responded that he did not.
38. Prior to coming to Australia, he stated that he lived at the address provided in his application. He stated that he lived there most of his life except when he was studying. He stated that his father owns the house. His father, mother and sister presently live there. He contacts his family about once per month.

39. His father is a farmer. He worked on the property described. He farmed agriculture like wheat and rice. The applicant indicated that his father had been a dairy farmer before he became a crop farmer.
40. The delegate asked him what he was claiming protection for. He responded that when he arrived in Australia his parents told him that they had a number of problems back home. On one occasion his parents were sick and he tried to make arrangements to see them. His parents told him that he needed to concentrate on his studies and that they would contact him when they thought it was a good time for him to visit them. However, they never told him the truth. They indicated that they had problems which they never told him about. The delegate again asked the applicant what his own problems were. He responded that there were problems relating to the religion that he followed including issues relating to the Guru. However, when he arrived in Australia there were further problems. The applicant indicated that his village did not permit activities with the Guru of his religion who he was associated with.
41. The delegate asked again why he was claiming protection. The applicant responded that his brother had been hit by a truck back at home but nobody helped him or informed him about the incident. The delegate again asked the applicant to explain why he feared that he would be harmed. He responded that when this happened to his younger brother, his father received threats that anything could happen to the family as well. He claimed that his brother's accident was not an accident but was intentionally done. He stated that his family faced a lot of financial problems there as well. His family were not very rich.
42. The delegate asked if anything happened to the applicant before he came to Australia. He responded that nothing happened to him when he was in India. However, when he was in Australia, people were threatening his family. His father was fearful as a result of these threats.
43. The applicant was asked why he could not go back to India. He responded that if he went back anything could happen and he would have problems. He stated that he might be harmed or killed. The delegate put to the applicant that nobody in his family had been harmed. The only claims made were that there had been verbal threats. The delegate asked again why he could not return to India. He responded that somebody had tried to kill his brother and this was the way that people had tried to harm his family. His parents were very old His parents sent his brother to another country.
44. The delegate asked who was attacking his family. He responded that it was people from his village. People from his local village were against believers of the Guru which the applicant follows. The delegate confirmed that it was the people from his local village who were making the threats. He responded that it was people from the local village and also people connected with the locals coming from other areas as well. He indicated that his brother's accident happened outside of the village so it meant that people from outside of the village were also threatening the applicant and his family. The applicant indicated that he could not tell the delegate who exactly was threatening him.
45. The delegate put to the applicant that he had concerns that the applicant was unable to specify who exactly was threatening him. The applicant responded that the threats were from his village. The accident to his brother was caused by people outside of his village.

46. The delegate asked the applicant whether his neighbours were attacking him. He responded that some of the houses next to him had threatened the applicant and his family. The delegate asked again whether his neighbours were attacking his family. He responded that his neighbours were not attacking him as such. However, they created problems for his family such as blocking access to the family. The delegate indicated that this might be regarded as a dispute but not persecution. He responded that this was but one example. His parents had already spoken to the police particularly about his brother's accident but the police did nothing to help.
47. The delegate asked how the villagers threatened his family. He responded that they had threatened harm to the applicant and that they had stopped them from going somewhere. The delegate asked the applicant if he could be more specific about the threats to his family. He responded that they had told them to stop going to the Dera otherwise they would harm the applicant.
48. The applicant was asked when he thought of first lodging for protection. He responded that it was in December 2011 when a friend told him how to do it. He did not have enough information about it at the time and he was told he could search it on the internet as to how to do it. He picked up the application from the department.
49. The delegate put to the applicant that his response that local villagers and people outside of his village were threatening his family was inconsistent with his written claims. In his claims he wrote that his relatives and neighbours would physically and mentally torture him if he returned. He responded that his neighbours were from the village. The delegate put back to the applicant that he had specifically stated that his relatives were threatening him. The applicant responded that he mentioned his relatives in his application because all of his relatives have no relations with his family – not his father's brother or uncles. The delegate verified with the applicant that none of his relatives have relations with his family because of the Guru that the family follow. The applicant replied that this was the case because they did not follow this Guru. The delegate again verified with the applicant that none of his relatives had relations with his family. He responded that there was no communication with them with his family. They are separate to his family.
50. The delegate put to the applicant that he had copies of his student visa application as well. He put to the applicant that in it stated that [Mr B] his uncle and his wife helped finance the applicant's studies in Australia. This was inconsistent with what the applicant had just stated. The applicant responded that [Mr B] was very close to his family at that time. However, after the applicant's family became involved with this religion it became an issue with [Mr B] and family. The delegate again put to the applicant that he had asked the applicant if all his relatives were against his family and he said that they were. Yet, [Mr B] helped finance the applicant's study and travel to Australia. The delegate put to the applicant this inconsistency. The applicant responded that they first had problems with the villagers but they began to later have problems with his relatives.
51. The delegate referred to the applicant's written claims that he had stated that his relatives and neighbours would harm them and outcast them from the village and that this was different to what the applicant was telling the delegate at the interview. He responded that he was confused as to what had been asked of him.
52. The delegate asked the applicant what was this religion that he was referring to in his claims. He responded that there are a lot of Deras and Gurus and this was one of them. He stated that

he believed in him and followed his teachings and prayers. He was asked whether he was a follower and believer of the Guru. He stated that when he was in India he used to go there. He went to see the Guru and listen to his prayers.

53. The delegate then asked for the applicant to answer the following questions. He asked what was the Guru's full name and title. He responded that it was Guru Baba Rahm Rahim Singh. He stated that there were no other names. The delegate indicated that from his research it was Guru Girmeeet Rahm Rahim Singh. The delegate asked why the applicant did not know this. The applicant responded that his name is Baba Rahm Rahim Singh. The delegate asked what his religion was called. The applicant responded that some of his teachings are taken from the Sikh religion and some of his teachings are his own. He was asked whether it was known by another name. The applicant stated that he did not know about this.
54. The applicant was asked when he joined the religion. He responded that it was in February or March 2008. He was asked why he joined. He stated that he joined because he was relaxed and had a good state of mind there. He saw other people go there as well. The delegate asked what made him join the religion however. He stated that he liked this Guru's teachings and prayers. The delegate asked who introduced him to the religion. He responded that he really did not know. His parent's first went to the Dera and slowly the rest of his family went there.
55. The delegate asked which family members were members of this religion. He responded that it started with his parents going there. The applicant then followed his parents. He stated that his whole immediate family were members. He stated that when his father went there, he and his brother followed his father. His sister went sometimes because she was studying. He stated no other relatives are members of this religion. He stated that his parents first started going to the Dera in 2008. The delegate asked when in 2008. The applicant indicated about January 2008. The delegate put to the applicant that his parents and he both started going to this place of worship in about January 2008. He stated that he did not know precisely when. He stated that he could not say about his parents but he could say when he went.
56. He was asked what Dera he went to. He responded that he attended the Dera in Haryana. He was asked which specific Dera in Haryana he went to. He stated that he attended specifically at Sirsa in Haryana. He was asked why he attended this one specifically. He responded because the Guru was living at this Dera. He liked the meditation and teaching at this Dera.
57. He was asked how often he went to this Dera. He responded that he attended this Dera once per month. He stayed at this Dera for one day. He was asked what he did while he was there. He responded that he listened to the prayer and teachings in the morning and then did volunteer work such as washing dishes. He stated that he then went home.
58. He was asked when he went home. He responded that they would start at 4am in the morning. After this they would do volunteer work. They would then arrive home the following day. He was asked did he return to his home village. He stated that he could not stay there as he had to get back and help look after the [farm]. He stayed one day and went back to his village.
59. He was asked how far away the village was from the Dera. He responded that it took a long time to travel between Haryana to his village. He was asked how long it took to travel between his village and the Sirsa Dera. He stated that he was not certain. However, if he left at 4am in the morning he would arrive back at 6 or 7 pm. He was asked how far his village

in distance from Sirsa was. He was not able to say exactly. The delegate stated that he was concerned that he travelled to the Dera in Sirsa once per month from the beginning 2008 until he came to Australia (9 or 10 months) yet he did not know the name of the religion. The delegate stated that it had a specific name. He did not know the name of the religion specifically. The delegate stated that he was a true follower and believer of the religion but did not know the name of the religion. The delegate stated that the name of the religion was called Dera Sacha Sauda. The applicant responded that the religion was the name of the place. Dera Sacha Sauda was the specific name of the place.

60. The delegate stated that the applicant stated that nothing happened to him while he was in India. The applicant responded that physical harm happened to him. However, there were threats back then and at the time of the interview.
61. He was asked while he was in India, did he report anything to the police. He responded that the police did not help them when he had been threatened. He was asked whether he went to the police. He stated that his father went to the police. He was asked why he went to the police. The applicant responded that they went there because people were creating problems for them such as people blocking their access on the road. When they did not stop they finally went to the police. The applicant was asked whether he lodged an official complaint. He stated that he did not have much information about this. He stated that his father went to the police and his father stated that the applicant was having problems against him.
62. The delegate asked if they went to the police to complain about threats being made to the applicant or his family. He responded that his father went a number of times. The applicant was asked whether his father lodged an official complaint. The applicant responded that his father told them everything and went a number of times to the police station. He did not know if an official complaint had been made by his father thought he thought that his father might have. He was asked why the police did not do anything about the complaints. He stated that they did not listen to them because the applicant and his family did not have money. He stated that no action was taken by the police.
63. The delegate stated that in his written claims the police wanted a bribe before they would do anything which was different to what he was stating at the interview. He responded that the police did not take any action because they listened to rich people only. He stated that he was answering what was being asked by the delegate.
64. The delegate asked why he could not reasonably relocate and live in another part of India. He responded that all of his land was where it was. He asked who would give him a place to live. He stated that his parents could not provide for him away from the home. People would also find him and harm him elsewhere. The delegate stated that he could move in any of the very large cities. He stated that nobody would be able to, or interested in finding him. The applicant responded that Mumbai and Delhi are big cities and very expensive. He could not survive there as it was hard to live there.
65. He was asked why he could not live in other states where there are other Deras. There were some 36 Deras in a number of different states. He responded that these Deras were all in India but that he could still be harmed. He stated that nobody knew him to provide him a place to live.
66. The delegate indicated that his passport was issued to him in August 2006. He was granted his Australian visa in October 2008. He then arrived in Australia in October 2008. He lodged his

protection visa in January 2012 He had a legal passport to travel from India. The delegate asked why he did not leave before October 2008 to leave India. He stated that his problems started at the start of 2008 and that he left in October 2008. When he left India, he had only received threats. However, when his brother had his accident, the problems started to become serious for the applicant.

67. The delegate asked why he took over three years to lodge his protection claims after arriving in Australia. He stated that he did not have information about a protection visa at the time he arrived.

Tribunal file

68. The applicant applied to the Tribunal for review [in] July 2012. The applicant attached a copy of the delegate's decision to the review application.

Tribunal hearing ([in] September 2012)

69. The applicant appeared before the Tribunal [in] September 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages.
70. The applicant stated that his father lived in [Village 1], Batala, Guardaspur, Punjab. Batala is a big city similar to Brisbane.
71. The applicant lived in [Village 1]. Batala was about [distance deleted: s.431(2)] kilometres from his home village. His mother and father live together. His father and mother have lived continuously in Guardaspur. His father was born there. His mother and father have lived there since they were married.
72. The applicant stated that sometimes he had lived in Chandagar while studying. This was in 2005 or 2006 for two years. Apart from these two years, the applicant lived with his parents in Guardaspur. He finished studying at the end of 2007 and then went back to live with his parents. He stayed with his parents until he came to Australia except for the time that he stayed with his uncle in Amritsar. He stayed with his uncle [Mr B] for 3 to 4 months before coming to Australia.
73. The applicant has a close relationship to [Mr B] as one would have to a brother even though [Mr B] is not his brother but is a relative.
74. The applicant has one sister and one brother. His sister lives with his father and mother. His brother lives in [Country 2]. He departed for [Country 2] in about 2009. He telephoned his home. He was told by his parents that his brother had gone to [Country 2] in 2009.
75. The Tribunal asked why he had left for [Country 2]. He stated that someone hit him with a truck from his village. He had a lot of injuries. His family told him that he would be safer overseas. He was hit by the truck at the beginning of 2009. The Tribunal asked why his family thought it better his brother go overseas. He stated that the people of his village did not think it was right. They were threatening. Because of those threats he was sent overseas. The Tribunal asked how he knew his brother was threatened. He responded that his father had been threatened. The tribunal asked again how he knew his brother had been threatened. He stated that when he came to Australia he spoke to his father who told him that the system had changed quite a bit. He stated that at first, the people were pretty good but then there

were differences. The Tribunal again asked the applicant how his father knew that his brother was threatened. He stated that when his brother used to go to the temple to say prayers or was with his friends on the sporting fields, other boys did not think that his beliefs in the Dera Sacha Sauda were correct.

76. The Tribunal put to the applicant that his father told him that he was hit by a truck. However, there appeared to be no evidence provided to the applicant that the truck hit his brother intentionally because he had been a follower of the Dera Sacha Sauda. He stated that his brother saw himself how the truck driver came up to him. This person pushed his brother to the side where he was hit. Where his brother was hit was a very busy road. Nobody came up to his brother to help. After about two hours, his father passed by and saw how badly injured he was. He stated that nobody called his family. Somebody would have seen his brother injured on the side of the road. The Tribunal asked whether his father or his brother told him about the truck hitting his brother. He stated that it was his brother who had told the applicant that the truck had purposefully tried to run him over. He was asked when his brother told him this. The applicant stated that he usually called every two months. He called about three months after the accident. He asked his brother to tell him the truth about what had happened. He stated that the accident happened in about January 2009. The Tribunal put to the applicant that this was a significant event for the applicant and his family. He confirmed this to be the case. The Tribunal put to the applicant that the event was so significant that his father sent his brother to [Country 2] for his safety. The applicant confirmed this to be the case. The Tribunal put to the applicant that his brother's accident was one of the main reasons for his not returning to India. He stated that he came in 2008 which was before this incident. The Tribunal put to the applicant that after he found out that his brother had been injured by the truck this made him fearful about returning. The applicant confirmed this. He also stated that his father told him not to return as the situation as not good.
77. The Tribunal raised with the applicant that it might have serious concerns about this incident taking place considering that in his written claims that he made [in] January 2012, and were subsequently lodged with the department, nothing as mentioned about a significant incident such as his brother being hit by a truck in January 2009. He stated that, first of all, there was nobody to guide him then. He did not realise that there was a visa like this one that one could apply for. He found out that he could apply for a visa in situations such as this. The Tribunal put to the applicant that in his application he provided a number of details in his claims so much so that he stated that his brother was bashed by the village boys and was planning to leave the country. The Tribunal put to the applicant that he had even mentioned that he was to leave the country because he had been bashed. However, the most significant claim that he was intentionally run over by a truck was not mentioned at all. The Tribunal indicated that this might give rise to credibility issues about claims made by him. He stated that the bashing was not a big deal because it happens. He received the information about the truck incident later.
78. He was asked what religion he followed. He stated that he was Sikh but that he attends the Dera Sacha Sauda. He was asked where he attended the Dera Sacha Sauda. He stated in Haryana. He was asked where in Haryana. He was unsure where in Haryana. He stated that he remembered the name of the town but needed time to think. After some time, he stated that he did not know where in Haryana. He then stated that it was about 20 kilometres from the border at the start of Haryana. The Tribunal put to the applicant that he was unable to tell the Tribunal where in Haryana he attended the Dera Sacha Sauda. He stated that he forgot but that he did know.

79. The Tribunal then asked the applicant when he started to go to the Dera Sacha Sauda. He stated that he first went to the Dera Sacha Sauda in 2004 or 2005. He was asked whether since 2004/2005 to 2008 he went back to the same Dera Sacha Sauda. He stated that there was a town nearby. Guru Rahm Rahim and his followers came to Dhaliwal for prayers. It was about [distance deleted: s.431(2)] kilometres from his home. He went there. Because he was studying he did not go often. When he had free time he would go there.
80. The Tribunal asked when he started to go to the Dera Sacha Sauda in Haryana. The applicant then indicated that he recalled the name of the town that he could not remember before. The town was called Beas. He started to go there in 2004 or 2005. He travelled there about every three months until 2008. The Tribunal asked whether he attended at the Dera Sacha Sauda every three months at Beas town. He confirmed this to be the case. He was asked why he remembered that it was Beas town just now. He stated that he could not remember before. The Tribunal indicated that it had concerns that he attended at Dera Sacha Sauda at Beas town every three months from 2004 to 2008. The Tribunal put to him that one might expect that as a result of this frequency of attendance that he could say where this Dera Sacha Sauda was located first up. However, he stated himself at the hearing that he could not remember on at least two occasions. Later on, after further questions were asked of him, he gave the name of the town as Beas town. The Tribunal indicated that it might conclude from this that he had not attended at the Dera Sacha Sauda in Beas and that the name of this town had been made up by him as the hearing progressed. He stated that it has been a long time and some things he can remember and some things he cannot. The Tribunal put to the applicant that one might expect that if he had participated at an Ashram or Dera from 2004 to 2008, which was a significant place of worship, he would be able to provide a name of the place where he worshiped at. Yet it took him a long time to provide an answer after many questions and his initial responses were that he could not remember the name. The Tribunal indicated that it might appear that he had made up a name of the town later as the hearing progressed rather than providing a name of the town straight away. He stated that he had no excuses. He was only saying what he could remember.
81. The Tribunal asked the applicant whether the Guru attended at the Dera in Beas town. He stated that he did. His name was Guru Girmeeet Rahm Rahim Singh. He was asked if he was known by any other names. He stated that sometimes people shorten his name to Rahm Rahim Girmeeet Singh. The Tribunal asked whether he was known by his Guru name, or a general title that his predecessors were also know by. He was unable to answer on this point. The Tribunal asked how many Guru's had there been including this one in the religion that the applicant had been a part of since 2004. He stated that, as far as he knew, there was one before this Guru. There may have been others but as far as he knew there has only been one before him. The Tribunal put to the applicant that the Dera Sacha Sauda website, which the current Guru puts his messages on, at the very beginning indicates that there has been two Gurus' before this current one and they all class themselves as Guru Ji, as a general title. The Tribunal put to the applicant that it might be expected that someone like himself who had been a part of this religion since 2004 or so would have gone onto the Dera Sacha Sauda website and read the information there and listened to the messages of the current Guru and been able to provide information about how many Gurus there had been in this religion and the title that was given to the Gurus. The applicant stated that he had not seen the website. He followed the Guru.
82. The Tribunal asked the applicant what was the religion or faith called in the Dera. He stated that it was called Sacha Sauda. The Tribunal put to the applicant that country information

suggested that the group's faith was called Insaan. He stated that everybody knew that that place was called Sacha Sauda.

83. The applicant confirmed that his father and mother followed this religion in India as well. He did not know when his father started this religion but his father had a distant friend who advised the father about this religion. The Tribunal asked whether his parents joined Dera Sacha Sauda before 2004. He stated that it was quite a while before this. He stated that they attended the Dera well before 2004 as well.
84. The applicant was asked who introduced him to the religion. He stated that his father used to attend so he attended as well. The Tribunal asked what Dera he worshipped at as a follower of the Guru. He stated that, as stated before, at Daniva, people attended there every three months where he attended. He also went to Haryana. He went to Haryana approximately every three months. He went to Beas.
85. The Tribunal asked which Dera is Guru Ram Rahim Singh situated in. He stated in Haryana. The Tribunal asked where specifically in Haryana. He stated in Beas village in Haryana. The Tribunal put to him that in his application he stated that his family believed in Baba Ram Rahim Singh which is a religious place near Sirsa in Haryana. He stated that Sirsa, a town, is in Beas, a village. The Tribunal indicated that country information appears to make it clear that the entrance to the Dera Sacha Sauda is in Sirsa. However, he was unable to tell the Tribunal initially that he was attending the Dera at Sirsa or Beas. The Tribunal might have expected that even if he could not remember the little town of Beas that he would remember the larger town of Sirsa. This might indicate that he has not been to Sirsa at all. He stated that he used to go with his father. He was always going with his father and never went by himself to this place of worship.
86. The Tribunal asked whether the place he went to for worship in Haryana is the main place of worship there. He stated that there were other places of worship, maybe 20 or 23 places. However, they went to Sirsa as their main place of worship. The Tribunal put to him that the main place of worship and headquarters for the Dera Sacha Sauda in Haryana was called the Shah Satnam Jidahm. He stated that there are a few names for this Dera. This name is another one. The Tribunal indicated that at the department interview he made it very clear that he went to Sirsa. At the hearing he stated that he was unable to say that he was attending at Sirsa. This inconsistency might indicate that he has not been credible in his claims in this regard. He stated that he can be nervous and maybe this is why there were inconsistencies. The Tribunal confirmed that he did attend at the Dera Sacha Sauda in Sirsa. He confirmed this to be the case.
87. He was asked how he travelled to the Dera in Sirsa. He stated by car with his father. He stated that he travelled from Guardaspur to Sirsa. He was asked if he knew the next town he passed through to get to Sirsa. He stated that he crossed a village and entered Haryana. He was asked to provide a distance in kilometres between Guardaspur to Sirsa. He was unable to give the kilometres. However, he stated that he would leave home at 5am he would not arrive to the Dera until 9pm. He travelled 16 hours. He stated that they would stop two hours in Jaladar. They would stop at other places. In total they would stop about 4 hours in their travels. The applicant confirmed that the driving time would take 12 hours and they would stop for another 4 hours into the journey. In total, the journey took 16 hours in total. The Tribunal asked how long it would take to travel from Guardaspur to Batala. He stated that it would take one and a half hours. He was unable to tell the distance in kilometres. At the time, he was not the driver. He was always the passenger.

88. The Tribunal raised concerns about these answers. The Tribunal put to the applicant that he travelled with his father from 2004 to 2008 from his hometown to Sirsa and yet he was still unable to tell the Tribunal the distance in kilometres during that time. The Google map indicates that the journey is about 320 kilometres. The Tribunal indicated that there was a route to Sirsa. The Tribunal raised concerns that the applicant indicated that it was a 16 hour trip to Sirsa from his home. The Tribunal indicated that the applicant had stated that the stopover totalled 4 hours. Therefore, there is 12 hours travelling time between his hometown and Sirsa. He had stated that from his hometown to Batala it took between one and a half and two hours' drive. This leaves ten hours travelling time between Batala and Sirsa. The Tribunal put to the applicant that Google map indicated that it took about five hours by car. The applicant indicated that it took twice that long – ten hours to travel this road. The applicant responded that he used to start the journey in the early morning and get there at night-time. He indicated that he was uncertain of the distance.
89. The Tribunal raised concerns that the applicant was unable to name the place where the Dera Sacha Sauda was, he was unable to indicate the distance in kilometres to travel there and he had provided evidence of the time it took there which was two times more than what Google map had estimated it would take. It indicated that all these matters together might concern the Tribunal that what he was saying in evidence was not credible. It might suggest that he had not travelled on this road to worship at the Dera Sacha Sauda and that he had not worshipped at the Dera Sacha Sauda as claimed in Haryana. The applicant stated that while the Tribunal had sighted Google maps the Tribunal had not travelled the road itself. It did not understand the traffic on the road.
90. The Tribunal indicated that he had travelled the full day to Sirsa. It asked the applicant whether he stayed overnight at the Dera when he arrived. He stated that at night there was a gathering of prayers. He does some work there at the Dera. He stayed there at night, participated in prayers and then come home the following day. The Tribunal asked whether he stayed overnight. He said yes. He was asked how many days he was away from home. He stated that if he left early in the morning he would arrive home the following evening. He confirmed that he would attend the Dera Sacha Sauda at night and early the next day. He stated that in evening, he would help with meals. The following day he would help with the tea at around 5am. He would be resting in the rooms. He would stay all day until the afternoon and then head back home. The Tribunal put back to him that he would leave home for Sirsa, arrive at the Dera late evening, then pray in the evening and then get up early the following morning and have lunch the next day. The applicant confirmed this to be the case. The Tribunal continued putting to him that in the afternoon he would then leave for home at around 3pm or 4pm. He confirmed this to be the case. He was asked what time would he return home. He stated that he would arrive at 1am or 2am of the following morning.
91. The Tribunal put to the applicant that in his application he stated that his relatives and neighbours threatened and harassed the applicant and his family and that he was threatened to leave the religion. The Tribunal asked whether this harassment happened as early as 2004 while attending the Dera. He responded that these people did not know where they were going. The Tribunal asked when his relatives started to harass him. He stated that his relatives came to his house in 2007 in Chandagar. They asked him why he was going to the Dera. The Tribunal put to the applicant that it did not understand why his relatives did not find out earlier than in 2007 that he was going to the Dera, considering that he began in 2004 and it was a close knit community. He stated that he did not have to tell people where he was going at home. The applicant indicated that his relatives might have been saying these things

to his family even earlier than 2007. The Tribunal asked whether the problems got worse with his relatives after 2007. He stated that his family had been separated from his relatives since 2007. The Tribunal asked when he and his family became separated from his relatives. He stated this occurred in 2007. He stated that his closest relatives were separated from them in 2007. These relatives were his father's brothers, his mother's [brothers], as well as his nearby neighbours. The applicant indicated that [Mr B], the son of one of his mother's [brothers], did not know about his involvement with Dera Sacha Sauda until the applicant came to Australia. The Tribunal indicated that it might have concerns that in his evidence, his mother has [brothers] and that one of those brothers is the father of [Mr B]. The Tribunal put to him that [Mr B] only found out about the applicant's involvement with the Dera Sacha Sauda while the applicant was in Australia. Yet, [Mr B]'s father separated from the applicant's family because of their association with Dera Sacha Sauda. The Tribunal indicated that this inconsistency might go to his credibility. The applicant asked the Tribunal what he had said before. The Tribunal again stated that his mother has [brothers] and that these [brothers] separated from his family in 2007 because of their involvement with the Dera Sacha Sauda. He then stated that [Mr B], the son of one of those brothers, did not find out about the applicant's involvement with the Dera Sacha Sauda until the applicant arrived in Australia. The Tribunal indicated that there appeared to be a contradiction in evidence here as [Mr B]'s father had already separated from the applicant and his family in 2007 because of his involvement with the Dera Sacha Sauda. He stated that [Mr B]'s father is no longer alive. He stated that he was talking about [another brother]. When the applicant came to Australia, [Mr B] found out in 2009 about the applicant's background.

92. The Tribunal put certain information to the applicant under s 424AA of the Act in the following way:

The following is information that the Tribunal considers would, subject to your comments or response, be the reason, or part of the reason, for affirming the decision that is under review. The Tribunal will explain the information to you and will also explain how it might be relevant to the Tribunal decision. Please let me know if you don't understand information or its relevance. The Tribunal will invite you to comment or respond to the information. You may seek further time to comment on or respond to the information. Please let me know if you wish to seek additional time and then I will consider whether to adjourn the review to give you additional time.

The relevant information is as follows:

At your hearing today, you stated that you first started going to the Dera in 2004 or 2005, headed by Guru Baba Rahm Rahim Singh. You gave evidence at the hearing today that your father attended the Dera before 2004.

In your application, Q.42, Form C, you were asked why you left your country. You responded as follows:

I left the country (India) as I [and] my family believed...in a sect and the person called Baba Ram Rahim Singh which [has] a religious place near Haryana (Sirsa) called Dera Sacha Sauda. I am Sikh (religion) by birth but we started following this different sect and our relatives and neighbours were anti ...Baba Ram Rahim Singh and started harassing my dad and family and there were riots in 2008 which lead to violence and death of many followers of Baba and we were threatened to leave this sect. Therefore, my father sent me for study to Australia.

At your hearing today you gave evidence that all your relatives separated from your family in 2007, including the father of [Mr B]

In your student visa application, [Mr B] completed an Affidavit of sponsorship, stamped [date] June 2008, stating that he explained to you the various student visa conditions, that he had sufficient funds to pay your fee and living expenses and that he confirmed full and unconditional financial support to you to meet your expenses and that he provided the specified funds in support of your application. He ended off by declaring and verifying the contents of the affidavit true and correct to the best of his knowledge and belief and signing in the presence of a Notary Public in Batala.

In your student visa application the wife to [Mr B, Ms C], signed a letter stating that she had a joint account with [Mr B]. She stated that she had no objection if this amount of money is used for the higher study of [the applicant] son of [name].

This information is relevant as it might indicate that you have provided contradictory evidence, and therefore might not be a witness of truth, about your relatives harassing you because they were anti-Baba Ram Rahim Singh and that all your relatives separated from you and your family in 2007. Yet relatives [Mr B and Ms C] supported you financially as a student to Australia as at June 2008. This information is relevant as it might indicate that you have not been a witness of truth that your father sent you to study to Australia because you were harassed by your relatives or that your relatives were separated from your family, as relatives [Mr B and Ms C] helped your father support you to study in Australia as at June 2008. This information is relevant as it might contradict your claims that your relatives harassed you and were anti- Baba Ram Rahim Singh in that you and your parents began attending at the Dera as followers of Baba Ram Rahim Singh as early as February 2004 but that relatives [Mr B and Ms C] still fully supported you financially in your studies in Australia in June 2008. This information is relevant because if you have not been a witness of truth about being harassed or threatened by your relatives in India, you might not be a witness of truth about you and your family being threatened by your relatives in India or threatened by your neighbours or any villagers for being a follower of Baba Ram Rahim Singh.

This might lead the Tribunal to conclude that you have not been credible in your claims that you or your family have been harassed or threatened by your relatives for being a follower of Baba Ram Rahim Singh. This might lead the Tribunal to conclude that you have not been credible that you or your family have been threatened by neighbours or villagers for being a follower of Baba Ram Rahim Singh. This might lead the Tribunal to conclude that you have not been credible in your claims that you or your family members have been harassed or targeted for being followers of Baba Ram Rahim Singh. This may lead the Tribunal to conclude that you have not been a witness of truth generally and have not been credible in your claims overall.

This information might be relevant to a conclusion that you would not face a real chance of suffering persecution in India for reason of religion or for any other reason under the Refugees Convention. It might also be relevant to a conclusion by the Tribunal that it is not satisfied that it has substantial grounds for believing that there is a real risk that you will suffer significant harm. The information might be relevant to a conclusion that you are not a person to whom Australia has protection obligations under the Refugees Convention or the complimentary protection criteria, and that the decision to refuse to grant you a protection visa should be affirmed.

I now invite your comments or response to this information and advise that you are entitled to request further time to comment or respond if you wish.

93. The applicant provided his comments and response to the information put to him under s 424AA of the Act. He stated that whatever decision the Tribunal takes he will go along with this. He stated that he said that in 2007 [another of his mother's brothers] was separated from them when he came to Australia. When he came to Australia in 2009, they separated from them. They helped him to arrive in Australia and did all the work to get the applicant here. He didn't say that [Mr B] separated from them in 2007. He said that when he came to Australia he then separated from his family when he found out.
94. The Tribunal put certain information to the applicant under s 424AA of the Act in the following way:

The following is information that the Tribunal considers would, subject to your comments or response, be the reason, or part of the reason, for affirming the decision that is under review. The Tribunal will explain the information to you and will also explain how it might be relevant to the Tribunal decision. Please let me know if you don't understand information or its relevance. The Tribunal will invite you to comment or respond to the information. You may seek further time to comment on or respond to the information. Please let me know if you wish to seek additional time and then I will consider whether to adjourn the review to give you additional time.

The relevant information is as follows:

At your department interview you stated that you attended specifically the Dera in Sirsa in Haryana. You stated you attended this one because the Guru was living at this Dera. You liked the teaching at this Dera. At the hearing today you were asked which Dera you attended at Haryana and you could not give the Tribunal a name of the town. You stated that you forgot and did not know the name of the town. Later you stated that the Dera you attended was in Beas village. You mentioned nothing about Sirsa.

At your department interview you stated that you father attended the Dera in 2008, possibly January 2008. At the hearing today you stated that your father attended the Dera before 2004

At your department interview you stated that you first joined this religion in February or March 2008. At the hearing today you stated that you started attending the Dera Sacha Sauda and the teachings of Guru Ram Rahim Singh in 2004 or 2005.

This information is relevant as it might indicate that you have provided inconsistent and vague evidence at the department interview and at the hearing today concerning significant aspects of your claims. This information is relevant as these inconsistencies and vagueness, in total, might indicate that you have not been a witness of truth about your claims overall.

This might lead the Tribunal to conclude that you have not been credible in your claims that you have been harassed or threatened by your relatives for being a follower of Baba Ram Rahim Singh. This might lead the Tribunal to conclude that you have not been credible that you have been threatened by neighbours or villagers for being a follower of Baba Ram Rahim Singh. This might lead the Tribunal to conclude that you have not been credible in your claims that you and your family members have been harassed or targeted for being followers of Baba Ram Rahim Singh. This may lead the Tribunal to conclude that you have not been a witness of truth generally and have not been credible in your claims overall.

This information might be relevant to a conclusion that you would not face a real chance of suffering persecution in India for reason of religion or for any other reason under the refugees Convention. It might also be relevant to a conclusion by the Tribunal that it is not satisfied that it has substantial grounds for believing that there is a real risk that you will suffer significant harm. The information might be relevant to a conclusion that you are not a person to whom Australia has protection obligations under the Refugees Convention or the complimentary protection criteria, and that the decision to refuse to grant you a protection visa should be affirmed.

I now invite your comments or response to this information and advise that you are entitled to request further time to comment or respond if you wish.

95. The applicant provided his comments and response to the information put to him under s 424AA of the Act. He stated that at the interview he did name the place at the interview but at the hearing he forgot the name of the place for a while. He also stated at the interview that his father attended first and he attended afterwards in the period stated. Whatever he stated the first time around he has stated this time around as well. He stated that whatever decision the Tribunal took he would abide by it.
96. The Tribunal asked whether he has practiced this religion in Australia. He stated that whatever he was told to practice there he has been practicing here in Australia. For example, not to eat someone else's food that they have eaten. The Tribunal indicated that under the *Migration Act* the Tribunal must disregard any conduct engaged in by the applicant in Australia unless the Tribunal is satisfied that he has engaged in the conduct of practicing his religion as claimed otherwise than for the purpose of strengthening his claim to be a refugee. The applicant stated that whatever he was given or told in the practice of his religion in India, he was doing the same in Australia.
97. The Tribunal asked whether there was anything else that he wanted to say to the Tribunal for its consideration. He stated that he had nothing further to add or say.

FINDINGS AND REASONS

98. The applicant claims to be a national of India. He travelled to Australia on an Indian passport. The Tribunal accepts that the applicant is a citizen of India and the Tribunal has assessed his claims against India as his country of nationality.
99. The Tribunal is satisfied that the applicant does not have a legally enforceable right to enter and reside in any third country and that the applicant is not excluded from Australia's protection by s.36(3).
100. The Tribunal found the applicant not to be a credible witness at the hearing in respect of any of his claims. The Tribunal found the applicant's oral evidence to be inconsistent in a number of ways with evidence already provided by him prior to the hearing and at the hearing. The Tribunal found the applicant's oral evidence to be vague and lacking in detail in crucial matters, particularly in relation to where he worshipped, the distance he travelled to this place of worship, the time it took to get there, and about the religion itself. The Tribunal provides its findings and reasons below.
101. The applicant claims in writing in his original application that he and his family believe in the sect and the person called Baba Ram Rahim Singh who has a religious place near Haryana (Sirsa) called Dera Sacha Sauda. He claims that as a result of following this different sect,

and because he and his family used to be of the Sikh religion, he fears his relatives and neighbours, who are all Sikh in their religion, will harm them because they are anti-Baba Ram Rahim Singh. He claims that his father sent him to study in Australia because of his belief in this religion. He claims that they will try and force him back to being a Sikh by religion and that they will “outcast” him from his village. He claims that his father and his family have been threatened many times because of their religion. He claims that his younger brother was bashed in his village due to their religious beliefs. As a result of this bashing, he was planning to leave for another country. After lodgement of his application for protection with the department, he raised a new claim that his only brother had left for [Country 2]. He claimed that his brother left for [Country 2] because his brother had been hit by a truck in India and that it was done intentionally due to his brother’s religious beliefs. His father sent his brother to [Country 2] because he feared for this brother’s life after he had been hit by the truck. The applicant claims that his brother was hit by a truck on purpose because his brother was a follower of Baba Ram Rahim Singh.

102. The Tribunal has considered these claims and all the material provided in support of them. However, the Tribunal does not consider the applicant’s claims here as credible. The applicant provided evidence that he started going to worship in Haryana as early as 2004 or 2005. He stated that he travelled to Haryana to worship about every three months until his departure for Australia in October 2008. On this evidence, the applicant travelled to Haryana about four times to worship at the Dera in 2005 (giving the benefit of the doubt that the applicant began to worship in Haryana in 2005 and not 2004). Based on his evidence, he travelled to the Dera in Haryana four times in 2006, four times in 2007 and a maximum of two times in 2008 prior to his departure for Australia. The Tribunal finds that the applicant would have attended his place of worship at the Dera in Haryana on no less than 12 occasions (giving the applicant the benefit of the doubt that he attended the Dera up to the beginning of 2008). Given that the applicant claimed to have made the journey on 12 occasions from Batala in Gurdaspur to the Dera in Haryana and 12 occasions from the Dera in Haryana back to Batala, the Tribunal would expect the applicant to have sufficient knowledge of the distance that he was travelling from one place to the next. However, the applicant was unable to provide any detail about what the distance was between Batala and the Dera in Haryana. As put to the applicant, Google Map indicates that the journey to Sirsa on the main road is a distance of about 320 kilometres. The Tribunal does not find it plausible that the applicant who travelled this road by car up and back 12 times would not be aware of the distance between his hometown and the Dera in Haryana.
103. When asked the amount of time it took to reach the Dera in Haryana from Batala, the applicant indicated that the journey took him about 16 hours. The Tribunal has considered the stopovers that the applicant claimed to have made on this journey amounting to 4 hours. The applicant confirmed with the Tribunal that the entire driving time on the journey took 12 hours and that he and his family would stop on this journey for a total of about 4 hours. The Tribunal has considered the applicant’s evidence that there was traffic on this journey. However, the Tribunal has had regard to Google map which indicates that the journey between Batala and Sirsa takes five hours in total. The Tribunal has considered that Google Map has taken into account traffic conditions on the road. The Tribunal makes this finding based on Google’s calculations of distance and time for travel between Batala and Sirsa. On these calculations, the Tribunal finds that if one was travelling at an average speed on this road one would average at 64 kilometres an hour. Google Map has not provided figures which show that the distance and time taken on this journey is a neat 100 kilometres an hour thus indicating that Google Map has taken into account time delays. Given that the Tribunal

finds that the journey between Batala and Sirsa takes approximately five hours, the Tribunal does not accept as credible the applicant's evidence that it took him 12 hours driving to reach Sirsa from Batala, more than twice the time claimed by him to be the driving time to Sirsa.

104. The applicant was unable to provide the name of the place of worship in Haryana where he claims to have attended on a regular basis when it was first asked of him at the hearing. The applicant was asked on a number of occasions to provide the location where the Dera that he attended was situated in. He was given time to think about his answer. He stated that did not know where the place was in Haryana. It was only later during the hearing that the applicant indicated that he remembered the name of the place where he worshipped at in Haryana and that this place was situated in Beas. The Tribunal put to him that it had serious concerns that he had travelled to the Dera in Haryana on a number of occasions since at least 2005 but was unable to provide an immediate answer as to where the Dera was situated at the time the question was asked. He stated that he had mentioned the name prior to the hearing and at his department interview. The Tribunal notes that the applicant did mention Sirsa in his application and at the department interview. However, the Tribunal also notes that the applicant attended a telephone interview with the department and that it was plausible that he had his application before him to read from and therefore was assisted by what was written in the application. The Tribunal makes this finding given that the applicant indicated that Sirsa was in Beas village when the Tribunal raised concerns that his delay in providing a location might create doubts that he ever attended the Dera in Haryana. In subsequent research undertaken by the Tribunal, the Tribunal has found that Beas is situated in Amritsar, Punjab **Error! Hyperlink reference not valid.**) and not in Haryana as stated by the applicant. Moreover, the Tribunal finds that Beas is 270 kilometres and about four and a half hours travelling time from Sirsa, which is significantly inconsistent to the applicant's claims that Sirsa was situated in Beas.
105. As put to the applicant under s 424AA, the Tribunal finds his inconsistent account of when he started as a follower of Baba Ram Rahim Singh as significant and going to the credibility of his claims. The applicant gave evidence to the department that he first joined the religion in February or March 2008 but at the hearing stated that he started attending the teachings of Guru Ram Rahim Singh in 2004 or 2005. The Tribunal finds this inconsistency of when he first started with this religion - an inconsistency of at least 3 years - as significant and going to the credibility of his claims overall.
106. Given the original claims from the applicant that he attended worship at a Dera in Sirsa, Haryana, and given his subsequent evidence at the hearing that he attended every three months at this Dera from 2005 to 2008, the Tribunal finds the applicant's inability to provide a distance between his hometown and Sirsa as a significant consideration when assessing the credibility of his claim given the amount of times he claims to have travelled to Sirsa. It finds his evidence about the time he claims it takes him to travel from Batala and Sirsa on each of these occasions as inconsistent with independent sources as to the travelling time between Batala and Sirsa. It finds his inability to immediately provide the name of the area where he worshipped at in Haryana (an area he claimed to have travelled to every three months from 2005 to 2008) as a significant consideration in assessing the credibility of his claim. It finds his later evidence at the hearing that he remembered the name of the area where he worshipped at as Beas as not credible at all given that independent information clearly shows Beas to be in Amritsar and not in Haryana and some 270 kilometres away from Sirsa. It finds his inconsistency of evidence of when he first began with his new religion as going to the credibility of his claims.

107. Taking into account all these considerations singularly and together, the Tribunal finds that the applicant has not been a credible witness as to his attending at the Dera Sacha Sauda in Sirsa as a follower of Baba Ram Rahim Singh at any time between 2005 and 2008 and finds that he has never been a follower of the sect and person called Baba Ram Rahim Singh. It finds that, as he has not been credible about his attending at the Dera Sacha Sauda in Sirsa, it does not accept that he has attended any other Dera or followed any other person involved with the Dera Sacha Sauda or the sect and person of Baba Ram Rahim Singh.
108. The Tribunal does not accept that the applicant's parents or family are, or ever have been, followers of Baba Ram Rahim Singh. It makes this finding based, not only on the applicant's lack of credibility as a witness overall, but also on inconsistent evidence given by the applicant. As put to the applicant under s 424AA, the applicant provided evidence at the department interview that his father first attended the Dera in 2008, possibly January 2008. At the hearing the applicant stated that his father attended the Dera before 2004. The Tribunal finds this inconsistency as significant given that there is an inconsistency of about 4 years and given that he has stated that it was his parents who brought him into this new religion and given that he has claimed that he attended worship in Haryana with his father on a regular basis. The Tribunal finds on these points, and on the basis that the applicant has not been a credible witness overall, that the applicant's parents and siblings are not, or ever have been, followers of the sect and the person of Baba Ram Rahim Singh.
109. The Tribunal does not accept that the applicant's brother was intentionally run over by a truck because he was a follower of Baba Ram Rahim Singh. It also makes this finding on the applicant's omission of this claim in his original application and inconsistencies made between his written claims and evidence that he provided at the hearing. Thus, in his original application dated [in] January 2012, the applicant only claim about his younger brother was that he was "bashed up by village boys" At the hearing, the applicant stated that he had only one brother satisfying the Tribunal that any reference made to his brother or younger brother is referring to the same person. He claimed in his written application that "as a result he is scared for his life and is planning to leave the country" The applicant clearly identifies the harm suffered by his brother and his fear of harm and the need to leave the country, as being the direct result of the bashing from the villagers for reason of his brother's belief in the religion of Baba Ram Rahim Singh. However, at the hearing, the applicant stated that his brother was hit by a truck in 2009 and that his brother had told the applicant about the incident. However, at the hearing, the applicant provided inconsistent evidence whereby he stated that because his brother had been intentionally hit by a truck in 2009, his family told his brother that he should go overseas for his own safety. The applicant has given two different accounts of why his brother departed India in fear. The applicant confirmed with the Tribunal that his brother's incident with the truck in India was a significant event for the applicant and his family, that the event was so significant that his father sent his brother to [Country 2] for his safety and that after the applicant found out that his brother had been injured in a truck accident that this made the applicant fearful about returning. Given this evidence of the significance of the event that took place with his brother and how it affected the applicant and his family, the Tribunal finds it implausible that this event would be completely omitted from his original application. The Tribunal considers this omission significant given the significance placed on the event by the applicant and given the applicant's evidence that the incident occurred in January 2009, some two years before lodging his application for a protection visa. The Tribunal does not accept his response that there was nobody to guide him in his claims. The applicant's own evidence indicates that his brother's accident was highly significant in the lives of his family and his life and was the

reason for his brother going to [Country 2] and his fear in returning to India. It does not accept his response that he received the information about the truck incident much later. He had clearly stated in his application that his brother was sent to [Country 2] by his brother because he had been bashed. The applicant had been told that his brother had been bashed. The applicant's own evidence was that his brother's bashing was not a big deal. However, the Tribunal notes that the applicant still found it significant enough to put in his application. If the applicant was given information by his family about his brother's bashing, then the tribunal finds it implausible that his family failed to tell the applicant about a more significant event of his brother being intentionally run off the road. If the applicant's own evidence has been that his brother's bashing was not a big deal, yet included it as significant enough as a claim in his application, the Tribunal does not accept that more significant event of his brother's accident where someone tried to kill him would not be included in the application. The applicant's omission of his brother's accident in his original application, and the inconsistencies that he has provided in his application and at the hearing gives rise to lack of credibility to the applicant's claims in this regard. Given the Tribunal's finding on lack of credibility here and given its findings on the lack of credibility of the applicant as a whole, the Tribunal finds that the applicant's brother has not had any accident involving a truck or been harmed in any way as a result of the applicant's brother being a member of, or associated with, the religion of Baba Ram Rahim Singh.

110. Given the Tribunal's findings that the applicant and his immediate family members are not, and never have been associated with the sect and religion of Baba Ram Rahim Singh, and given the findings that the applicant's brother has not been harmed in any way because of his association and membership to this same religion, and given the Tribunal's findings that the applicant has not been a credible witness overall, the Tribunal does not accept that the applicant or his immediate family members have been threatened with harm or that they will be expelled from the village or that they will not be able to sell their land as a result of his relatives, his neighbours or his community orchestrating this. It does not accept on this basis that the applicant's relatives, his neighbours or his community will harm the applicant or his immediate family in any way because they follow the sect and person of Baba Ram Rahim Singh. This finding is further strengthened by the information contained on the applicant's departmental student visa file that [Mr B] and his wife have fully supported the applicant financially in Australia while he undertook his student studies here. As put to the applicant under s 424AA, the applicant indicated that his closest relatives separated from his family in 2007 because his family was associated with the religion of Baba Ram Rahim Singh. However, as at June 2008, his close relatives [Mr B] and his wife assisted the applicant's father to help support the applicant in Australia in his studies. The tribunal has considered the applicant's prior evidence whereby he stated that [Mr B] found out in 2009 about the applicant's religious background. It has also given consideration to the applicant's response to the information put to him under s 424AA whereby he stated that he did not say that [Mr B] separated from the family in 2007 but that when the applicant came to Australia [Mr B] separated from his family when he found out about the applicant's religion. The Tribunal does not accept this oral evidence based on the applicant's previous evidence at the hearing that the applicant's family had been separated from his relatives since 2007. He confirmed that among the relatives who became separated from the applicant's family in 2007 were his mother's [brothers]. One of these brothers, he stated in evidence, was the father of [Mr B]. On the applicant's own evidence, his uncles on his father's side and his uncle's on his mother's side, as well as his neighbours separated themselves from his family because of their religious beliefs with Baba Ram Rahim Singh. The Tribunal finds it implausible in the circumstances that the applicant's closest relatives and neighbours knew about the applicant

and his immediate family's association with the religion of Baba Ram Rahim Singh but that [Mr B], the son of one of the uncles who chose to separate himself from the family, was not told by his other relatives or neighbours of the applicant's and his family's religion two years after [Mr B]'s father and other relatives found out. The Tribunal finds it implausible that [Mr B], the person who the applicant indicated at the hearing was like a brother to him, did not know about the applicant's religion during all those years that the applicant claimed that he was going to the Dera (since 2005). Given this evidence, the Tribunal does not accept that [Mr B], a close relative of the applicant, separated from the applicant in 2009 or at any time because of the applicant's association with the religion of Baba Ram Rahim Singh. It finds on the evidence that [Mr B], a close relative, helped his father to support the applicant financially in his studies in Australia. The Tribunal does not find the applicant credible in his claims about his relatives wanting to harm him because of his religion. The Tribunal does not find the applicant's claims that his relatives separated from him and his family because of their association with the religion of Baba Ram Rahim Singh as credible.

111. Given that the Tribunal finds the applicant not to be a credible witness in his entire claims, it does not accept the claims that his relatives, his neighbours or his community will harm the applicant or his immediate family because of their religion. It does not accept that his relatives, his neighbours or his community will expel the applicant or his family from the village. It does not accept that his relatives, his neighbours or his community will influence people not to buy the applicant's family land because of their religion. It does not accept that the applicant had a friend, [Mr A], who was attacked and lost his eye because he believed in the sect of Baba Ram Rahim Singh. It does not accept that he has continued in the teachings of Baba Ram Rahim Singh in Australia.
112. The Tribunal has found on the evidence that the applicant has not been credible in any of his claims about his, and his immediate family's association and membership with the sect and person of Baba Ram Rahim Singh.
113. In all the circumstances, and having considered all the evidence before it, the Tribunal finds that there is no real chance that the applicant will suffer serious harm for reason of his religion, or for reason of his membership of a particular social group, namely followers or members of the sect and person of Baba Ram Rahim Singh or for any Convention reason, now or in the reasonably foreseeable future, if he returned to India.
114. Looking to the reasonably foreseeable future, the Tribunal is not satisfied that the applicant has a well-founded fear of being persecuted in India for any Convention reason. Therefore he does not satisfy the requirements of s.36(2)(a) of the Act.
115. The Tribunal has also considered the application of s.36(2)(aa) to the applicant's circumstances. However, the Tribunal has already made findings that it does not accept any of the applicant's claims as credible.
116. In all the circumstances, and having regard to all the evidence before it, the Tribunal is not satisfied that the applicant's claims in this regard gives rise to substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's being removed from Australia to the India, there is a real risk that he would suffer significant harm.
117. The Tribunal is not satisfied that it has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's being removed from Australia to India, there is a real risk that he will suffer significant harm.

118. Having carefully considered all of the evidence, the Tribunal is not satisfied that it has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed to India, there is a real risk that he will suffer significant harm in the form of being arbitrarily deprived of his life, having the death penalty carried out, or being subjected to torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment. In making this finding, the Tribunal has had careful regard to all of the applicant's circumstances.

CONCLUSIONS

119. 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).
120. 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).
121. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

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