

1004072 [2010] RRTA 764 (24 August 2010)

DECISION RECORD

RRT CASE NUMBER: 1004072

DIAC REFERENCE(S): CLF2010/12352

COUNTRY OF REFERENCE: India

TRIBUNAL MEMBER: Jennifer Ciantar

DATE: 24 August 2010

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship 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, arrived in Australia in 2007 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa in 2010. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

Definition of 'refugee'

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

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

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

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant came to Australia in 2007 . He left Australia two months later and returned after two weeks. His visa was due to cease in May 2009. He was granted a bridging visa in September 2007.
21. On the visa application, the applicant states that:
 - He left his country for his career and also because he was in love with a Hindu girl. He belongs to the Sikh religion and when they were living in India, it was hard for them to get married; they were students and their parents did not want to give them any assistance if they married. However, after arguing with their parents, their parents agreed to the marriage but with conditions. Only the applicant's wife's father agreed and he said it was only possible if the applicant made good his career so that he could give their daughter a good life.
 - The applicant became engaged in early 2007 and then came to Australia. Everything went well but the applicant suddenly was called back home as his mother was sick. She lives with the applicant's sibling who is too young to handle the situation. The applicant decided to marry and did so. However, he stayed with his wife only a few days and then returned to Australia less than two weeks later.
 - He was still worried about his mother but then he received a letter from the Department regarding his visa. The Department cancelled his visa and the applicant's wife was upset. The applicant's appeal was unsuccessful.
 - When the applicant parents-in-law found out they began fighting with the applicant's wife and threatening her that she would have to apply for a divorce, and sometimes they beat her. The applicant and his wife did not know what to do and the applicant's mother was also upset because the applicant's mother-in-law and brother-in-law began ringing from India and making threats to the applicant to sign the divorce papers which they sent to them. However, the applicant and his wife did not want to divorce. The applicant then applied for judicial review as he did not want to return to India.
 - The applicant suggested to his wife that she should apply for a visa and she agreed to do so; she was granted a visa and came to Australia. If the applicant has to return to India he will be in big trouble and he has already spent a lot of money to come to Australia. He believes he will be harmed because he has an inter-caste marriage to which his in-laws had not agreed. In India, the police always listen to the wife's family and people are generally against inter-caste love marriages.

Department's interview

22. The delegate interviewed the applicant. The applicant said that his parents in law were upset because the marriage is a love marriage and it is between people of different castes, as the applicant is Sikh and his wife is Hindu. He described how he met his wife. They married in Punjab,. They did not have a full wedding. The applicant's sister is in Country A, his father is deceased, but his grandparents attended. His wife's family all attended. After the marriage, they lived in a hotel for a number of days and then the applicant returned to Australia and they lived apart for 2 years. During this time the applicant's wife mostly lived with her parents and sometimes with his mother. The applicant went home as his mother was sick and his sibling is too young to look after their mother. His grandparents had then come back to India from Country A. The applicant decided to marry so that his wife could take care of the applicant's mother. The applicant paid for the marriage but the arrangements were made by the family of his wife. At the time of the marriage, the parents in law attended but were not happy. He got engaged when he came to Australia. Her parents tried to persuade her not to marry and they said that the applicant is from the city and she was from the country but they agreed as the applicant was in Australia. They did not like the applicant but they said it was up to the applicant's wife; it was her future. When asked what happened to change the attitude of his parents in law, the applicant said that he does not speak to his parents in law as they do not like him.
23. Her parents first had not allowed the applicant's wife to come to Australia but they had agreed after the decision to cancel the applicant's visa was overturned. The applicant would face problems if he returns to India, as his parents in law would try to force his wife to divorce him; they will tell his wife that the applicant has no future. However, the applicant's wife will not agree to a divorce. When asked if they could force her to divorce, the applicant said that it is different in India and they will keep calling her and telling her to divorce the applicant. The applicant said there is not discrimination against divorced women but it is his wife's caste that is against him. If he returns to India his parents in law will taunt him; they will say that he has nothing to show for his 3 years away and he should give his wife a divorce.
24. The applicant also stated that if he and his wife wanted to live in another part of India it would be hard because they would need a lot of money and it would be difficult to obtain a good job. His family are also not happy with him because they have spent a lot of money on the applicant. His grandfather has an agricultural business. The applicant has 2 siblings; his younger sibling is going away to study and the other sibling has permission to work in Country A. The applicant said he is not sure if either family would support him if he returns. Even his grandfather is not really happy with the applicant. His grandfather has been living in Country A and leasing out the farm. The applicant will have trouble with his in-laws if he returns; they will encourage the applicant's wife to get a divorce. In India, if a person is divorced, people think that it is very bad and they say that the divorced person is not good. When asked why his wife's parents would want her to divorce, given the societal attitude, the applicant said that they belong to the city and the applicant belongs to the country and they will tell his wife to find another boy.

Tribunal Hearing

25. The applicant appeared before the Tribunal to give evidence and present arguments.

26. The applicant's oral evidence can be summarised as follows. He came to Australia and he became engaged three weeks before he came to Australia. Prior to coming to Australia he had lived in Location B. He described how he met his wife. The applicant stated that his father died years ago. He has two siblings, one of whom went to Country A. His grandparents have been citizens of Country A for a number of years. The applicant's grandfather returns to India for four to five months every year, towards the end of the year, to collect income and renew leases associated with properties that the family owns but which they lease out. The applicant's grandmother returns to India every two or three years. The applicant has extended family residing in India but they live some distance away from the applicant's mother.
27. The applicant stated that he had first considered marriage in 2006 but his wife's parents refused because the applicant is of the Sikh religion and his wife is Hindu. However, his wife refused to marry anyone else and after struggling with her parents for about two years, her parents told her to do whatever she liked. His wife's parents had rung the applicant during 2006 and 2007 telling him to stay away from his wife. His wife's brother had also rung him and said the same thing. However, the applicant married his wife in 2009. They married in a Sikh religious temple. The applicant confirmed that his wife had agreed to marry him in a Sikh temple. The applicant stated that his family would not go to a Hindu temple and he had to marry in a Sikh temple. The wedding was attended by about 30 to 40 of the applicant's friends and about 25 members of his wife's family. The applicant stated that his friends had arranged the wedding. He had rung his friends and asked them to make the arrangements at very short notice, around the time the applicant was leaving Australia. The wedding was not planned properly because his wife's family did not really agree. However, her family had attended the wedding except for her brother. The applicant's wife's parents and two siblings had attended. Her brother had declined to do so because he was opposed to the marriage.
28. The Tribunal asked the applicant if his wife would have needed to convert to his religion in order to be married in a Sikh temple. The applicant stated that his wife had converted and she has become a Sikh, and this was automatic at the time of the marriage. Her parents had not agreed with this either. The only legality associated with the conversion is that his wife has to register a name change through the court. She intends to do this in December when she returns to India. The applicant stated that his wife attends the Sikh temple in Australia with him each week. When the applicant and his wife married they had a traditional Sikh wedding using the Sikh book.
29. When asked what he fears if he returns to India, the applicant stated that he is worried that his wife's brother will create trouble for the applicant. He last spoke to his wife's brother about a day after he returned to Australia. His wife's brother rang the applicant and said that the applicant had done the wrong thing to his wife's family and then his wife's brother hung up. His wife's brother had visited Australia last year but made no contact with the applicant; the visit occurred prior to his wife coming to Australia.
30. When asked if he speaks to his wife's family, the applicant stated that he sometimes speaks to her mother and sibling. However, his wife's family never contact the applicant's family. The applicant stated that his mother and younger sibling are intending to go to Country A. His sibling has applied to study there and his mother intends to accompany them, as their guardian. It is possible that his sibling will apply for permanent residence after they complete their studies, as his other sibling has done. When asked if he has any right to live in Country A, the applicant stated that he could apply to go to Country A. He believes that his wife may pass the points test and be able to apply for permanent residence in Country A but he could only apply for a student visa. The applicant stated that if he returns to India he will live in the

family home but as his mother and sibling intend to go to Country A, he is likely to be living alone and he would feel very vulnerable as he fears his wife's brother.

31. The Tribunal put to the applicant that the Tribunal accepts that there are problems in India arising from a mixed marriage such as the applicant's. However, the Tribunal has serious concerns about whether the harm that the applicant fears would eventuate or whether it is serious harm. Although some mixed marriages have problems and face discrimination, other mixed marriages do not experience problems and the Tribunal has to consider whether there is a real chance the applicant is at risk of serious harm. The applicant said that he has not been threatened by his wife's brother because the applicant has been living in Australia. However, he is frightened of his wife's brother who is married and has his own business and is well-established. The applicant stated that his wife does not speak to her brother but because she speaks to other family members, the brother would find out if the visa applicant returned to India.
32. The applicant stated that although his wife's parents had come to the applicant's wedding, they were not happy about the wedding. They look unhappy in the wedding photos and they only stayed in the temple for about 10 minutes. In India, marriages between Sikh and Hindu people are not accepted and there are long-term problems. There are further problems because the applicant is from the country and his wife's family is from the city. The Tribunal put to the applicant that his wife has, however, maintained relations with her family. The applicant stated that his wife does not speak to her parents very often but she does speak to her sisters each week.
33. The applicant stated that he is only worried about what his wife's brother might do and he does not have any other fears. When asked what he fears his wife's brother would do, the applicant stated that in India, it is possible to pay for anything. For example, if the applicant decided to establish a business, his wife's brother may pay some one to sabotage the business. Although his wife's brother has not had contact with the applicant for three years, if the applicant returns to India he fears that his wife's brother will create problems.
34. The Tribunal put to the applicant that the applicant has told the Tribunal that his friends arranged his wedding whereas the applicant told the delegate that his wife's family arranged the wedding. The applicant stated that his wife's family had arranged things on their side, for example, they prepared clothes, fruit, rings and small gifts for the applicant's family. However, the applicant arranged the temple and other things from his side.
35. The applicant stated that in the two years after his marriage, while he was in Australia and his wife was still in India, she prepared to come to Australia. She had lived with the applicant's mother for one to two months but then her parents insisted that she return home. When asked if his wife had had any problems with her family at this time, the applicant stated that whenever he rang his wife she was always crying and she had said that sometimes her mother beat her. Her parents kept telling her to forget the applicant and to marry someone else. The Tribunal put to the applicant that nevertheless, his wife's parents had agreed to her coming to Australia. The applicant stated that his family had paid for the applicant's wife to come to Australia. The applicant's grandfather had given some money and the applicant's sibling had provided evidence of money in the bank. The applicant also stated that he and his wife continue to live together and they intend to stay married.
36. The applicant said that he had shown the delegate his marriage certificate. The Tribunal indicated that there was no copy of the certificate on the Department's file. The applicant

stated that he would provide the Tribunal with the certificate and also with photos of the wedding within a week. The applicant also stated that he has said everything about the reasons why he fears returning to India.

37. The applicant provided the Tribunal with his marriage registration and some photographs of the wedding.

Independent Information

38. The UK Home Office country of origin information report on India (August 2008) includes a section of compiled information on inter-religious marriages. The information notes that inter-religious marriages are legal in India. One source quoted states that “marriages between Sikhs and Hindus are ‘not uncommon’ in the state of Punjab because of prominent numbers of Hindus” While a number of sources are also cited which indicate that society in general disapproves of inter-religious marriages, the examples given appear to report that it is Hindu-Muslim marriages which are most opposed. The section follows in full below:

Inter-religious marriages

20.06 As noted in an Immigration and Refugee Board of Canada response, dated 9 January 2006 “According to several sources, inter-religious and inter-caste marriages are legal in India and are governed by the Special Marriage Act 1954.” Marriage between couples across caste and religious lines may be sanctified under the Special Marriage Act 1954 subject to certain conditions at the time of the marriage. [4f]

20.07 The same source continued:

“...Inter-religious marriages are more common between students and among professionals in urban areas, and are less likely in rural areas.’ The professor consulted commented that marriages between Sikhs and Hindus are ‘not uncommon’ in the state of Punjab because of prominent numbers of Hindus. It was his opinion that: ...The general societal attitude toward inter-religious married couples in India is ‘not favourable’ In correspondence to the Research Directorate, an India-based lawyer agreed that society in general disapproves of inter-religious marriages but added that the treatment of married couples with different religious backgrounds depends on their location and social levels, and an associate professor of social and cultural anthropology added that ‘social attitudes often [cause people to] ostracize and discriminate against such unions’. A July 2004 news article stated that society is ‘deeply opposed’ to inter-religious marriages, and highlighted that such attitudes are prevalent in Gujarat, where relations between Muslims and Hindus became ‘polarized’ after Hindu-instigated violence against Muslims in 2002, in which 2,000 people, mainly of Muslim faith, died. The news article also highlighted parents’ opposition to inter-religious marriage” (UK Home Office 2008, ‘Country of origin information report: India’, UK Home Office website, 12 August <http://www.homeoffice.gov.uk/rds/pdfs08/india-210808.doc> – Accessed 22 August 2008).

Some issues in Sikh-Hindu marriages

39. It would appear from a range of web published sources and news reports that the subject of marriage plays a prominent role in Sikh identity issues and the separation of the Sikh religious identity from Hinduism.
40. An analysis of the Punjab crisis by S. Gurpreet Singh Dhillon, found on Khalistan.net (a pro-Khalistan website) suggests that the replacing of the Sikh Marriage Act with the Hindu Marriage Act in 1955 was perceived as a serious threat to Sikh identity. Dhillon states:

Post-independence political acts by the Congress party directly threatened the viability of the Sikh population in Punjab. The politics of the Center struck at Sikh security via discriminatory and threatening measures encompassing the Sikh identity. In the 1950 drawing of the constitution, Sikhs were categorized as Hindus, along with Buddhists and Jains. Further the Sikh “Anand Marriage Act” was replaced with the “Hindu Marriage Act” in 1955. Given the clear contrasts between Hindu and Sikh philosophy and practice, specifically regarding the egalitarian nature of male-female relations in and out of marriage, as opposed to the progressive detachment from family (including wife) and ultimately, the world, by Hindu teachings, such acts were perceived as a serious threat to the Sikh identity (Dhillon, S. (undated), ‘Punjab Crisis: An Analysis’, Khalistan.net <http://www.khalistan.net/pu-crisis.htm> – Accessed 9 June 2009).

41. According to a *BBC* guide to Sikhism, “[t]he Sikh marriage is called Anand Karaj. This form of marriage was introduced from the time of the Sikh Gurus and was given statutory recognition during the British rule in India by the Anand Marriage Act 1909”. The *BBC* guide does not mention that the marriage act was replaced by the Hindu marriage act. The guide does provide details on Sikh marriages, including a summary of what is allowed and what is forbidden. The guide states that: “According to the centrally approved Sikh Code (Sikh Reht Maryada), persons not professing the Sikh faith cannot be joined in wedlock by the Anand Karaj ceremony” (Singh, G. 2003, ‘Sikh weddings’, *BBC*, updated 3 June <http://www.bbc.co.uk/religion/religions/sikhism/ritesrituals/weddings.shtml> – Accessed 9 June 2009).

FINDINGS AND REASONS

42. The Tribunal finds that the applicant has Indian nationality, as claimed. He entered Australia on an Indian passport, which the Tribunal sighted at the hearing, and he has given oral and documentary evidence consistent with this claim. There is nothing to suggest that he has the nationality of any other country.
43. The applicant claims to fear persecution in India because he is Sikh and his wife was Hindu and her family opposed the marriage. He fears that if he returns to India, his wife’s brother will threaten him or harm him because of his marriage. The Tribunal accepts that the applicant is Sikh and that his wife was Hindu prior to her marriage. The applicant has given evidence that he married in a Sikh Temple and that his wife converted at the time of the marriage, which also upset her parents and brother. The Tribunal accepts that the applicant and his wife married in a Sikh Temple and that the applicant’s wife has converted and is now a practising Sikh.
44. The Tribunal accepts that the general attitude of society towards inter-religious married couples in India is ‘not favourable’ However, the independent evidence also indicates that the treatment of married couples with different religious backgrounds depends on their location and social levels. The Tribunal accepts that the applicant’s wife’s parents were unhappy about their daughter marrying a Sikh. However, the applicant’s evidence is that his wife’s parents and her sisters attended the wedding, which was held in a Sikh Temple, the parents made some of the arrangements for the wedding and that the parents and sisters have maintained a relationship with the applicant’s wife since the marriage, which occurred some 3 years ago. The applicant’s parents in law have also allowed their daughter to come to Australia to live with the applicant, and the applicant gave evidence that not only does his wife speak to her sisters regularly and her parents from time to time but he also speaks to them from time to time. The Tribunal is of the view that the parents of the applicant’s wife accept the marriage of the applicant and his wife. The applicant claims that his parents in law

will disapprove of him if he returns to India and the Tribunal accepts that his parents in law might be disappointed. However, the applicant is not claiming that his wife's parents would harm him if he returned to India. The applicant claims to only fear his wife's brother. The Tribunal is satisfied that the applicant would not be subjected to serious harm by his wife's parents because of differences about religion or caste or for any Convention reason, if he returned to India.

45. The applicant claims to fear harm from his wife's brother. The Tribunal accepts the applicant's evidence that his wife's brother did not attend the applicant's wedding and he has not spoken to the applicant since the wedding, apart from one phone call shortly after the applicant returned to Australia in 2007. The Tribunal accepts that the applicant's wife's brother disapproves of the applicant's marriage. However the Tribunal is not satisfied that the applicant has experienced serious harm as defined in the Act or that he will be persecuted if he returns to India. Under s.91R(1) of the Act persecution must involve "serious harm" to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression "serious harm" includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act.
46. The applicant's evidence is that he has not had contact with his brother in law for 3 years. When his brother in law came to Australia he did not contact the applicant. This failure to contact the applicant in Australia, combined with an absence of phone contact not only with the applicant but also with the applicant's wife, and his refusal to attend the applicant's wedding, indicate to the Tribunal that the applicant's brother in law is actively avoiding the applicant and that he is also avoiding the applicant's wife.
47. The Tribunal has considered the applicant's fear that his brother in law will target him when he returns to India but the Tribunal is of the view that this is speculative on the applicant's part and is not consistent with the efforts that both families have made to maintain some communication. Although the applicant and his wife are estranged from her brother, her parents and sisters have maintained a relationship not only with the applicant's wife but also with the applicant. The family of the applicant's wife accepted financial assistance from the applicant's grandfather to enable the applicant's wife to come to Australia. Both families attended the wedding of the applicant and his wife. Taking into account the ongoing communication between the 2 families and the commitment of the families to the marriage as evidence from the attendance at the wedding and the financial contribution of the applicant's family to the applicant's wife, the Tribunal is of the view that there is an estrangement between the applicant and his wife and her brother, which, although upsetting, does not amount to serious harm and is not likely to do so in the foreseeable future.
48. The Tribunal has considered the applicant's claims individually and cumulatively. The Tribunal finds that the applicant has not suffered any past Convention-related persecution or similar harm in India. The Tribunal concludes that there is no real chance of the applicant facing harm for a Convention reason if he returns to India. The Tribunal is therefore not satisfied that the applicant has a well-founded fear of Convention-related persecution, now or in the reasonably foreseeable future, if he returns to India.

CONCLUSIONS

49. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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