

1301246 [2014] RRTA 57 (16 January 2014)

DECISION RECORD

RRT CASE NUMBER: 1301246
DIAC REFERENCE(S): CLF2012/175525
COUNTRY OF REFERENCE: India
TRIBUNAL MEMBER: Anthony Krohn
DATE: 16 January 2014
PLACE OF DECISION: Melbourne
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

SUMMARY OF CRITICAL FINDINGS

1. The applicant claims protection in Australia by the grant of a protection visa (“**the visa**”).
2. The applicant claims protection as a national of India who fears harm by a particular relative (“**the relative**”) because of a property dispute (“**the dispute**”).
3. For the reasons given below, although the Tribunal accepts the applicant’s evidence that there is a property dispute in his family, it finds that:
 - ❖ the applicant does not have well-founded fear of persecution if he returns to his home area in India;
 - ❖ as an independent and discrete basis for the decision, the applicant could reasonably and safely relocate to another part of India where he would not have a real chance of suffering persecution;
 - ❖ the applicant does not have a real risk of suffering significant harm if he returns to his home area in India and becomes a party to the property dispute;
 - ❖ as an independent and discrete basis for the decision, the applicant could reasonably and safely relocate to another part of India where he would not have a real risk that he will suffer significant harm;
 - ❖ the applicant is not a member of the family unit of a person in respect of whom the Tribunal is satisfied that Australia has protection obligations.
4. The Tribunal therefore finds that the applicant does not meet a necessary criterion for the grant of a protection visa, and must affirm the decision to refuse to grant him the visa.

CLAIMS AND EVIDENCE

5. The applicant gave his claims in writing in his application for the visa, and elaborated them at an interview with a delegate of the Minister (“**the delegate**”) and at a hearing before the Tribunal. In summary, the following were his claims and evidence.

Application for the visa

Representation

6. The applicant was represented by a registered migration agent in his application for the visa. The agent attended the interview of the applicant by the delegate.

Claims in the application for the visa

7. The applicant is a man [from] the State of Punjab in India. He speaks, reads and writes Hindi and Punjabi, and has some ability to read and write English.¹ He is married, but separated from his wife in Australia. It is now over four years since he arrived in Australia on student visa.²
8. The applicant claimed to have been the subject of attack by relatives in India “a couple of times” and fears further attack if he returns. This is because of a property dispute between the applicant’s father and other relatives, a dispute before the Indian courts (“**the court case**”). The applicant’s father’s side of the dispute has so far been successful in the Indian courts, and the other relatives made their attacks in rage. The applicant fears for his life. He does not believe the police can or will protect him, and that the police are afraid of his relatives and their connections.³
9. The applicant submitted a copy of a document from the court case.⁴
10. The applicant was interviewed by the delegate in relation to his application for the visa. The delegate noted that the applicant’s agent expressed some concern about the quality of the interpreting at the interview, but confirmed with the agent that the applicant was able to convey all that he wanted at the interview.⁵
11. The applicant was married a few years ago, but was divorced from his wife just before the interview with the delegate. His family are aware of this. His wife had not been threatened or attacked as a result of the dispute.⁶
12. The applicant’s siblings are young adults still in India, sometimes in one place and sometimes in another. They were attacked in 2007 at the time the applicant was there, but now they are only threatened. The applicant clarified that there were verbal threats to kill his father and siblings. The applicant, his father and siblings are listed as parties to the court case. They all have a claim to the property in the dispute.⁷
13. The applicant’s father and another close relative are involved in the court case in India. The applicant himself has received threats in when he was in India in 2007 at the time when the dispute was first in court. He was threatened on other occasions also after 2007, but his parents sent him to stay with other relatives in Australia. Another relative of the applicant in Australia also has been threatened with death or harm by the same relative who has threatened the applicant, his father and siblings.
14. The dispute is about land worth many crores of rupees.⁸ It belongs to a number of the applicant’s relatives, beneficiaries under the will of an ancestor. The court case is still continuing, although twice the applicant’s side of the family have won. The applicant’s father and another relative have been running the case for their side of the dispute.

¹ Minister’s department’s file, folio 18.

² Minister’s department’s file, folio 17, Minister’s department’s records, folio 33 of the Tribunal’s file.

³ Minister’s department’s file, folios 15-14.

⁴ Minister’s department’s file, folios 46-42.

⁵ Minister’s department’s file, folio 78.

⁶ 48’ in the interview.

⁷ 32’ in the interview

⁸ 39’ in the interview. A crore is 100 lakhs = 10,000 rupees.

15. The applicant, one of his siblings and a cousin have been threatened, but not the youngest sibling in the applicant's family.
16. The applicant was attacked in the sense that on an occasion when he was on his motorbike, he was pursued by eight or ten men, who followed him to near his home. These men were the relative and his friends.
17. The relative is a very dangerous person.
18. If the case is compromised and sorted out, it will be all right for the applicant to go back, but if there is no compromise they will continue to threaten him, as long as the case runs.⁹
19. The current situation is that there is no prospect of compromise, and threats will continue in the hope of pressing the applicant's immediate family to pay money.
20. The applicant did not apply for protection for several years after arriving in Australia because he thought at first that the case would be sorted out and he would return to India. He thought also that he would get permanent residency, but as that has not happened, he applied for protection.
21. The applicant did not believe the Indian authorities could protect him. The relative has a friend in the police. He has not reported the threat from the relative to the police, because of this. The police would take the side of the relative because of the relative's friend. Other police outside the area would not protect him because of this connection. Also, the family have not involved the police because they expect to resolve the dispute by a compromise.
22. The relative is pursuing the court case, even after losing twice in lower courts, in the hope of getting money, but the applicant's immediate family are not going to sell their land in the city which is worth crores of rupees.
23. If the applicant went to another State, and the relative and his friends did not find out about this, the applicant would be all right, but if they did find out, they are very dangerous people and would not leave him.¹⁰
24. The applicant said that his sibling is not living with his family. Whenever the case goes to court, his father or uncle attend the court.

The delegate's decision

25. The delegate was not satisfied that a reason under the Refugees Convention was the reason for the harm the applicant fears.
26. Also, the delegate was not satisfied that there are substantial grounds for believing that there is a real risk of significant harm to the applicant.

⁹ 56' in the interview

¹⁰ The interpreter made a reference to the applicant's Punjabi accent, but neither the agent nor the applicant raised any concerns about the interpreting during the interview. The agent did so after the interview, but did not request a further interview, and the delegate noted that the agent confirmed with the delegate that the applicant was able to say all he wanted at the interview. (Minister's department's file, folio 80.)

Application to the Tribunal

Representation

27. The applicant was not represented in his application to the Tribunal.

Claims and evidence in the application to the Tribunal

28. The applicant advanced the same claims in his application for review as he had done in his application for the visa. He gave evidence to the Tribunal substantially consistent with his previous evidence in the application for the visa. The following is a summary of significant additional points or additional detail in his evidence before the Tribunal.
29. The applicant's next sibling lives in another State in India, some days' journey distant by train. He left home to go there in 2007. He visits home sometimes to see his parents. He visits once or twice a year, and remains for ten to fifteen days each time. The remaining sibling lives with a relative on the applicant's mother's side of the family.
30. The applicant has a trade qualification in India, but not experience such as to be able to get work in his trade.
31. The applicant's sibling who has moved to another State received threats from 2007. These threats were not made to him directly, but to the applicant's and his sibling's parents, at court. It is the applicant and this sibling who are most at risk, as they are the older siblings.
32. On the occasion when the applicant was chased in 2007 on his motorbike, the eight or ten who chased him had hockey sticks and knives. This was outside the court, a short distance from his home. Other villagers saw it. The applicant's father first thought of going to the police about this, but did not do so, because he thought that the parties might reach a compromise.
33. After this incident, the applicant lived at home, sometimes visiting his mother's family, until he left India in 2009. He did not go back to court again.
34. The court dispute has gone to trial, and then on a first appeal, and now on a further appeal to the High Court of the State.
35. The applicant has no illnesses.
36. The applicant has no friends or family other than his family at home and his sibling in the other State in India.
37. The applicant's family did not report the matter to the police, as his father thought there was a chance of compromise of the dispute with the other side.
38. The applicant does not know of any reason why the police would not protect him, except that they could not do so every hour of the day. The relative is very dangerous.
39. After the incident of the threat in 2007, the applicant avoided contact with the relative, and did not attend court. His parents told him to stay at home and not to cross the path of the relative.

40. From 2007 to 2009, the case was in court twice. Each day the matter was in court, there were threats to harm the applicant's parents and their children. The applicant knows of the threats on the second occasion, because his father and another relative told him.
41. From 2007 to 2009 the applicant remained in his parents' home. His movements were restricted. He stayed at home or in the streets of the village, but he did not go into the town. Although he got a passport in 2007, he did not leave India straight away, as his family took some time to arrange a marriage with a girl who could assist him to leave the country.
42. The applicant cannot live where his sibling is living, with other relatives on his mother's side in another place in India, because they only have space for one person, and he cannot go anywhere else in India because he does not know anyone. He is able to live in Australia, because it is very far away, and he is not in danger here.¹¹
43. The relatives on the other side in the court case live a few kilometres from his parents' village.¹²
44. The applicant is in contact daily with his parents. Since 2007, his parents have not suffered harm at the hands of the other people in the case.¹³ They are not in danger, because the land belongs to the applicant and to his sibling.
45. The applicant has siblings. His older sibling has not been harmed. He has been living elsewhere, but not been harmed during visits because they did not find out he had returned. His younger sibling had not been harmed because when the case started he was young, but as grew older, has gone to stay with mother's parents at a place he named few kilometres away.¹⁴ The applicant himself could not stay there because he is the oldest sibling and the one wanted by those on the other side of the dispute.
46. The other side did not come into his village to harm the applicant in the time from 2007 to 2009 because they were scared of the other villagers who would join together to protect him. The applicant was all right if he stayed at home, but not if he went out.
47. The applicant maintained that only if he knew someone in another place in India, could he relocate there.
48. The Tribunal suggested that the applicant would not have to move very far to be safe, as his younger sibling has lived safely with the applicant's mother's family only a short distance from the home village for a number of years.¹⁵
49. The applicant said that bearing in mind all his circumstances including his age, health, qualification in a trade, and language ability he still had no experience in a trade.
50. The applicant said he would need about 14,000 rupees per month to buy a house and a bout 10,000 rupees per month to live. The Tribunal said that it doubted a university graduate would earn so much.

¹¹ Approximately 1 hour, 33 minutes in the hearing.

¹² Approximately 1 hour, 34 minutes in the hearing.

¹³ Approximately 1 hour, 34 minutes in the hearing.

¹⁴ Approximately 1 hour, 39 minutes in the hearing.

¹⁵ Approximately 1 hour, 59 minutes in the hearing

51. The Tribunal said it had difficulty believing the applicant was in real danger, as the other side in the dispute have not harmed anyone in his family in the period of the dispute, although the Tribunal said it accepted people in India were sometimes harmed in disputes over land.
52. The Tribunal said also that it appeared that the applicant's family had the resources to help the applicant, as for example they had helped his siblings.

Other information concerning the situation in India

Land disputes

53. *Forbes India* reported in June 2010 that “[a] third of the 11 million civil cases pending in the lower courts involve fights over property”, and “[a]s much as 1.3 per cent of the gross domestic product (GDP) is locked away in such fights”.¹⁶
54. India has a severe shortage of land. The BBC News has reported that in 2012, India had a shortage of approximately 26 million dwellings. Furthermore, “there is a huge pent-up demand for commercial spaces and land for building factories and huge infrastructure projects such as roads, ports and power plants”.¹⁷
55. This land shortage has led to dramatic rises in the property values, particularly of clear sites near India's rapidly growing cities. A consequence of this is that opportunists, often family members and neighbours, seek to appropriate exclusive land title of such lands with the intention of selling for profit. Indian media reports indicate that these disputes sometimes result in violence, including deaths.¹⁸

Police and State protection - Impunity

56. Corruption and incompetence are frequently serious obstacles to adequate state protection in India. The US Department of State reported in 2012 that in India bribes are commonly paid to secure police protection, and that 39,123 police officers were fined for being involved in corrupt practices between 2008 and 2010. It also cited a Transparency

¹⁶ Kumar, K P 2010, ‘The Law of the Land’, *Forbes India*, 23 June <<http://forbesindia.com/printcontent/14382>> Accessed 20 June 2013.

¹⁷ Srinivas, A 2012, ‘India: Why land is at the centre of all scandals’, *BBC News*, 10 December <<http://www.bbc.co.uk/news/world-asia-india-20457766>> Accessed 20 June 2013.

¹⁸ Kamal, N 2012, ‘Father killed, son injured in land dispute’, *The Times of India*, 25 December <http://articles.timesofindia.indiatimes.com/2012-12-25/chandigarh/35998884_1_land-dispute-arms-act-punjab-village> Accessed 1 March 2013;

‘Elderly killed by son over land dispute in Punjab’ 2012, *Jagran Post*, 24 June <<http://post.jagran.com/elderly-killed-by-son-over-land-dispute-in-punjab-1340510369>> Accessed 1 March 2013;

‘Son held for killing father over property dispute’ 2012, *ZeeNews*, 26 June <http://zeenews.india.com/news/punjab/son-held-for-killing-father-over-property-dispute_783929.html> Accessed 10 September 2012;

‘Siblings hacked to death’ 2012, *WebIndia*, 8 September <<http://news.webindia123.com/news/Articles/India/20120908/2059844.html>> Accessed 10 September 2012;

‘Woman burnt alive over property dispute’ 2012, *WebIndia*, 29 August <<http://news.webindia123.com/news/articles/India/20120829/2053165.html>> Accessed 10 September 2012,;

‘UP: Father-son duo killed over property dispute’ 2012, *Zeenews*, 9 September <http://zeenews.india.com/news/uttar-pradesh/up-father-son-duo-killed-over-property-dispute_798659.html> Accessed 10 September 2012;

‘Neighbour shoots man’ 2012, *The Tribune*, 28 August <<http://www.tribuneindia.com/2012/20120828/punjab.htm#11>> Accessed 10 September 2012.

International report that found that 54 per cent of respondents in an Indian corruption survey admitted to paying bribes to authorities, primarily in order to gain police protection and other government services.¹⁹

57. The Bertelsmann Stiftung Transformation Index 2012 *India Country Report* said Indian police were “highly inefficient, politically dependent and corruption-prone”. Consequently, “the conviction rate of criminals is low, police atrocities against civilians are frequent and the government quite often has to rely on the army to quell internal disturbances”.²⁰
58. Police inaction, either as a result of delays in conducting inquiries or refusals by police to accept FIRs, prevents investigations into many serious crimes. The practice is widespread, and at times seems politically related. Some reports indicate that persistence on the part of the complainant can result in FIRs being acknowledged, but this is not always the case.²¹
59. In 2012, the US Department of State noted that “[w]idespread impunity at all levels of government remained a serious problem. Investigations into individual cases and legal punishment for perpetrators occurred, but in many cases a lack of accountability due to weak law enforcement, a lack of trained police, and an overburdened court system created an atmosphere of impunity”.

Wages in Punjab

60. There are figures for minimum wages in the Punjab which suggest that a person in various occupations within some industries may earn from 240 to 430 rupees per day, and that this is calculated to provide at least a basic livelihood.²² At approximately 4,000-10,000 rupees per month, some Indians may expect to earn approximately one lakh per year or rather less. A crore (100 lakhs = 100,00,000 = 10 million rupees) would therefore be much more than a lifetime’s wages for many Indians.

¹⁹ US Department of State 2012, *Country Reports on Human Rights Practices 2011 – India*, 24 May, Section 4.

²⁰ Bertelsmann Stiftung Transformation Index 2012, *India Country Report*, pp.6, 8 <<http://www.bti-project.org/>> Accessed 3 May 2012.

²¹ The following reports give examples of inaction by police:

‘Trader killed in his shop, police ‘inaction’ sparks protest’ 2012, *The Indian Express*, 22 July <<http://www.indianexpress.com/news/trader-killed-in-his-shop-police-inaction-sparks-protest/977832/>> Accessed 27 August 2012,;

Deedwania, B 2012, ‘Firm traces stolen containers after police inaction’, *Mumbai Mirror*, 25 May <<http://www.mumbaimirror.com/article/2/20120525201205250413472061ec66fde/Firm-traces-stolen-containers-after-police-inaction.html?pageno=1>> Accessed 27 August 2012,;

Ray, M 2012, ‘Court justice for rape victim after police inaction’, *The Times of India*, source: TNN, 23 June <http://articles.timesofindia.indiatimes.com/2012-06-23/bhubaneswar/32381758_1_police-station-complaint-local-police> Accessed 27 August 2012.

²² Minimum Wages in Punjab W.E.F September 1, 2013 to February 28, 2014, <http://www.paycheck.in/main/salary/minimumwages/punjab>. Accessed 30 November 2013.

FINDINGS AND REASONS

The first question for the Tribunal – is the applicant a refugee?

61. The applicant claims protection in Australia by grant of the visa.
62. Section 36(2)(a) of the *Migration Act* 1958 ("**the Act**") provides that a criterion for a protection visa is to be a non-citizen in Australia in respect of whom the Minister²³ is satisfied Australia has protection obligations under the Refugees Convention²⁴.
63. Australia is a party to the Refugees Convention and, generally speaking, has protection obligations in respect of people who are refugees within the meaning of 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.”
64. Does the applicant meet this definition of a refugee?

Section 499 Ministerial Direction

65. The Tribunal is required, by Direction No. 56, made by the Minister under section 499 of the Act, to take account of policy guidelines prepared by the Minister’s department, namely *PAM3 Refugee and humanitarian - Complementary Protection Guidelines* and *PAM3 Refugee and humanitarian - Refugee Law Guidelines* – to the extent that they are relevant. The Tribunal has done so.
66. Direction 56 also requires the Tribunal to have regard to any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant, but there is no such assessment for India at the date of the Tribunal’s decision.

Credibility

67. The Tribunal notes that the applicant applied for the visa more than three years after his arrival in Australia, but draws from this fact no adverse conclusion concerning the credibility of the applicant’s evidence.
68. The Tribunal finds that the applicant was clear, definite and responsive in his evidence before it, and that he did not embellish his evidence of his history.
69. The Tribunal finds, by reference to the coherent and internally consistent account given by the applicant at the hearing, that he is a true and reliable witness of the things known to

²³ Or the Tribunal, in the case of an application to the Tribunal for review of a decision by the Minister or the Minister’s delegate. See section 415 of the Act.

²⁴ A fuller name of this treaty is the 1951 *Convention relating to the Status of Refugees* as amended by the 1967 *Protocol relating to the Status of Refugees*, but for the sake of brevity referred to in these reasons as “**the Refugees Convention**”, or “**the Convention**”.

him, and that he has not embellished or exaggerated his account of the dispute which is the basis of his fear.

Nationality

70. The applicant claimed to be a citizen of India and of no other country. (Minister's department's file, folio 59.) There is no evidence to the contrary.
71. The Tribunal notes that the applicant entered Australia travelling on an Indian passport in his name. (Minister's department's file, folios 17, 30-29; Minister's department's records, extract in Tribunal's file, folios 33, 26-24.)
72. The Tribunal finds by reference to the applicant's own evidence and claims, and by reference to the evidence of his passport, that the applicant is a national of India and of no other country. It follows that India is the country of nationality and the only "receiving country" in this matter within the meaning of section 5(1) of the Act for the purposes of section 36(2)(aa).

Assessment of the applicant's claims for protection

1. The situation in India

Land disputes

73. In making the following observations and findings, the Tribunal accepts, consistently with the claims of the applicant and the other evidence before it, including the reports cited above, that there are many disputes in India about land, that they are pursued seriously because of the pressure of the population on land, and that there are often lengthy delays in the courts. The Tribunal is satisfied that such disputes are often pursued with terrible, and sometimes murderous, violence.

Limited police protection

74. In making the following observations and findings, the Tribunal accepts, by reference to the reports cited above, and consistently with the claims of the applicant, that the factors of corruption, political influence, lack of resources and sometimes incompetence, alone or in combination, are frequently serious obstacles to adequate state protection in India.

2. The Tribunal accepts the applicant's evidence

75. The Tribunal accepts the applicant's evidence of his own history and of the things known to him directly as truthful and reliable. It therefore accepts, by reference to the applicant's evidence, given to the delegate and Tribunal at the hearing, and to the other information available to the Tribunal about land disputes in India, that:
 - ❖ the applicant is from the Punjab;
 - ❖ that he has a simple education with a qualification in a trade;
 - ❖ that his father and other relatives are in a property dispute, which has resulted in his father and the others on his father's side of the dispute being successful on two occasions in court against another relative;

- ❖ that the relative has made some threats against the applicant and the next eldest sibling;
- ❖ that the relative has appealed to a higher court for a third attempt at victory in the courts;
- ❖ that his father and mother have continued to live without harm in their home village;
- ❖ that the applicant lived in his home with his parents, at a place close to the court and known to the relative, without harm for two years during the currency of the dispute;
- ❖ that his next brother has lived without harm in another State in India, and has sometimes returned to the home village to visit his parents, without harm;
- ❖ that his youngest sibling has moved and lived without harm at the village of the applicant's mother's family, a short distance from the home village;
- ❖ that the applicant's father has not sought the protection of the police, because he has hoped to settle the dispute by compromise, and also because a friend of the relative is in the police;
- ❖ that the applicant could safely relocate to another State in India as long as the relative did not find out where he was.

3. What if the applicant returns to his home area? The Tribunal is not satisfied the applicant is a refugee – section 36(2)(a)

76. The Tribunal has noted and accepts the evidence about police incompetence and corruption in many parts of India. It assumes that effective State protection is not available in the home area of the applicant.
77. The Tribunal notes that the applicant gave no evidence and made no claim that any member of his family had been attacked or injured in the course of the property dispute, apart from the single instance when he said that he had been threatened outside the court and followed on one occasion in 2007. The Tribunal finds, by reference to the applicant's evidence and its findings above that although the applicant lived at his home for two years during the currency of the dispute, and that the relative knew where the applicant lived, the relative did no harm to the applicant, apart from one occasion in 2007 when the relative and some men followed the applicant by motorbike from the court to his home. The Tribunal finds that the relative has had the opportunity to threaten or harm the applicant's parents, still living at home, including his father who is a party to the litigation, but has not done so. The Tribunal finds that the relative has had the opportunity also to harm the applicant's next oldest sibling on the visits of that sibling to the family home, but has not done so. The Tribunal finds that the relative has had the opportunity also to harm the applicant's youngest sibling who is living not far away with the family of the applicant's mother, but has not done so.
78. The Tribunal finds that if the relative were serious about the use of violence as a means of compelling a compromise or securing a victory in the dispute, he would have inflicted some harm on one of the members of the family, parties to the dispute, who have remained

in India during the years the applicant has been absent, and that he would have done so either against them as parties or potential parties to the dispute, or as a means of putting pressure on the applicant.

79. The Tribunal is satisfied, from the past record of the relative, that there is no real chance that he will inflict serious harm such as to amount to persecution on the applicant, especially as he did not do so from 2007 to 2009 when the applicant was living at his home in his parents' village, and has not inflicted harm on the applicant's parents or siblings since 2007, although the parents are still in their home village, the older of the two siblings has visited the home village a number of times, and the younger sibling lives with the family of his and the applicant's mother only a short distance from the applicant's parent's village.
80. The Tribunal is satisfied and finds that the relative has pursued and is still pursuing the claim through the courts. While he may hope to put pressure on the applicant's family by threats, he has not acted on any threats in more than six years, even though some of the parties to the litigation were readily to hand.
81. It follows and the Tribunal finds that if the applicant returns to his home area of his parents' village in Punjab he will be able to live without a real chance of suffering serious harm in the reasonably foreseeable future at the hands of the relative or the relative's agents.

Conclusion

82. It follows from the findings above that the Tribunal is not satisfied that the applicant is a person with well founded fear of persecution if he returns to India such as to be a person in respect of whom Australia has protection obligations under the Refugees Convention.
83. It therefore follows and the Tribunal finds that the applicant does not meet the criterion in section 36(2)(a) for a protection visa.

4. Complementary protection – section 36(2)(aa)

The requirements for complementary protection?

84. If the applicant is not a refugee, he may nevertheless meet the criteria for the grant of a protection visa pursuant to section 36(2)(aa) if he is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm.
85. '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.
86. 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

Does the applicant meet the requirements for complementary protection?

87. By reference to the evidence of the applicants and the other material before it, the Tribunal is not satisfied, for the reasons set out above in relation to the question of the applicant's claim to fear persecution, that there is a real risk that the applicant will suffer treatment amounting to significant harm at the hands or instigation of the relative if he returns to his home area of Punjab.
88. Therefore the Tribunal is not satisfied that the dispute with the relative over property is such or may in the reasonably foreseeable future become such that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to India, a receiving country, there is a real risk of the applicant suffering significant harm.
89. It therefore follows and the Tribunal finds that the applicant does not meet the criterion in section 36(2)(aa) for a protection visa.

5. Relocation – discrete and independent reason for decision

90. The Tribunal has found that it is not satisfied there is a real chance the applicant will suffer serious harm or significant harm if he returns to his home area of India. It is therefore not necessary for the Tribunal to determine whether he could reasonably relocate to avoid harm. Nevertheless, if the applicant remains fearful of the relative in his home area, he may wish to consider relocation within India. The Tribunal has considered this issue as a discrete and independent basis for its decision in this matter.

Relevant law

91. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. The principles discussed by the court in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437, per Black CJ at 440-1, provide that the relevant question is whether an applicant can, reasonably in all the circumstances, live safely and free from a risk of such harm by resettling and living in another part of his or her country.
92. The Tribunal notes the judgement in *MZYLH v Minister for Immigration & Anor* [2011] FMCA 888 (17 November 2011), where the court was dealing with a case where there was evidence that the applicant was a person who was suffering from severe depression and severe post-traumatic stress disorder. The court said at [137]-[138]:

137. The Tribunal is required to consider the practical realities facing a person in determining whether it is reasonable to expect them to relocate. Those practical realities are not limited to matters related to persecution for a Convention reason:

○ *A well founded fear of persecution for a Convention reason having been shown, a refugee does not also have to show a Convention reason behind every difficulty or danger which makes some suggestion of relocation unreasonable.*[146]

138. *The issue is not whether the Applicant might be denied treatment for his mental illness for a Convention reason but whether he could relocate within Pakistan and maintain himself given the state of his health. As Branson J said in NAIZ, the approach set down in Randhawa requires the Tribunal to consider the practical realities facing the Applicant to consider how, in a practical sense, he could reasonably be expected to relocate.*[147]”

Relocation reasonable

93. The Tribunal notes the applicant’s evidence that he is young, in good health, with ability in English, Hindi and Punjabi, with some education and a trade, although lacking in experience in his trade, with the good will of his immediate family who also have some material means (being owners of land of some value), and that he is without dependants. The Tribunal finds that his circumstances are such as to make it reasonable for him to relocate and to make a new start in a part of India away from his home area of his parents’ village, whether a short distance away at his mother’s village where his youngest sibling has lived safely for some time, or in another village or town or place in Punjab, or in another State, as his older sibling has done for some years.

Relocation safe from persecution

94. The Tribunal finds, by reference to the applicant’s evidence that his siblings and parents have not been harmed in the course of the dispute, that if the applicant were to relocate and to make a new start in a part of India away from his home area of his parents’ village, whether a short distance away at his mother’s village where his youngest sibling has lived safely for some time, or in another village or town or place in Punjab, or in another State, as his older sibling has done for some years, there is not a real chance of the applicant suffering serious harm such as to amount to persecution.

95. The Tribunal therefore finds, as a separate and independent basis for the decision, that it is both reasonable and possible in all the circumstances for the applicant to relocate to another part of India away from his home area where he would have no real risk of suffering persecution. He therefore on this basis does not meet the requirements of section 36(2)(a) of the Act.

Relocation safe from significant harm

96. For the same reasons given above, in considering relocation in the context of protection under the Convention, the Tribunal also finds that it would be reasonable (and possible) for the applicant to relocate to an area of India where there would not be a real risk that he will suffer significant harm. By operation of section 36(2B), he is therefore taken not have a real risk of suffering significant harm in India, and does not meet the requirements of section 36(2)(aa) of the Act.

6. The Tribunal is not satisfied that the applicant is a member of the family unit of a person in respect of whom Australia has protection obligations – section 36(2)(c)

97. There is no evidence before the Tribunal that the applicant is a member of the family unit of a person who is mentioned in section 36(2)(a) or 36(2)(aa). It follows and the Tribunal finds that the applicant therefore does not satisfy the criteria for the visa set out in section 36(2)(b) or 36(2)(c) of the Act. The Tribunal finds, therefore, the applicant does not satisfy the criterion in section 36(2) of the Act.

CONCLUSIONS

98. For the reasons given above, although the Tribunal accepts the applicant's evidence that there is a property dispute in his family, it finds that:

- ❖ the applicant does not have well-founded fear of persecution if he returns to his home area in India. He therefore does not meet the requirements of section 36(2)(a) of the Act.
- ❖ as an independent and discrete basis for the decision the applicant could reasonably and safely relocate to another part of India where he would not have a real chance of suffering persecution; On this basis also he therefore does not meet the requirements of section 36(2)(a) of the Act.
- ❖ the applicant does not have a real risk of suffering significant harm if he returns to his home area in India and becomes a party to the property dispute; He therefore does not meet the requirements of section 36(2)(aa) of the Act.
- ❖ as an independent and discrete basis for the decision the applicant could reasonably and safely relocate to another part of India where he would not have a real risk that he will suffer significant harm; by operation of section 36(2B) he therefore does not meet the requirements of section 36(2)(aa) of the Act.
- ❖ the applicant is not a member of the family unit of a person in respect of whom the Tribunal is satisfied that Australia has protection obligations. He therefore does not meet the requirements of section 36(2)(c) of the Act.

DECISION

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

Anthony Krohn
Member