

0806712 [2009] RRTA 210 (18 March 2009)

DECISION RECORD

RRT CASE NUMBER:	0806712
DIAC REFERENCE(S):	CLF2008/102860
COUNTRY OF REFERENCE:	India
TRIBUNAL MEMBER:	Jonathon Duignan
DATE:	18 March 2009
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

RELEVANT LAW

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

Definition of 'refugee'

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

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

outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

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

18. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
19. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.
20. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1. 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. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of “practicable”, to expect him or her to seek refuge in another part of the same country. What is “reasonable” in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC* [2007] HCA 40 and *SZFDV v MIAC* [2007] HCA 41, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.

CLAIMS AND EVIDENCE

21. The Tribunal has had regard to material contained on Tribunal case file 0806712 and Departmental file CLF2008/102860 as well as material available to it from a range of other sources as referred to in this decision.

Information included in Application for a Protection visa

22. The first named applicant included a statement regarding his circumstances with the Application for a Protection visa. This read:

I live in [village A] which is in [district X] which is in Punjab.

I am a disciple of Sant Baba Gurmit Ram Rahim Singh Ji.

I am harassed by Shromoni Akali Dal party members.

I had my own [food shop].

I used to earn about Rs. 18 thousand to 20 thousand every month.

My house is quite big.

I have a big hall and a very big yard.

I used to organise Sat Sang (discussion about the philosophy of my Baba Ji) in my house on regular basis.

There used to be about [number] persons.

Every year I used to hold an annual function in which there used to be about [number] persons.

In these gatherings we used to preach and discuss the philosophy of our baba ji.

The main teachings of our Dera are to raise the self character, lead a simple life, avoid taking any type of drugs, liquor, or smoking and lead vegetarian life.

Our philosophy opposes dowry system which is one of the biggest problems of our society.

Our Dera preaches to work hard and believe in Universal siblinghood.

There is no difference between Hindu, Sikh, Muslim and Christian. All human beings are equal.

After the preaching and lectures I used to arrange some refreshments for the participants.

Some times some other members used to bring the refreshments which we used to distribute and consume together.

I was holding these type of gatherings since [year].

For about 3 or 4 times in a year, I used to visit Sirsa which is our head quarter. I used to listen to the discourses of Baba ji and get his blessings.

After about 2 years of organising the gatherings in my house, the number of participants started rising and I had members not only from my town but from neighboring villages.

Our total membership grew from 4 families to [number] families.

Every year we used to celebrate a big function also where almost all the participants and many visitors used to take part.

[Person F] is our local MLA. He used to take part in our annual function and address the participants.

He himself is a simple man and believes in all the principles of our Dera.

The participants also used to respect [Person F] and used to support him in the elections.

Sometime in [date], I was contacted by [Person H] who is the Pardhan (main organiser) of the local Gurudwara).

He told me that Baba Gurmit Ram Rahim Singh is not a man of good character. He is a liar and that I should not follow him.

He said, "you are dividing the community here in [village A]".

He advised me to stop this false propaganda otherwise there will be a problem.

I laughed at him and said, “[Person H] everybody is free to follow any religion, I do not disturb you and you should not disturb me.”

He got angry and told me, “you will face the consequences”.

I went on following my programme and did not change my programme.

I told everything to the members of my group who became very angry at [Person H], but I told them to not to get angry and take the things calmly.

In [date] some members of the Shiromani Akali Dal (political party of Punjab) approached me.

One of them was [Person K] and [Person M].

They threatened me that I was creating problem for the supporters of Akali Party.

He said, you are doing false propaganda against our party in your gatherings and we will not tolerate this.

I said, “I am not doing any false propaganda”

I am a supporter of Congress Party and I have a right to vote for any party.

I told them that I along with other members of our group are supporters of Congress party and we will vote for them.

I even put a flag of congress party outside my house and openly supported our candidate [Person F].

The leader of the Akali Party was [Person P].

Prior to the elections I received a call from [Person P] who openly threatened me.

He said, “you will be in trouble when I or my party come to power”.

I did not say anything and spoke to him politely.

During the election campaign the Akali Party members came to my shop and asked me to donate money for the Akali party.

I refused to pay them anything and they threatened me.

I again told everything to the members of my group.

In the elections our candidate [Person F] won the elections.

But Akali party came into power because they won more seats.

After the new government came into power the workers of Akali party became very aggressive.

Some of them made a group who forcible used to collect donations from the shop keepers.

In [date] I was on my shop when few people came to my shop and asked me to show them the papers of the business.

They said, they are on official duty and they were coming from [district X]. I refused to show them anything and they started swearing at me.

They broke glasses of my counter and threatened me that they will close my shop.

They blamed me that I was selling illegal things. I heard one of them saying that

I was a follower of Baba Gurmit Ram Rahim Singh and he supplies me drugs.

When they went away I went to the police station and asked them to write a report of this incident.

The police asked me the name of these persons.

I did not know the names and the police did not write me report nor they visit my shop to see the damage.

After this incident I received a call from some unknown caller.

He threatened me that either I should close my shop or it will be burnt.

I asked the caller, why. He said you know yourself what you are and what you do.

He said, we will not tolerate anything against Sikhism.

He said, your Baba is a big liar. He is against Sikhism. He is a cheater.

He said, you should close your shop and your false propaganda otherwise your whole family will disappear.

I did not take these threats seriously and went on working normally.

I have only one son who is year 6 student and he was enrolled at [school] which is about 10 kilometre from our home.

He used to go there on a van.

In [date] I was holding a normal gathering at my house when some people came to our home and told us to stop this gathering.

There were about 20 people who entered my house without any permission. I could recognise some of them who were the workers of Gurudwara and some of them were workers of Akali party.

They told spoke lot of things against my Guru.

Some of our members also became angry and started argument.

When these people were going out they attacked my car and some other motor bikes.

They damaged them.

After this incident I told everybody to leave the place. I also informed them to cancel the next gathering.

Next day I went to the police station and asked them to write my FIR. The Inspector asked me many questions and asked me how many people were there.

I said there were about 35 people who were participating in the meeting. He said it is illegal to have such a large meeting and we should write a report against you rather than against any other person.

I came back.

After two days I met [Person F] and told him about the incident.

He said, "do not worry he will talk to the Deputy Commissioner".

There was lot of false accusations going on against our Baba ji at that time and the Sikhs were very against our Baba ji.

After this incident I stopped having gatherings at my place and we started meeting at different places in a smaller groups.

In [date] I was coming back after attending the meeting from [place]. [Person R] of this village had organised a meeting in his house.

It was getting dark and I was coming back on my scooter.

When I reached near [place] some people on motor cycles encircled my scooter and attacked me with an iron rod.

I fell down from the scooter. They stopped and beat me with various types of arms. I heard one of them saying, kill him. He is preaching against our Gurus.

The only thing I remember was that I was trembling and after that I do not know anything.

In the morning when I opened my eyes I was at [Hospital] [village A]. My family members were also there.

They told me that I was unconscious when somebody picked me up on the tractor and brought to this clinic.

I was advised by my family members to not to lodge a police report as the police will act against me rather than in my favour.

However after about 4 days I decided to go to police station. And instead of writing my report the police threatened me.

I could not open my shop for about two weeks.

After two weeks when I opened my shop there were three or four letters in which some people had threatened me.

In one of the letter they had threatened that they will kidnap my son.

I got trembling and came back home. I discussed the whole incident with my family members.

Since some cases of children kidnapping had taken place in Punjab myself and my family became very scared.

I did not open my shop after that and moved myself and my family at [district Y] in my in laws house.

After about two weeks I was informed that the Akali party workers and Gurudwara workers are still looking after me and they knew I was hiding in [district Y].

I got scared. I requested my elder sibling to help me to come to Australia He sent me the sponsorship and I came to Australia with the whole family.

I left my country because my life and my family's life is in danger. I am a believer of Baba Gurmit Ram Rahim Singh Ji. I am a [worker] of his Dera. I am also a supporter of Congress Party. The members of other religions especially Sikhs and members of Akali Party are against me due to my commitments.

If I go back to India, I may be killed and tortured.

I may be harmed by the members of other religions, and members of the ruling Political party.

I may be harmed because of my political and religious thinking.

The authorities of my country like police and courts will not help me as they are working under the influence of ruling political party.

I request you to kindly consider my application for protection visa.

23. The applicants also included evidence as to their identities and personal particulars with the forms which were completed.
24. The first named applicant had an interview with an officer of the Department, at which he discussed the issues affecting him and his family. He restated his commitment to Dera Sacha Sauda and detailed the incidents which he referred to in his written statement. He had travelled to Australia because of harassment by members of the Shiromani Akali Dal in Punjab. He spoke about the beliefs of those who followed Sant Baba Gurmit Ram Rahim Singh Ji. The first named applicant was born into a Sikh family but regarded all religions as the same and so had identified himself as Hindu in his Application for a Protection visa. He spoke about the good works of followers of Dera Sacha Sauda and to the fact that it did not make distinctions between races and groups in society. He was also aware of the practices and ceremonies associated with the faith. The first named applicant spoke about the incidents which affected him in India in the terms as described above and the fact that these caused him to fear harm there. He confirmed that those who had attacked him were Akali Dal supporters because he knew them and that on one occasion he was hit on his right shoulder with a metal rod and on another occasion was taken to the gurudwara. He was in hospital for several days. The first named applicant confirmed that he was a member of the Congress Party and had their flag at his home. He reported the matter to police through a First Information Report, but believes the police did not assist him because the Akali Dal party was in power. He had moved to [district Y] after the attacks and they came to his family and found out about him

and he moved to his aunty's home. The people looking for him said they would not leave him alone. He did not know who these people were. He thought he would still encounter difficulties if he moved elsewhere. He explained that he had his own home and a very good business in Punjab, but because of the problems he left.

25. The delegate did not believe that the applicants were persons who were owed protection obligations by Australia or the spouse or dependants of such a person. As a result, he refused the applicants the grant of Class XA visas.
26. The applicants sought review of those decisions.

Information provided with the Application for Review

27. The first named applicant attended a hearing before the Tribunal. He indicated that he had not discussed the issue of attendance of other applicants for review with them, and that perhaps his wife may wish to give evidence. As a result, the hearing was rescheduled and took place by video, at which both the first and second named applicants gave evidence with the assistance of a Punjabi interpreter.
28. The first named applicant gave evidence that he had travelled from India to Australia. This was the first occasion on which he had left India after having been born there.
29. In relation to his fears of returning to India and need for protection in Australia, the first named applicant explained that he believed his child was in danger because children were often abducted in India. He believed that members of the Akali Dal would attempt to abduct his son because they are against him and they could use the local Government in Punjab to harm him.
30. The first named applicant explained that he was a member of the Congress Party and that an Akali Dal Member of the Legislative Assembly had twice won their constituency and had friends who supported him. The applicant explained that people had come to his shop to threaten him and the President of the local Sikh gurudwara had told him to stop following his guru.
31. The first named applicant explained that on one occasion opponents took hold of him and beat him when he was returning from a religious meeting in a nearby village. Members of the Akali Dal had also claimed to be from the Taxation Department and come to his shop and broken glass and other items.
32. The first named applicant operated a food shop which was approximately 500 metres from his home in a local village in Punjab.
33. On one occasion, the first named applicant was returning by motorbike from a meeting of the Dera Sacha Sauda held in a nearby village. Some people stopped him and told him that Dera Sacha Sauda was against the Akali Dal and that his guru should stop his speeches. The first named applicant told them that his guru was not speaking anything wrong. He was beaten by the members of the Akali Dal, injured on his head, arm and body and fainted at the time. He was taken by tractor to Hospital where he was treated and released after two days. The first named applicant did not know who it was who took him to hospital. After his release he continued to have pain in his arm and continued to use painkillers to control this.

34. The first named applicant attempted to report the matter to local police but they did not listen to him. This was because the Akali Dal formed the Government and the police listened to the Akali Dal who had won the Government for the last three years.
35. This was the first occasion the first named applicant was physically harmed by opponents. Prior to this, members had used the President of gurudwara to intimidate him and had also visited his shop. This was after he became an organiser for the Dera Sacha Sauda in the mid 2000s. The leader of the local gurudwara warned the first named applicant that he would repent one day. When the first named applicant told his own members about these matters they became angry, but the first named applicant made them cool down.
36. The first named applicant had run a food store since the early 2000s in his local village. Before this, the store sold groceries and had been run by the first named applicant's father for a number of years. The first named applicant rented the building in which the shop operated. He owned a home in the same town and still owned this, although no one was currently living in that home.
37. The first named applicant explained that he went to the police some three to four days after the attack on him. The police told him that he should stop what he was doing and took no further action. After about four days, the first named applicant opened his shop and found a note that threatened to abduct his son and kill him if the first named applicant did not cease his activities. The first named applicant stayed for about one week after this in his local village and then he moved to district Y in Haryana state to live with his father-in-law. His opponents found out that he was hiding in district Y. The first named applicant telephoned his sibling in Australia and they arranged for his sibling to sponsor him to come to Australia with his family. After arrival in Australia, he stayed at his sibling's home for three or four months and then he and his wife felt they should go where no one else would know them. This was why they moved interstate.
38. The first named applicant came to know that opponents found out he was living in District Y because he kept in contact with a sibling in his home village. She told him that they were still looking for him and that they may kill him and that he must leave. This was about 10 to 15 days after he and his family had moved to district Y.
39. The first named applicant and his family came to district Y and stayed with his father-in-law for some 10 to 15 days. After this they took their own small home in district Y where they lived until their departure from India. During this period they did not have a problem but the first named applicant's wife was very afraid. That was why he got his sibling to sponsor him. He explained that his wife was so afraid that she would shake. They had tried to return to India but she had found out that some Congress supporter's homes had been burnt in Amritsar, Punjab and would not return.
40. The first named applicant did not believe that he could live anywhere in India safely. He explained that his wife was very afraid and would not budge. He agreed that he and his wife could go to district Y or Delhi or somewhere else but he explained that business would be difficult. He explained that he and his father had run their shop for some years. He was unsure what business he could do elsewhere. While the first named applicant had experience in small business he would need money to establish and run a new shop and did not know how he would do this.

41. The first named applicant did not know whether he could sell the property he owned in India. He explained that it was just lying there and he did not know if the material had been wasted. He did not enquire regarding this of his sibling because there was no point. He described the house as a good house. He believed that when there was an outcry about something, the value of it would come down and nobody would want to buy it. He could not go to his home area because his wife did not want to go there because she feared that he or their son could be killed.
42. The first named applicant had a daughter who had married against his wishes and he did not speak to her. He and his wife also had another child who had died. The first named applicant's father had gone to live with his daughter at Haryana and was now coming to live in Australia.
43. The first named applicant was asked about the fact that he had been able to establish a life in Australia, including working and renting his own accommodation. The first named applicant explained that his sibling had helped to organise this. He also explained that his son was a real problem because he had been very much affected by the situation in India. The first named applicant explained that if he and his family moved to a new place in India they would not know it to drive around. They would have to know the area to start again. In Australia he worked on a farm and he described the hardships of this work and difficulties with his hands which he experienced in his employment. His wife was also working on a casual basis. She had a job for the last 10 to 15 days and he had a job for the last week. He and his wife did not intend to become a burden on the Government.
44. The second named applicant also gave oral evidence. She explained that they believed in their guru Baba Ram Ji and that members of the Akali Dal party had started giving them trouble. They said that the couple should not obey this and should leave that path. They became more angry over time and told them to stop supporting the Dera Sacha Sauda. They broke the couple's car and motor cycle and windows. They threatened that the couple had better stop their work for Dera Sacha Sauda and gave an ultimatum.
45. As a result, their group held meetings elsewhere. She referred to the physical attack on her husband in the same terms as those dealt with above. She had come to know he was harmed when told by a relative who lived near the hospital where he had been taken.
46. She was very much afraid but the police would not write a report and they threatened the couple. They were told to leave this place and not continue their work.
47. The second named applicant went to district Y with her husband and described staying with her parents for some 10 to 15 days before taking their own small home. The second named applicant explained that during this time they had problems because they had left everything in their village. They kept getting calls that members of Akali Dal were looking for them.
48. The second named applicant was asked whether she and her family could live somewhere else in India in safety. She explained that they could not leave their guru as had been requested and did not believe that he was false. She referred to the abduction of a relative of her husband in Ludhiana state. His mother was still waiting for his return. These relatives did not follow the same guru and it was not known if the boy was abducted for money or for some other reason. She explained that this was an example of people not having any fear of the Government and doing what they wanted.

49. In respect of establishing themselves in another area, the first named applicant explained that business would be a very big problem. His wife and child were depressed and afraid and he could not work. They both felt that their child was their biggest asset and they had been blessed with him after many years. His wife trembled when she felt threatened.
50. The first named applicant explained that they had wanted to go to Delhi but did not believe the situation had calmed down there. While their guru had a high level of security, the first named applicant and his family would not get this security. The guru had 100 people protecting him when he went to Court.
51. The first named applicant explained that he and his wife did not have relatives or acquaintances in other areas of India and if they went to a new place, they would not have anyone to assist them.
52. The second named applicant explained that she and her husband had lived in their village for many years. If they started a new business it would take 2 to 5 years and the future of their child would be lost. They had gotten information that opponents were looking for them. When in Australia they were fearful that people were keeping track of their movements and this was why they moved interstate. They were told they did not need to be afraid, but were afraid because political people have long arms. Friends rang and told them that members of the Akali Dal were looking for them.
53. The first named applicant explained that they did not think that members of the Akali Dal would come to Australia to harm them but they could use others. His sibling had told him not to have any fear but his wife felt they should move to an area where nobody knew them.
54. In respect of establishing themselves elsewhere in India, the first named applicant explained that business would be a problem and political people could follow him in India. He explained that efforts to establish themselves in Australia had all been done through his sibling and arrangements were done by him. They had only made acquaintances through his sibling
55. The first named applicant explained that even where they were currently living they had been harassed. He explained that a young man with a Sikh name who used their home for showering had come at night to ask for rent. He had told them they had to leave when they did not pay the rent. The first named applicant spoke to the police and they came and told the young man that he did not live at the home. The owner of the property then spoke to the couple and explained that the young man was not good. He then sorted out the problem and said if they had any more problems they should call him.
56. In respect of the Government's ability to provide protection elsewhere in India, the first named applicant explained that while the Government gave security to their guru this was because millions of people were after him. Politics in India was very dirty and the Prime Minister was in his own world. Because the Akali Dal were in power in Punjab, people listened to them and they have money. He was mainly concerned for his child. Even if he could establish a business someone could attack his child. If anybody would take responsibility for his child he would return to India.
57. The second named applicant referred to the recent attacks in Mumbai and the destruction of the Taj Hotel. She explained that people such as this could do anything in India and the Government could not protect them. She believed they would be seen just as insects to the

Government. Here they were working on farms, but there it would be difficult to establish a business. Her child refused to return to India and believed his father would be killed there. His education had been disrupted in India, but here he was attending school and was a little bit back to normal. He had attended a Christian School in India but ceased attending school when the family moved to district Y. He may feel that it would hard to go back to the Indian education system.

58. The couple explained that they were afraid, and the first named applicant explained that his wife was very upset. She requested the Tribunal to consider the position of a mother in reaching its decision.
59. The first named applicant provided a copy of a medical certificate issued by the hospital which referred to the applicant being brought to the hospital. He had multiples hematomas and bruise to his body and alleged he was beaten at the time. He was admitted for two days before being released with advice to rest and continue medicine at home.

Information in relation to Dera Sacha Sauda

60. An October 2007 report published by *Himal South Asian*, which indicates that the Dera Sacha Sauda was founded by Shehenshahji Mastana in 1948 at Sirsa, in what is now Haryana state:

The Dera Sacha Sauda came into existence in 1948 at Sirsa, in present-day Haryana, then part of the undivided state of Punjab within India. The organisation was founded by Shehenshahji Mastana, a pious Sikh leader from Balochistan, with an eye to social reform and spiritual purification – among the Sikhs in particular, but also others in general. The organisation takes its name, sacha sauda, meaning ‘true business’, from the place where a 12-year-old Guru Nanak was believed to have fed the poor, with money given to him by his father to do business (Alig, Asif Anwar & Anwar, Abid 2007, ‘Embers of a Sikh fire’, *Himal South Asian*, October http://www.himalmag.com/2007/october_november/embers_of_a_sikh_fire.html –)

61. An article published by *The Times of India* on 18 May 2007 indicates that after taking control of the Dera Sacha Sauda in September 1990, current Guru Gurmit Ram Rahim Singh expanded its area of influence:

With him at the helm of affairs, the number of dera followers grew. Their ranks were not limited only to places in Punjab and Haryana, but even to the bordering areas of Rajasthan, including Sriganganagar and Hanumangarh. In fact, the dera built ashrams (Naam Ghar) in Gujarat, Maharashtra, HP, Madhya Pradesh, Chhattisgarh, Delhi and Chandigarh (‘Dera Sacha Sauda and Gurmeet Ram Rahim’ 2007, *The Times of India*, 18 May <http://timesofindia.indiatimes.com/articleshow/msid-2060431,prtpage-1.cms>

62. Varied estimates were located regarding the number of Dera Sacha Sauda followers (commonly referred to as “premis”), ranging from four hundred thousand to thirty million (see ‘Dangerous tensions in Punjab’ 2007, *The Economist*, 5 July; Gopal, Navjeevan 2008, ‘Its chief at the centre of a row, Dera Sacha Sauda spreads its wings’ indianexpress.com website, 25 June and ‘Supreme Court declines to hear Dera Sacha Sauda petition’ 2007, [WebIndia123.com](http://webindia123.com) website, 4 June http://news.webindia123.com/news/ar_showdetails.asp?id=706040159&cat=&n_date=20070604).
63. Information was located to indicate that tensions exist between the Dera Sacha Sauda and various sections of the Sikh community in Punjab, Haryana, and other states in India, and that

these tensions stem from religious, political, and caste-based issues. Reports were located to indicate that these tensions have, on numerous occasions, been manifested in violent protests and attacks against members of the Dera Sacha Sauda.

64. Reports were located to indicate that since 2002, Dera Sacha Sauda leader Guru Gurmeet Ram Rahim Singh has been accused of various criminal acts. In 2007 and 2008, Guru Gurmeet Ram Rahim Singh was charged with crimes including rape and murder; as of December 2008, these charges were unresolved (for information on criminal charges see Rajalakshmi, T.K. 2002, 'Godman under a cloud', *Frontline Magazine*, Vol. 19, Iss. 26, 21 December <http://frontline.in/fl1926/stories/20030103003404000.htm> –; CBI charges Dera chief with murder' 2007, *The Economic Times*, 2 August; and 'Chandigarh Fortified For Visit Of Dera Sect Chief' 2008, *Indo-Asian News Service*, 3 December).
65. Information was located to indicate that the attire and actions of Guru Gurmeet Ram Rahim Singh in a newspaper advertisement published in Punjab on 13 May 2007 were broadly interpreted by members of the Sikh community as an impersonation of the tenth Sikh Guru Gobind Singh; reports were located that around a hundred persons were injured, and one Sikh demonstrator was killed, in widespread violent protests by members of the Sikh community which ensued in Punjab and Haryana from 14 May to July 2007. (for information on the alleged impersonation of Guru Gobind Singh and subsequent violent clashes and protests in Punjab and Haryana in mid-2007 see Baixas, Lionel 2007, 'The Dera Sacha Sauda Controversy and Beyond', *Economic and Political Weekly*, October 6, Vol. 42, No. 40, p. 4059; 'Keep the faith' 2007, *The Hindustan Times*, 17 June; and Alig, Asif Anwar & Anwar, Abid 2007, 'Embers of a Sikh fire', *Himal South Asian*, October http://www.himalmag.com/2007/october_november/embers_of_a_sikh_fire.html; for reports on acts of violence by Dera Sacha Sauda members in mid-2007 see 'Fresh clashes between Sikhs and Dera followers in Punjab' 2007, *Asian News International*, 14 June; and 'Haryana Sikhs Fired Upon by Cultists, Many Injured' 2007, *The Panthic Weekly*, 25 July <http://www.panthic.org/news/126/ARTICLE/3445/2007-07-25.html>; for information on charges against Guru Gurmeet Ram Rahim Singh for hurting the religious sentiments of Sikhs see 'Dera Chief interrogated by Punjab Police team' 2007, *The Press Trust of India Limited*, 8 December; and 'Punjab Police quiz Dera Sacha Sauda chief' 2008, *The Times of India*, 4 December http://timesofindia.indiatimes.com/Cities/Punjab_Police_quiz_Dera_Sacha_Sauda_chief/articleshow/3790470.cms).
66. Tensions have reportedly existed in recent years between the Dera Sacha Sauda and the Sikh-based Punjab political party the *Shiromani Akali Dal* (SAD), which, in coalition with the Hindu-based *Bharatiya Janata Party* (BJP), won government the most recent Punjab legislative assembly elections in February 2007. Reports were located to indicate that prior to the election, the Dera Sacha Sauda leadership had publicly issued an instruction for Dera members to vote for the incumbent Congress administration, and that in the wake of the SAD-BJP victory, "Akalis" had been "harassing" Dera Sacha Sauda followers. Reports were also located of accusations that the Punjab Chief Minister Parkash Singh Badal and his SAD-led administration had failed to adequately respond to the violent protests in Punjab in mid-2007; stronger claims that the SAD had actively encouraged the protests were also located (for reports on the involvement of the Dera Sacha Sauda in the February 2007 Punjab state elections and subsequent "harassment" of Dera followers, see 'Badal sworn in as Punjab CM' 2007, *Rediff*, 2 March <http://in.rediff.com/news/2007/mar/02punpoll.htm>; Baixas, Lionel 2007, 'The Dera Sacha Sauda Controversy and Beyond', *Economic and Political Weekly*,

Vol. 42, No. 40, October 6, pp 4059-4065; 'Akalis-BJP blame religious sect for poor show in Malwa' 2007, *India eNews*, 28 February <http://www.indiaenews.com/politics/20070228/41381.htm>; and 'Dera Sacha Sauda and Gurmeet Ram Rahim' 2007, *The Times of India*, 18 May <http://timesofindia.indiatimes.com/articleshow/msid-2060431,prtpage-1.cms>; for reports on the reaction of the SAD-led Punjab state government to the mid-2007 anti-Dera protests see Alig, Asif Anwar & Anwar, Abid 2007, 'Embers of a Sikh fire', *Himal South Asian*, October http://www.himalmag.com/2007/october_november/embers_of_a_sikh_fire.html; Sarin, Jaideep 2007, 'Most in Punjab had nothing to do with faith frenzy', *Hindustan Times*, 19 May http://www.hindustantimes.com/StoryPage/FullcoverageStoryPage.aspx?id=5a68d750-e1e4-468f-bad4-b9346b0b208fPunjabontheboil_Special&&Headline=Most+in+Punjab+had+nothing+to+do+with+faith+frenzy; 'Dangerous tensions in Punjab' 2007, *The Economist*, 5 July; and Baixas, Lionel 2007, 'The Dera Sacha Sauda Controversy and Beyond', *Economic and Political Weekly*, October 6, Vol. 42, No. 40, pp. 4059, 4064).

67. Information was located to indicate that on 20 July 2008, during a visit by Guru Gurmeet Ram Rahim Singh to Mumbai in Maharashtra state, a Dera Sacha Sauda bodyguard fatally shot a Sikh during a protest against the Guru; members of the Sikh community subsequently engaged in demonstrations in Mumbai, and in Punjab state, where protesters blocked railway lines (for information on the shooting in Mumbai see 'Sikh mobs run riot in Mumbai' 2008, *The Times of India*, 22 June http://timesofindia.indiatimes.com/File_Sikh_mobs_run_riot_in_Mumbai_/articleshow/3152760.cms; for reports of protests in Punjab see 'Sikh protesters disrupt train services' 2008, *The Hindu*, 26 June <http://www.hinduonnet.com/thehindu/2008/06/26/stories/2008062661061300.htm>; for information on the response of Punjab Chief Minister Parkash Singh Badal and the SAD to the incident in Mumbai see 'Punjab CM Badal asks Maharashtra CM to arrest Baba Ram Rahim' 2008, *Asian News International*, 21 June; and 'No clean chit for Dera chief: Deshmukh' 2008, *The Tribune*, 24 June <http://www.tribuneindia.com/2008/20080625/nation.htm#1>).
68. Reports were located to indicate that numerous localized violent incidents occurred in 2007 and 2008 between Dera Sacha Sauda followers and members of the Sikh community in Punjab and Haryana; many of the reports located indicate that these incidents occurred after members of the Dera Sacha Sauda attempted to hold religious ceremonies (for reports and claims of violent incidents see Mullick, Rohit 2007, 'Punjab govt settling scores: Dera', *The Times of India*, 5 July; 'Dera followers and Sikhs clash' 2007, *The Times of India*, 4 September; 'Five injured in Dera-Sikhs clash' 2008, *Hindustan Times*, 21 July <http://www.hindustantimes.com/StoryPage/StoryPage.aspx?sectionName=Business&id=4cbf9927-6d8b-47e4-b67a-21b9a6e4dc8c&&Headline=Five+injured+in+Dera-Sikhs+clash>; '5 injured in Dera-Sikh clash' 2008, *The Times of India*, 15 August <http://timesofindia.indiatimes.com/articleshow/3366937.cms>; and 'Haryana: 1 killed in Sikh-Dera clashes, curfew imposed' 2008, *Press Trust of India*, 19 July).
69. Guru Gurmeet Ram Rahim Singh has reportedly been the subject of several assassination plots by members and/or affiliates of various Sikh militant groups; in addition to a failed bomb attack against the Guru on 2 February 2008, reports were located of various plans against the Guru being uncovered by police investigations (for information on Sikh militant groups and assassination plots against Guru Gurmeet Ram Rahim Singh, see Khalistan forces

trying to stir sectarian violence' 2008, *Economic Times*, 21 March
http://economictimes.indiatimes.com/News/PoliticsNation/Khal%20istan_forces_trying_to_stir_sectarian_violence/articleshow/2%20886425.cms; Vinayak, Ramesh 2008, 'The Baba and the Bomb', *India Today*, 7 February
http://indiatoday.digitaltoday.in/index.php?issueid=39&id=4335&option=com_content&task=view&assignedid=; and Police unveils conspiracy to assassinate Sacha Sauda chief' 2008, webindia123.com website, 8 November
<http://news.webindia123.com/news/Articles/India/20081108/1099507.html>).

70. Reports were located which suggested that the Punjab administration was initially slow to respond to the violence which broke out over Guru Gurmeet Ram Rahim Singh's alleged impersonation on Guru Gobind Singh on 14 May 2007. An article published in the *Hindustan Times* states that Punjab police did not initially intervene in clashes between Dera followers and Sikh protesters in May 2007:

For the first three days, the police were mere spectators as sword and lathi-swinging mobs clashed in and around Bhatinda, the heart of Punjab's prosperous Malwa. At the behest of the ruling Akali Dal and the Shiromani Gurdwara Prabandhak Committee (SGPC), the Sikh clerics occupying the five Takhts arbitrated, but their harshly-worded edicts only fuelled more hatred ('Keep the faith' 2007, *Hindustan Times*, 17 June).

71. Information was found on police protection for Dera Sacha Sauda members during the large scale clashes in Punjab and surrounding states in mid-2007, including information which indicates that by 17 May, police were acting to protect Dera members. An article published on the *My Khanna* website reports that on 17 May 2007 a Dera Sacha Sauda branch at Malikpur village in Punjab was attacked by around fifty armed persons, but that the assailants "fled after a police contingent, posted for such exigency, returned fire" ('Exchange of fire near Khanna' 2007, *My Khanna* website, 17 May
<http://www.mykhanna.com/cms/news.php?260>; RRT Research & Information 2008, *Research Response IND33077*, 28 March).
72. Reports were located which indicate that the central Indian government responded to the large-scale clashes in Punjab in mid-2007, sending security forces to assist local authorities to control the situation. An article published on 18 May 2007 by *Yahoo! News India* reports that Indian Prime Minister Manmohan Singh had consulted with the Chief Ministers of Punjab and Haryana states regarding the conflict, and stated that "[c]ompanies of the Rapid Action Force (RAF), the Central Reserve Police Force (CRPF) and the Border Security Force (BSF) have been deployed in sensitive areas after Chief Minister Parkash Singh Badal sought 5,000 of central force personnel" ('Manmohan Singh expresses concern over Punjab violence' 2007, *Yahoo! News India*, 18 May <http://in.news.yahoo.com/070518/139/6fy9p.html>).
73. Reports were located which indicated that police had in several localised incidents not been effective in preventing harm to Dera Sacha Sauda followers and conversely that police had been active in Punjab and other areas when protest against Dera Sacha Sauda were anticipated. There were also reports of active investigations after localised incites directed against followers of Dera Sacha Sauda followers. (see Gopal, Navjeevan 2008, 'Its chief at the centre of a row, Dera Sacha Sauda spreads its wings' [indianexpress.com](http://www.indianexpress.com/news/its-chief-at-the-centre-of-a-row-dera-sacha-sauda-spreads-its-wings/327145/0) website, 25 June <http://www.indianexpress.com/news/its-chief-at-the-centre-of-a-row-dera-sacha-sauda-spreads-its-wings/327145/0>; Alig, Asif Anwar & Anwar, Abid 2007, 'Embers of a Sikh fire', *Himal South Asian*, October

http://www.himalmag.com/2007/october_november/embers_of_a_sikh_fire.html; 'Supreme Court declines to hear Dera Sacha Sauda petition' 2007, WebIndia123.com website, 4 June http://news.webindia123.com/news/ar_showdetails.asp?id=706040159&cat=&n_date=20070604).

FINDINGS AND REASONS

74. The Tribunal is satisfied that the applicants are nationals of India and no other country as they have claimed. They travelled to Australia using documents issued by authorities of that country and the first and second named applicants were familiar with a major language of that country when giving evidence before the Tribunal. This is the country against which their fears of return should be assessed.
75. This application is made on the basis that the applicants fear harm from members of the Akali Dal arising from their commitment to the Dera Sacha Sauda and the identification of the first-named applicant as a strong supporter of that faith and supporter of the Congress Party. They fear direct physical harm, as has occurred to the first-named applicant in the past, or acting on threats such as the kidnapping of the third-named applicant.
76. In the Tribunal's view, these matters do fall within the ambit of the Convention. The physical assaults or possibility of kidnapping and harm are sufficiently serious harms that they can be considered persecution. It is also the case that the matters giving rise to antipathy by members of the Akali Dal arise from concerns of religion and political opinion. It is clear that there have been two recent episodes of hostility between established Sikh groups in India and followers of Dera Sacha Sauda. These arose from a perception that the guru of the Dera Sacha Sauda had insulted a Sikh figure, and also after the death of a Sikh man at the hands of the bodyguard of the guru in Mumbai. These matters led to large scale protests and to incidents of harm being directed at followers of Dera Sacha Sauda.
77. The Tribunal accepts that the applicants have affected by the incidents of intimidation and harm as claimed in the past and that this has given rise to reasonable fears about remaining in the area of India where they formerly resided. It appears clear that they are well known in their local area for their support of Dera Sacha Sauda and that this could given rise to the possibility of additional harms being directed at them should they return to that area.
78. In the Tribunal's view, however, the real threat to the applicants does not extend to India as whole and they are able to access real and effective protection from harm by returning to another area of India to live.
79. The Tribunal believes that by moving to a new area of India they would reduce the risk of harm coming to them arising from their religion or political opinion to one which was remote. In the Tribunal's view, it is notable that after leaving their local area in they were not again located or harmed in India at any time before their departure from India This was despite being aware that the group that wanted to harm them knew they were in district Y from shortly after their departure from their home village, and them moving to an area where their presence could be anticipated as a result of having family there. In the Tribunal's view, this indicates that the intention or desire to harm them is one which can be described as localised and there is very little likelihood of threats being acted upon should they relocate to a new area, away from their former home.

80. The Tribunal is also of the view that it could be expected that the applicants would receive proper protection from security authorities in India should they now move to a new area. While there were claims initially that the Punjab Government did not act to protect Dera Sacha Sauda followers in the wake of attacks during 2008, it is notable that the Prime Minister of India took an active interest in the protection and subsequently security authorities did act to protect Dera Sacha Sauda followers. This included direct action in confronting Sikh protests, mobilising officers in anticipation of protests and the active investigation and prosecution of Sikh protesters where harms were identified. In the Tribunal's view, while the antipathy between the Punjab Akali Dal Government and the Dera Sacha Sauda and the first named applicant's past experiences may give rise to concerns about future protection in Punjab, this would not be the case outside that state. The central Government and Prime Ministership is dominated by the Congress Party, of which the first named applicant is an active member, and the evidence indicates that security authorities have taken appropriate steps to protect Dera Sacha Sauda followers when harms are threatened elsewhere in India and would do so for the foreseeable future.
81. The Tribunal also believes that the couple can reasonably access protection elsewhere in India. There is no doubt that it is difficult for the family to contemplate their lives in India after the events of recent years, however, in the Tribunal's view they possess the attributes, resources, support and capacity to settle successfully elsewhere in India and away from their former home.
82. The applicants have been able to travel to Australia and after initially relying on the support of the first named applicant's sibling, have shown a resilience and capacity to make decisions about, and organise, their own affairs. Concerned about remaining in one city they organised employment and accommodation elsewhere which they are using to support themselves. Where they encountered a difficulty with a co-tenant in Australia they were able to resolve this issue, after discussions with the landlord and intervention of the police. While a difficult experience, this does not appear related to any persecution of the applicants although the person was Sikh, and does indicate that the couple are able to deal with difficulties encountered, even in unfamiliar environments.
83. The first named applicant has considerable business experience in India, and in the Tribunal's view, this could reasonably be translated to another region of India. While his former rented shop could not be run by him, there is nothing which would act to stop him establishing a business elsewhere in India, given his background and experience. While it is true, as was claimed at the hearing, that it may take some period to establish a new business, the Tribunal does not accept that this would mean that it could not be reasonably done. The couple have family remaining in India who have supported them in the past, and subsequent to their move to district Y were in a position to rent their own accommodation. The first named applicant has a sibling remaining in their local area with whom he maintains contact. She could reasonably be expected to provide assistance in arrangements which may be necessary there to finalise the applicants' matters in that region. They have also in the past relied upon the support of relatives in other regions of India, for example the second named applicant's parents and there is no reason why this would not continue. They also have the support of the first named applicant's sibling living in Australia, and it would not be unreasonable to expect that he could provide what assistance he is able. It is also the case that the first named applicant retains ownership of a home in India, and while not accessible to them for their own accommodation, it could be used to generate income to support them, either through it being rented or sold. While the first named applicant has speculated that the property may

have been damaged or have lost value because of the problems he experienced in the past, the Tribunal does not accept that this is anything other speculation. It could reasonably be expected that the property could be appropriately dealt with, particularly given the presence of the applicant's sibling in the area.

84. In the Tribunal's view, while the applicants may have initial difficulties in settling in a new region of India on return, those difficulties are not of a magnitude that could be said to make their relocation within that country not reasonably possible.
85. The couple have put forward the view that their child may have difficulty returning to the Indian education system after some period in Australia and the Tribunal's accepts this could be true. He is a young boy and there would inevitably be some disruption to returning to India, after having commenced schooling in Australia, however the Tribunal does not believe that this would prevent the successful relocation of the family. He has now apparently adapted to his travel to Australia and in the Tribunal's view, reintegration to the Indian culture would not be so difficult that it would make relocation unfeasible. He has been exposed to this system in the past, although it was disrupted when the family moved to district Y, and there is nothing which indicates he could not continue his education through a religious school in another region of India.
86. Also the first and second named applicant expressed general fears and concern for their own safety and that of their son, with concerns about the general possibility of kidnapping and the second named applicant concerned about the recent attack in Mumbai. The first issue has arisen from threats made, however, the Tribunal believes that outside Punjab the chance of this threat being acted on would be remote. In respect of the general issue of kidnapping, this has arisen from the kidnapping of a relative's child which was unrelated to any following of Dera Sacha Sauda. There appears no information available to the second named applicant, or otherwise, which indicates that such a general threat is a real one for this family. In respect of the attack in Mumbai, this was a shocking incident that could reasonably make one fearful. It was not, however, directed at followers of Dera Sacha Sauda and the prospect of these applicants being affected by such an extraordinary event would, in the Tribunal's view, be remote. While the applicants may have general fears about their security in India, and the second named applicant and her son a very marked reluctance to return there, the Tribunal does not believe that their fears in this respect are well-founded.
87. For these reasons, it is the view of the Tribunal that no applicant in this matter can be said to hold well-founded fear of being persecuted for any Convention reason should they return to a different region of India than where they have formerly lived. There appears only a remote likelihood that those seeking to harm them in their former region of residence would have an interest in, or the capacity to, locate them in another region of India. They can rely on protection from security authorities in other regions of India and have the capacity and resources to do so. On this basis, the Tribunal does not believe that any applicant is a person owed protection obligations by Australia, or the spouse or dependant of such a person. For these reasons, no applicant satisfies essential prescribed criteria for a Class XA visas, and each should be refused the grant of such a visa under s.65 of the Act. The delegate's decisions to this effect should be affirmed.

DECISION

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

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