

1311052 [2013] RRTA 695 (27 September 2013)

DECISION RECORD

RRT CASE NUMBER: 1311052
DIAC REFERENCE(S): CLF2013/18059
COUNTRY OF REFERENCE: India
TRIBUNAL MEMBER: Roger Fordham
DATE: 27 September 2013
PLACE OF DECISION: Adelaide
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

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 25 January 2013 and the delegate refused to grant the visa on 10 July 2013.
3. The applicant was invited to appear before the Tribunal by registered mail sent on 18 August 2013 and a hearing date of 17 September 2013 was offered to give evidence and present arguments.
4. The applicant was represented in relation to the review by his registered migration agent.

CONSIDERATION OF CLAIMS AND EVIDENCE

5. 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 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.
6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
8. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.
9. The issue in this case is that the applicant, a single [age] year old male from Sirhind, Punjab, India, who claims to be Punjabi by ethnicity and Sikh by religion claims to fear harm at the

hands of the Indian authorities for reasons of his membership of a separatist movement called the Khalistan movement/Shiromani Akali Dal party.

10. In his application for a protection visa the applicant, through his adviser, stated:

[The applicant] influenced by movement and joined. Sooner, he became an active member of group. His role was to run an awareness camp of Khalistan movement in Punjab against the government of India. Being it's against Indian government, sooner he came in notice of Punjab police and CBI, though he was not involved in any criminal activity but they started to harass him. He started to get verbal warnings that he has short life span. Infected (sic) police started to harass his family.

To protect himself, he applied Australian student visa Vocational Education Sector 572 and came to Australia [in] September 2008 for course [name and college].

11. At Q.44 of the application form he was asked, "Have you experienced harm in that country?" He replied:

Punjab police and CBI of India Verbal Warned [the applicant] and harass his and his to family. He had not experienced any physical harm but he had gone through process of Mental Tortured and sense of insecurity.

12. When asked what he feared would happen to him if he went back to that country (India)? He replied:

Anyone who is recognized as an active member of movement, Punjab Police and CBI are arresting them in Tailored made case of Militancy. They are giving them third degree torture and force them to accept whatever they want otherwise a fake encounter.

There are a number of stories in which this has already happened in reality but nothing in records. (Evidence enclosed)

They have eye on me. They have warned me before they arrested me, I escaped on student visa and never returned back to see my parents even. I am only son of my parents. They want to see me, meet me and even I, but we cannot as we all understand that if I visited once that will be last day of my life.

13. Asked who he believed would harm him he claimed that it would be the Government authorities through the Punjab police. He claimed that Punjab police and CBI are arresting members of the movement and torturing them or harming them through "fake encounters". He said that the government therefore would not provide protection.

14. He said he would provide a letter from the movement's President.

15. At folio 39 of the departmental file is a statement concerning the applicant in which it is stated:

- a. [The applicant] has started his studies in [course and college], Punjab, India in 2006.
- b. During his studies he attended a seminar of khalistan movement. Khalistan movement refers to a global secessionist movement which seeks to create a separate Sikh country called Khalistan. "The land of the Khalsa" in the Punjab region of South Asia. The territorial definition of the proposed country is centred around the Indian state of Punjab. Various pro-Khalistan outfits have been involved in a separatists movement against the Government of India ever since. There are claims of funding from Sikhs outside India to attract young people into these pro-khalistan groups.
- c. [The applicant], influenced by seminar and joined the group. Sooner, he became an active member of group. His role was to run an awareness camp of Khalistan movement in Punjab against Indian government of India. Being it's against Indian government, sooner he came in notice of Punjab police
- d. Together with the application the applicant provided several media clippings in foreign script and one media clipping of 8 September 2012 from the [newspaper] reporting that the chief of Shiromani Akali

Dal had filed a defamation claim against six police and administration officials for accusing him of "instigation Sikh groups settled abroad."

16. At folios 64 to 68 of the Immigration file is a document which purports to be a letter from the President of the Shiromani Akali Dal claiming in the first paragraph that the applicant is a permanent member of the party and that he would be persecuted by the state if he returned.
17. The letter does not provide any details of the applicant's activities or roles in the organisation.
18. The delegate interviewed the applicant on 29 May 2013 and found that the applicant lacked credibility and did not accept that the claims were genuine, rather that they had been provided in an attempt to remain in Australia following the cancellation of his student visa.
19. The delegate also noted that in his request for Ministerial intervention after the visa cancellation that the applicant had made no mention of wanting to remain in Australia based on any fear, only that he wished to continue to study.
20. The hearing
21. The applicant and his adviser, who later identified herself as being from India and speaking the applicant's native language, attended the Tribunal hearing and, by way of introduction I explained how the application for review was before me and the manner the hearing would be conducted. I informed the applicant that, since he had chosen not to use an interpreter, to let me know if he experienced any difficulties in understanding what I was saying and to ask me to repeat questions or information if he did not understand. I further informed him to seek brief adjournments if he became stressed or needed a short break.
22. I said that after I had completed my interview with him I would leave him to speak with his adviser in private and then I would take oral submissions from her if she wished and I would also take details of any further issues he felt I should take into account in his case.
23. I put to the applicant that I understood that he was a Sikh but I noticed that he was not wearing a turban and did not appear as a conservative Sikh.
24. He said that he had had an accident about nine years ago and that wearing a turban gave him discomfort so he only wore one on some occasions.
25. He said, when asked, that both parents were still in Punjab and that he was the only child.
26. I asked why he had come to Australia and he said that it was because he was afraid because of harassment by the police.
27. I put to him that it appeared that his claim to persecution was based on his membership of the Khalistan movement for a separate state of Khalistan through the Shiromani Akali Dal (Amritsar Party). I asked when he had first joined the party and he said that it was in 2007 in about mid year.
28. I reminded him that he entered Australia in 2008 so that indicated that he had only been in the party for a year, if I accepted that he was a member.
29. I asked what his role had been in the party in the year he was in India.

30. He hesitated for a short time before replying that he had attended rallies and had told people about the movement and what had occurred in 1984 and after that. He added, when I sought clarification, that he had attended more than six rallies prior to leaving India and coming to Australia. He said that rallies were in Punjab and numbered more than 2000.
31. I asked if there were any problems at the rallies and he said that there were many problems. He said that the police didn't give permission for the rallies and that the police had arrested some participants but, when asked, he said that he had never been arrested.
32. I asked what it was that he said to people about the situation in 1984. He said he told them that the then Prime Minister, Indira Ghandi ordered an attack on the Golden Temple and destroyed it.

33. Independent material from <http://www.sikhmuseum.com/bluestar/> advises:

In early June 1984 the Indian Army invaded one of the most historic of all Sikh Gurdwaras, the Darbar Sahib complex at Amritsar Punjab to flush out Sant Jarnail Singh Bhindranwale a Sikh leader and his followers who had made the Gurdwara complex their refuge. The ensuing destruction and loss of life marked one of the darkest chapters of the later 20th century for Sikhs.

34. I put to the applicant that, I assumed, that he was telling people about what he had later heard about this incident since he hadn't been born at that time. He confirmed that was the case. He had told people about the history.
35. I asked the applicant if he had ever heard of a group of people or militant movement called the Bhindranwale Tigers. He said that he was aware of this and that it was a fighting force for Bhindranwale or separatist Khalistan.

The Bhindranwale Tiger Force (BTF), known also as the Bhindranwale Tiger Force of Khalistan (BTFK), is an illegal Sikh militant group fighting for an independent Sikh homeland (AI Aug. 1991, 172; AFP 25 Nov. 1993; Documentation-Réfugiés 23 Nov.-6 Dec. 1993, 8). Based in the state of Punjab, India, the BTF is described as one of the major Sikh militant groups and reportedly the strongest militant group in the Amritsar-Tarn Taran area (AFP 25 Nov. 1993; India Today 31 Mar. 1993, 56). Immigration and Refugee Board of Canada. IND19156.E

36. I summarised what the applicant had said to that point and it was that he had been a member of the Khalistan movement for a year prior to coming to Australia and, in that year he had attended about six rallies and had told people about the history of the movement.
37. I asked if he had done anything other than that and, he appeared confused and gave no response. I went on to put to him that, in his written statement through his adviser, it was stated;

[The applicant], influenced by seminar and joined the group. Sooner, he became an active member of the group. His role was to run an awareness camp of Khalistan movement in Punjab against Government of India ever since. (folio 39 of Departmental file).

38. I asked the applicant what was meant by that, and what the awareness camp was.
39. He appeared to dodge the question by saying that while he was in India he was involved and helping the movement but now, in Australia he was not.
40. I brought him back to the question and again asked what the camp was. He was still confused and repeated the question to himself. I again read the statement to him.

41. He then asked me, which type of camp. He hesitated and then said rallies. He then said perhaps it was an English problem. I reminded him that he had a professional adviser (the adviser was, herself Sikh)
42. As the applicant was unable to give any response to the question of the type of camp this was I asked him who and how he told people about the history of the movement.
43. The applicant said that before becoming a member he had attended some seminars in his college and he had spoken to friends and students at the college about the movement.
44. He then said that there were meetings of about twenty to fifty people and that he had organised the meetings. He said that he had organised one or two a month but then said there was sometimes a gap of up to three months.
45. He said that these meetings were addressed by the president of the movement and were held in different districts and sub meetings.
46. I asked what was talked about in the meetings and he said that they spoke about what had happened in 1984, Sikh riots and unemployment.
47. I asked if he had experienced any problems and he said that he hadn't. However, when asked if there were problems after that, he said that the police had gone to his parents and told them that he should not be involved with the party.
48. I put to him that from what he had said it appeared that the police had never spoken to him face to face. He said that was correct.

I put to the applicant that the written statement in respect of his claims were that, "he came in notice of Punjabi police and CBI, though, he was not involved in any criminal activity but they started to harass him. He started to get verbal warnings that he has a short life span."
49. He said that they had harassed him. I reminded him that he had just said that they never spoke to him face to face.
50. He said that police at the level of Deputy Commission had come to see him three or four times and told him to leave the party. He said that they stayed for about fifteen minutes each time. He said that they never arrested him. He said they told him to leave the movement.
51. I asked the applicant if he had done anything to assist the movement. He said yes but when I asked him what he had done he hesitated and then said he had set up a website in 2008. I asked him to give me the details of the website and he provided one of [website deleted].
52. I put to him that the "in" at the end meant that it was an Indian website so asked if he had been the one to set it up and he said that he wasn't. I then asked what, if anything, I would find about him in the website and he stated to say that I would find out many things about the movement but when I reminded him that my question was what I would find about him he said that I would not find anything about him.
53. I said that since he hadn't set it up and since it was in India I wanted to know what his involvement was. He attempted to change the topic by saying there was a face book site too. I reminded him that I wanted to finish discussing his involvement in the website firstly.

54. I asked what, if anything, he did in regard to the website and he said that he posted statements on the website and when I asked when the most recent statement was he said that it was the day before the hearing and that it was a letter [in] September 2013 and about a rally that had been arranged by the president of the movement.
55. After questioning, the applicant said that the letter had been written by the president of the movement.
56. I put to him that the letter was written by his president, was on an Indian website so it didn't seem that he had put it on the website but he said that he had. He said that he ran the website.
57. I asked how he had come by the letter and he said that his president had sent it to him from India and asked him to put it on the website. I asked why he would do that when he had written the letter and he could put it on the website himself. The applicant said that the president was very busy and had sent it to him to put on the website.
58. I said to the applicant that I was finding this account very difficult to accept. I said that India is a country which is widely known for its technology. I said that it was also a country where Australia, among other countries had set up call centres because the call centres were efficient and very cheap but it appeared that the applicant was telling me that his president was busy and rather than choose to give the letter to one of thousands of people in India who could enter it on the website had, instead, chosen to send it to the applicant, in Australia.
59. I asked the applicant if he could understand why I found this account difficult to believe. He said he did.
60. He then went on to say that he actually entered material onto a facebook page. He said that he had first set that facebook page up in 2008 but the Indian government had shut it down and he had set up another on in December 2011. I put to him that would mean the Indian government had. When I asked for the name of the facebook page he said it was [deleted], the name of the president of the Shrimani Akali Dal Party (Amritsar). He said that it had over 35,000 friends.
61. I put to him that since this was the name of the president of the party the Indian government would be aware of it and could have closed it the same way they did the first one. I said that the fact that they hadn't could indicate to me that they were not concerned by it. He said he didn't know.
62. I asked the applicant if there was a branch of his party in Australia and, initially he said that there wasn't. However, shortly after he said that there was a group of about forty to fifty members and they met every three months or so. He said that they also took petitions to the Australian government in Canberra.
63. I put to the applicant that the amount of new material he had provided at the Tribunal hearing, the claim to have set up a facebook page, to be a member of a group operating in Australia had not been put to the delegate and, since they had not been included in any submissions it appeared they had not even been put to his adviser. I added that the manner in which they were given was as if they were being made up on the spot.
64. The applicant insisted that all his claims were all true.

65. I went on to discuss his party in Punjab and he said that there were two parties with almost the same name. One being the Shiromani Akali Dal Party and the other, the one to which he belonged, was the Shiromani Akali Dal Amritsar Party.
66. I asked if the party he belonged to, Shiromani Akali Dal Amritsar, was a registered party and he said that it was. I asked if it was allowed to take part in elections and he said it was.
67. I put to him that if that was the case it indicated to me that the Indian government allowed it to operate and to participate in free and fair elections.
68. He said that the party had difficulties and when pressed to give details of those difficulties he said that the media did not write favourable news about that party.
69. I put to him that this, without more, didn't amount to serious harm.
70. I put to him that, further to this, a submission he had provided just before the hearing had a number of media articles but that the most recent one was 2007, apart from one in 2012 referring to a party member taking legal action against corrupt police.
71. I said that indicated to me that the party was not only free to operate but that its members felt confident in the Indian government to the point of using the legal system in the country to address wrong-doing against it.
72. The applicant then went on to say that there had been an incident in which two young men had been killed in a peaceful rally. When I explored that situation the applicant explained that the rally was against the execution of a Sikh man who had killed Beant Singh, who had been the chief Minister of Punjab from 1992 to 1995 and had been assassinated by Balwant Singh Rajoana, who was later convicted and sentenced to death in accordance with the law.

Balwant Singh Rajoana, a convict on death row in connection with the assassination of former Punjab chief minister Beant Singh, has expressed his desire to be hanged.

Rajoana, a Babbar Khalsa International terrorist, has in a four-page open letter dared the system and said he has neither appealed for any mercy nor did he ask anyone to do that for him.

In the past also, Rajoana had refused to appeal against his death sentence.

73. I put to the applicant that, if in fact Rajoana, had murdered someone this was not a politically justifiable situation it was a murder and the rally was in support of the murderer not a pro Khalistan rally, as such.
74. I said I didn't have the article before me but it appeared from his claim it appeared that there was a rally to support a murderer and the police had fired into the crowd and two young men were killed.
75. The applicant agreed that was the case. I said to the applicant that I wasn't trying to justify what had happened but, from his account, it was not a consequence of a peaceful rally for the Khalistan movement.
76. I put to the applicant that my understanding that the Khalistan movement had become a violent movement after a crushing attack at the Golden Temple of Amritsar in 1984. This had led to a period of militancy and terrorist activities until the early 1990s when the movement had returned to political solutions.

77. Information before me in a research paper IND30435 of 17 August 2006 and held in UNHCR's Refworld database at <http://www.refworld.org/pdfid/4b6fe2150.pdf> advises:

"The militancy period began in the early 1980s when a movement within the Sikh community, in Punjab, turned to violence to achieve an independent state of the Sikhs, which they would call Khalistan. Some sections of the ruling Congress party, whose support base included urban Hindu traders, fomented this radicalization in order to weaken their main parliamentary opposition in the state, the Akali Dal party, which represented the Sikh peasantry with a more moderate agenda. In 1982 the Akali Dal launched a civil disobedience campaign against a decision to divert a river vital to Sikh farmers in the state. A number of Sikh organizations were banned and several leaders of militant groups took shelter in the Golden Temple in Amritsar."

6.140 As noted in the Amnesty International report on the Punjab 2003: "The radicalisation of the movement for Khalistan was met with arrests under a series of national security laws that were introduced during the 1980s to meet the terrorist threat in Punjab but were enforced also in other parts of India and maintained for several years after the end of the militancy period in Punjab."

6.141 As reported by an Asia Watch report entitled "Punjab in Crisis" (published May 1994) the violence continued and hundreds of Sikhs were detained in the first part of 1984. Followers of Jarnail Singh Bhindranwale established a terrorist stronghold inside the Golden Temple in Amritsar. The Prime Minister, Indira Gandhi, then initiated Operation Blue Star which took place on 4-6 June 1984. The Golden Temple was shelled and besieged by the army to dislodge the terrorists. The fighting continued for five days. Bhindranwale was killed and there was serious damage to sacred buildings.

6.142 The Asia Watch report stated that official figures put the casualties at 493 "civilians/terrorists" killed and 86 wounded; and 83 troops killed and 249 wounded. Later in the year, official sources put the total number killed at about 1,000. Unofficial sources estimated that the civilian casualties alone were much higher. There were apparently more than 3,000 people in the temple when Operation Blue Star began, among them 950 pilgrims, 380 priests and other temple employees and their families, 1,700 Akali Dal supporters, 500 followers of Bhindranwale and 150 members of other armed groups.

6.143 According to a Canadian IRB issue paper dated 1989, the intervention had disastrous consequences for the Sikh community and the whole country. Sikh-Hindu communalism was aggravated, Sikh extremism was reinforced, and political assassinations increased.

6.144 As noted in an Asia Watch report on 31 October 1984 Indira Gandhi was assassinated in New Delhi by two Sikh bodyguards. In the days that followed, anti-Sikh rioting paralysed New Delhi, ultimately claiming at least 2,000 lives; unofficial estimates were higher. Sikhs were also attacked in other cities in northern India.

6.145 Asia Watch, in the "Punjab in Crisis" report, noted that a peace agreement was concluded between the Indian Government and moderate Akali Dal Sikhs led by Harchand Singh Longowal in July 1985, which granted many of the Sikh community's longstanding demands. However the extremists regarded Longowal as a traitor to the Sikh cause and he was assassinated in August 1985. Moreover the promised reforms did not take place.

6.146 As recorded in the Europa World Year Book, 1998, in 1987 the State Government was dismissed and Punjab was placed under President's Rule. Despite the resumption of discussions between the Government and the moderate Sikh leaders, the violence continued.

6.147 It was reported in the Europa World Year Book 1998, that President's Rule was finally brought to an end following elections in February 1992, which were won by Congress (I). However the elections were boycotted by the leading factions of Akali Dal and attracted an extremely low turnout (only about 22% of the electorate). Beant Singh of the Congress (I) was sworn in as Chief Minister, but his Government lacked any real credibility. Despite the continuing violence between the separatists and the security forces, the large turnout in the municipal elections in September 1992, the first in 13 years, afforded some hope that normality was returning to Punjab. The local council elections in January 1993, the first for 10 years, also attracted a large turnout.

78. I put to the applicant that there was evidence before me that the authorities had taken action where pro Khalistan Babbar Khalsa members had undertaken violent or terrorist activities and had faced legal action for that. However, this did not indicate that the group had been abused for involvement in peaceful activities.

December 23rd 2011. Delhi Police today claimed to have foiled the plans of Babbar Khalsa International (BKI) to assassinate some religious and political leaders with the arrest of two suspected terrorists

The module was tasked by BKI chief Wadhawa Singh and an operative Kulbir Singh to assassinate three religious leaders in Punjab and Haryana and some political leaders in Punjab during the upcoming Assembly elections, police claimed.

The arrested duo -- Sarabpreet Singh alias Prince (30) and his childhood friend Jaswinder Singh (30) -- were allegedly waiting for a consignment of assault rifles and rocket launchers to carry out the strikes, they said.

Ashok Chand, Deputy Commissioner of Police (Crime), said Sarabpreet was the first to be arrested from north-west Delhi's Shalimar Bagh last evening. His arrest led to Jaswinder who was picked up from Anantpur Saheb in Punjab.

"We had information from Punjab Police and other agencies that some BKI operatives were trying to assassinate religious and political leaders. Yesterday we got an input that somebody will come in a Ford Icon car to Singhalpura market in Shalimar Bagh. Sarabpreet was arrested from there," Chand said. <http://www.ndtv.com/article/india/arrested-babbar-khalsa-terrorists-wanted-to-revive-movement-delhi-police-160183> (downloaded 16 September 2013)

79. I put to the applicant that a further concern I had, in regard to his application, was that he had been in Australia since 2008 and, according to his account was fearful before he left India.
80. I said that I had noted he knew how and where he needed to make applications for student visas. He had also demonstrated that he knew how to find a migration agent.
81. I added that he had also been in Australia through a period where the situation regarding asylum seekers and Australia's protection was a matter of widespread media attention.
82. I said that, this being the case I could not understand why he had failed to make application for a protection visa for six years or more.
83. The applicant said that he had applied to come to Australia as a student but had never intended to return to India.
84. I put to the applicant that the final matter of concern that I had was that he had provided a letter purporting to be from his president. I said that I had read the letter completely and was surprised at its nature in that the first paragraph was in reference to him but that the remaining ten pages were in the form of a submission regarding the organisation in general. I put to him that I had been in countries where I was aware that I could readily obtain fake documents and, that being the case, I had looked into the situation in India. I said that information advised that India is the source of a wide range of fraudulent documentation and the information came from reliable sources.
85. In regard to fraudulent documents from India the Research Directorate, Immigration and Refugee Board of Canada IND102461 of 26 April 2007 advised:

An official from the Canadian High Commission in New Delhi provided the following information to the Research Directorate regarding the availability of fraudulent identity documents in India in correspondence dated 17 April 2007:

To my knowledge there are no identity documents in India that are not altered or counterfeited frequently. Even when we send them for verification we cannot be sure that the "verifier" has not been paid to tell us the document is genuine.

Several media sources report the availability of fraudulent identity documents in India (*Hindustan Times* 24 Feb. 2007; *The Hindu* 22 Jan. 2005; *The Times of India* 5 Feb. 2006). According to the *Hindustan*

Times, a couple who were providing fake passports and Pakistani visas were arrested for "helping people illegally migrate to Pakistan on forged visas" (24 Feb. 2007). Another scheme was discovered in 2005, in which fake visas were produced to travel to France and west Asian countries (*The Tribune* 21 Jan. 2005; *The Hindu* 22 Jan. 2005). Police recovered more than 30 passports and three French Embassy stamps in the houses of the accused (ibid.). *The Tribune* states that "[t]he police also claimed to have seized as many as 50 passports" (21 Jan. 2005). Held at <http://www.refworld.org/docid/469cd69714.html>

86. More recent material citing DIAC in 2013 advises:

The DIAC report stated that, while Indians can easily gain false identity documents, it will be impossible for DIAC to be certain that Indian applicants are who they say they are.

However, DIAC papers said that the department was concerned that the agent who had helped this man obtain false documentation continued to live in Australia, also under a false identity. The report says that he seems to have helped many others to get fake documents to use in visa applications.

<http://www.workpermit.com/news/2013-07-25/australian-immigration-concerned-about-indian-visa-fraud>

MELBOURNE: Thousands of Indian students and skilled workers on 457 foreign worker visa scheme entered Australia on dodgy travel and work documents from 2008-10, according to a report.

The immigration department's internal audits show fraud rates touching 50 per cent and reveal that it has struggled to properly identify people who were entering the country, the Australian Broadcasting Corporation (ABC) said on Monday. http://articles.timesofindia.indiatimes.com/2013-07-23/other-news/40748244_1_fraud-levels-visa-documents

87. I then left the applicant to consult with his adviser. I told him that I had raised all my issues of concern and he could discuss those in private with his adviser and I would then return and take any oral submissions she may wish to make. I added that I would also take into account any further comments he may have before concluding the hearing.
88. After the adjournment his adviser submitted that some of the information which had come forward was also new to her.
89. She said that she had conducted her consultation with him in his own language and that his claims remained that he held a fear of return to India because of his membership of the Shiromani Akali Dal Amritsar party. She said that even though the independent material did not support his claims she said she was from India and she was aware of the movement and the government's reaction. She said that the government was concerned that the movement could, again become militant as it had been through the eighties.
90. She said that in her opinion there is a reaction against the movement as it had a history and in 1992 there was the terrorism act which had been imposed to bring the violence to an end. However, she said the country was afraid that the movement may arise again and was concerned that the group may develop overseas. She said that there had been an attack in London on the military head who had led the attack in 1984. She said that situations like this showed that there was still a "burning inside of the hearts" of some Sikh people.
91. She acknowledged that there was a lack of documentary evidence in the applicant's case but said that this was because whenever the police threatened someone as they had done when they visited the applicant's parents they did not leave any documentary material.
92. She stated that after 1992 the party had been allowed to operate and that the authorities were not concerned about peaceful rallies, only where violence occurred and this was their fear.

93. She went on to say that the applicant was an only child so that when the police came and threatened the parents, even though the police officer who did this may not have been serious the parents took it to be a big issue and have continued to support their son to remain in Australia using his student status.
94. Now he has resorted to making a protection visa application.
95. The adviser provided a list of internet addresses and phone numbers and said that the Tribunal could follow up on these if it wished. She acknowledged that there was no documentary evidence. These would not, to my mind have advanced his claims in any way more than his evidence and the independent material had done.
96. I put to the applicant that during the break I had had the opportunity to look into the situation of the murderer Balwant Singh Rajoana and found that he was not executed and that the authorities in India had commuted his death sentence following petitions from a Sikh group. I said that it also appeared that he had been tried on another criminal matter and been duly sentenced.
97. I put to the applicant that, this being the case it could lead me to find that even members of the movement at this radical level were still treated in a non-persecutory manner but, in accordance with the law and with leniency on some occasions.
- a. Balwant Singh Rajoana, a convict on death row for the assassination of former Punjab Chief Minister Beant Singh, was today sentenced to two-and-half-year jail in an 18-year-old Arms Act case.
 - b. Additional District Judge Deepika awarded Rajoana two-and- half-year jail and also imposed Rs 1,000 fine as fine in case registered here on December 25, 1995 under the Arms Act.
 - c. The then inspector of Sadar police station D S Malli had arrested Rajoana and recovered a pistol along with four cartridges from him, as per FIR.
 - d. Rajoana was produced in the Court and after pronouncing the sentence, he told media persons, "I was blessed by the almighty."
 - e. He also raised slogans of 'Khalistan Zindabad'.
 - f. Rajoana was also facing sentence of 10-year in an Explosive Act case.
 - g. Rajoana is also facing death sentence for assassination of former Punjab CM Beant Singh and his execution was scheduled for March 31, 2012.
 - h. On March 28, 2012, Union Home Ministry stayed his execution following clemency appeals filed by the Shiromani Gurdwara Parbandhak Committee. <http://www.indianexpress.com/news/balwant-singh-rajoana-gets-twoandhalfyear-sentence-under-arms-act/1150737/>
98. When asked if he had a membership card to the party the applicant said that he had had one but it was lost. He said that I could check with the party if I wanted.
99. The applicant maintained that he did have a well-founded fear and its members were still being harassed and harmed. He said that he could get more independent material if I wanted.
100. I again said that I had considered all of the material that he had provided and there was no indication that members of the party were harmed for peaceful activities.
101. The applicant through his adviser said that he wanted to continue with peaceful activities for the movement's cause.
102. I put to the applicant that I had considered his offer to get more material but was of the opinion that I had granted him and his adviser ample time to produce any material to support his claims and would go over the material he had provided again before making my decision.

103. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
104. Country of Reference
105. The applicant entered Australia on an Indian passport and using a student visa which had been issued through the Australian High Commission in India.
106. I am satisfied on this evidence that the applicant is a citizen and national of India and, in the absence of any evidence to the contrary find that he does not have an enforceable right to enter or reside in any other country.
107. This being the case, the country of reference in this matter is India.
108. Credibility
109. The UNHCR *Handbook on Procedures and Criteria for determining Refugee Status*, Reedited, Geneva, January 1992, at paras 196,197, 203 and 204 advises decision makers as follows: It is reasonable that applicants whose claims are plausible and credible should, unless there are good reasons not to do so, be given the benefit of the doubt .
110. Australian case law however, states that [i]t is clear that the Tribunal is not required to accept uncritically all claims made by applicants. In *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* [1994] FCA 1253; (1994) 52 FCR 437 at 451 unreported, Beaumont J. observed (at page 16) that a liberal attitude concerning proof of persecution in the context of an application for refugee status should not, however, lead to 'an uncritical acceptance of any and all allegations made by suppliants'.
111. Further that, a decision-maker does not have to have rebutting evidence available before he or she can lawfully hold that a particular factual assertion by an applicant is not made out (*Selvadurai v The Minister for Immigration and Ethnic Affairs and Refugee Review Tribunal*, Heerey, J, 20 May 1994, p.7).
112. Generally speaking it is inappropriate to speak of onus in administrative law decisions. However, "it must remain the position that the applicant for refugee status carries the overall onus of establishing to the satisfaction of the decision-maker that the relevant chance or possibility exists." - *Denissenko v Hasket and Minister for Immigration & Ethnic Affairs* (unreported, Federal Court, Foster J, 9 May 1996) at p22.
113. The applicant had been in Australia since 2008 having left India, according to his claims, out of fear. That he would fail to seek protection for the next five years begs the question as to whether or not his fear is genuine. I have separately addressed the issue of the delay in making application below but, have firstly considered the applicant's claims.
114. The nature of the applicant's responses at the hearing were such that, he could only give direct responses to material that was at the basic level of his claims. Whenever, further details were sought the applicant frequently had to pause to think, giving an impression that he was creating an account rather than recalling factual matters.
115. He seemed to be unaware of some of the material in his written claims through his representative such as the reference to a training camp he supposedly ran.

116. His first responses to his role in the Khalistan movement party was that he attended about six rallies involving about fifty thousand people.
117. However, when I pointed out to him that his written claims mentioned a role of running a camp. At first he was completely unaware but then turned it around to claim that he had organised meetings and had gone to different districts with the leader.
118. This is at odds with the written claim that he had attended meetings and had then been moved to join the party rather than setting up the meetings and telling people about the history of the pro Khalistan movement.
119. He had claimed to have set up a website to the delegate but this had not been pursued prior to the hearing and, at the hearing, when I asked about the website and asked for the actual address he provided the party website with an Indian address and, admitted that there was nothing on the website that was related to him. Rather that he posted material on the website.
120. He claimed that he had posted a letter from the president in India the day before the hearing. When asked why he would have done that rather than the president doing it himself he claimed that the president was busy and sent it to him. I pointed out that this seemed implausible to me as the president of the party would have had any number of people in India who could have done that. This account lacks any logic and I find it implausible and that it has been concocted and give it no weight.
121. He also claimed that he had set up a facebook account and that one previously had been shut down. Again when asked for the name of the facebook account it was not in his name but, in the name of the president of the party. If as he claimed the authorities in India had closed a previous account I do not accept that he would have then set up an account in the name of the president as this would be readily obvious to the authorities. I find his claim to have set up this facebook account is also false.
122. However, I do accept that both the website and the facebook account exist, I have opened the website, which is largely in an Indian script, for the party.
123. The fact that both these accounts exist does not, in any way support the applicant's claims to be at risk for any involvement since the party continues to operate and both the website and the facebook account remain open. Rather than demonstrate repression it serves to do the opposite and leads to a finding that both the website and the facebook site remain free to operate.
124. The letter purporting to be from the president of the party raises concerns in that it is a lengthy ten page document with only the first paragraph referring to the applicant and his purported real chance of harm.
125. The rest of the letter is in the form of a petition or submission and only concerns the situation of the party and the president himself. The mention of detentions and harsh treatment of Sikh is historical rather than current. It talks of detentions from 1982 but nothing currently. It goes on to lobby against dams being built in the region.
126. I put to the applicant that the letter gave the impression that the first paragraph had been added or inserted and that the document was fraudulent.

127. I have also taken account of the independent material advising that fraudulent material for visa applicants is vast and common.
128. This, together with the applicant's far-fetched claims in regard to the website and the facebook page, leads me to find that this letter is fraudulent and, I give it no weight.
129. I am of the view that the applicant has concocted an account falsely solely to provide a basis for a protection visa application.
130. The delay of lodging a protection visa application for five years
131. By his own account the applicant claims that his fear was present at the time he left India. He further claims that it was that fear that led him to leave India although he also intended to study.
132. He was aware from the time he received his student visa that the visa was temporary.
133. He found himself in an environment where the asylum seeker issue and protection visas was commonplace, yet this did not move him to seek asylum.
134. Even when he failed in his bid to extend his student visa options in Australia he still did not seek the certainty of asylum through a protection visa application.
135. Even when his last resort was to appeal to the Minister for Immigration he failed to raise the concern of harm on return with the Minister.
136. The applicant is an intelligent man, he knew that the department was where visa applications were made. He had the initiative to seek Ministerial intervention and he knew how to avail himself of the services of a migration agent.
137. The fact that he chose not to do so despite a claim to a well-founded fear that had existed since 2008 leads me to conclude that the fear was not genuine.
138. In any event, even if his claims were taken at face value. He has claimed to have first become a member of the party, around July of 2007.
139. According to details in the delegate's decision he applied for a student visa in January 2008, about six months after becoming a member of the party and left in July, a year after becoming a member.
140. He claims that, although he attended six rallies he was never detained or suffered any harm.
141. By his own account the political party Shrimomani Akali Dal (Amritsar) is a registered and recognised political party which can field candidates in elections.
142. He has claimed that the authorities allow peaceful activities, including rallies,
143. He claims that the authorities will not permit acts of violence or violent demonstrations.
144. The independent material before me leads me to find that the authorities will take action against anyone carrying out illegal acts against the party's members but within the constraints of the law.

145. It is of interest that in the letter purporting to be from the President of the party at folio 67 of the departmental file it states:

Jaswant Singh Khalra was a Sikh human rights activist who was done to death by the Punjab police in a gruesome extra judicial murder in 1995. The guilty police officers have been sentenced to life imprisonment.

146. Although the letter claims that articles are attached to the effect that subsequent to that sentence police were reported to be offering support to the convicts those articles are not attached.
147. As stated above I do not accept that the letter is genuine and have found it to be fraudulent. I therefore looked up references to the murder of Jaswant Singh Khalra and find that the case was genuine and that the police concerned were belatedly tried and sentenced to life as the letter states: See The Times of India, 2007 , 10-16 Khalra Murder Case: HC grants life imprisonment to 4 cops- Chandigarth-City- NEWS.
148. The applicant claims that members of the political party are harassed and at risk of harm. However, this is not supported by the independent material.
149. Any reports of atrocities that the applicant has referred to are pre 2005.
150. Although I do not accept the applicant's claims as being genuine I have gone on to consider the applicant's matter if he was a member of the party as he claims and find that, in any event, by his own account and the submissions of his adviser a low level member who has chosen to operate peacefully as a member of a registered and recognised political body does not face a real chance of serious harm for a Convention reason either now or in the reasonably foreseeable future.
151. Summary
152. To summarise, this is an applicant who entered Australia in 2008 and who now claims to hold a well-founded fear of persecution for reasons of his membership of a movement calling for a separatist Sikh state.
153. Despite his failed attempts to extend his stay in Australia through further student visas, including appeals against the decision to refuse the applicant made no attempt to lodge a protection visa application in the entire time he has spent in Australia. Even when he lodged an appeal to the Minister to remain in Australia he made no mention of his claimed fear and the basis for it. It was, only applied when all other avenues were closed to him that he lodged an application for a protection visa.
154. The applicant comes from Punjab in India, a province with a predominantly Sikh population and the current party is a Sikh party.
155. The applicant has sought to provide supporting evidence in the form of media articles and a letter from the president of the party he claims to belong to.
156. The media articles are not current and are mostly dated 2002 to 2007. The one exception is an article in 2012 in which a member of the movement has laid charges of defamation against some state authorities. Rather than indicating persecution this indicates confidence in the state on the part of that person.

157. The letter the applicant has provided leads me to find it is fraudulent because of the nature of the letter and independent material concerning the level of fraudulent documentation in India.
158. The history of the movement he claims to belong to is one which came to a head in 1984 when the state waged an attack on the Golden Temple of Amritsar and a period of state abuse and terrorism on the part of the group ensued. This period effectively came to an end in the early 1990s and, as submitted by his adviser, the group is given the right to form a political party and to put its aims publicly in peaceful demonstrations. The only limit, according to the adviser is the group are not permitted to carry out acts of violence. This, of course, is not persecutory.
159. When consideration is given to all of the above issues I find that the claims lack credibility, the independent material counters his argument to be a member of a group which faces persecution and, the manner in which the application has been made, when all other attempts to obtain a visa have failed, leads me to find that the claim has been made as a final attempt to remain in Australia when all other attempts have failed. I find that the applicant does not face a real chance of persecution for a Convention reason or a real risk of significant harm if he is returned to India as the receiving country now or in the reasonably foreseeable future.
160. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
161. Complementary Protection
162. The applicant's claims to face significant harm are based on his membership of a pro-Khalistan group or party. As discussed above, having considered those claims I find he does not face a real chance of serious harm.
163. For the same reasons as those discussed above I am not satisfied that there are substantial grounds to find that, as a necessary and foreseeable consequence of being returned to India as the receiving country that the applicant faces a real risk of significant harm
164. This being the case, I find Australia's protection obligations under the terms of s.36(2)(aa) are not engaged.
165. 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).
166. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

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

Roger Fordham
Member