

1218705 [2013] RRTA 404 (13 June 2013)

DECISION RECORD

RRT CASE NUMBER:	1218705
DIAC REFERENCE(S):	CLF2012/153247
COUNTRY OF REFERENCE:	India
TRIBUNAL MEMBER:	Christine Cody
DATE:	13 June 2013
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

SUMMARY

1. The applicant is a [age deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] Indian national who seeks to be granted a protection visa on the grounds that he is a refugee or entitled to protection under Australia's complementary protection provisions. He fears harm from his family, his community and his wife's community and the actions of his wife's family, due to his marriage (which is inter-religious, and to an older, divorced, woman). The Tribunal does not accept that there is (or was) the opposition to the marriage as claimed, and does not accept that the applicant has a well-founded fear of persecution for a Convention reason, nor that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to India, the applicant faces a real risk of significant harm. The Tribunal has accordingly affirmed the decision of the delegate to refuse to grant the applicant a protection visa.

BACKGROUND TO THE APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
3. The applicant had applied to the Department of Immigration for the visa [in] July 2012 and the delegate refused to grant the visa [in] October 2012. The applicant was not represented during the initial application before the Department, nor in the application to the Tribunal.

THE LAW

4. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.
5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugee as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
6. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

CONSIDERATION OF CLAIMS AND EVIDENCE

Sources of claims and evidence

7. The Tribunal has before it the Department's file relating to the applicant (CLF2012/153247) which contains his protection visa application and other material including certain pages of his passport and the recording of the delegate's interview with the applicant [in] October 2012 (to which the Tribunal has listened). The Tribunal also has had regard to the delegate's decision (which the applicant also provided to the Tribunal with his application for review: the delegate did not accept that the applicant was a credible witness nor that he would be killed upon return) and other material available to it from a range of sources, has conducted a [hearing] with the applicant [in] June 2013 (and taken evidence from his wife) and has considered all the material referred to in the Tribunal file.

The applicant's claims – abandoned and ongoing

8. The applicant initially had two claims, which were referred to in both his protection visa application form and at his interview with the delegate. However, by the time of the Tribunal's hearing, he said that he no longer had any fear in relation to one of his claims: a claim that he had owed money to certain family members and that he would be killed or otherwise harmed by his father and others on his return for this reason. As the applicant did not provide any evidence to the Tribunal in relation to this fear, and said that he no longer maintained a fear for this reason, the Tribunal considered this claim to be abandoned and has found that there is no reason for the applicant to fear harm on this basis, and that he does not have a well-founded fear of persecution on that basis, nor is he at risk of significant harm on this basis.
9. Accordingly, the only claim upon which the applicant relied was in relation to the harm feared on the basis of his marriage, and the Tribunal has considered this claim as set out below.

Past events and history

10. According to the information taken from his application for a protection visa, his passport, the decision record attached to his application for review and/or his evidence to the Tribunal, the applicant makes the following claims as to past events, and the basis for his current fear:
 - He was born in a village in the state of Uttarakhand in northern India. He does not have the right to enter in, or reside in any other country, nor is he a national of any other country. His religion is "Sikh".
 - His family remain in India in his home village.
 - He came to Australia as a student in March 2008, undertook studies in Australia, and then his visa was cancelled in February 2011. The Migration Review Tribunal affirmed the cancellation of his visa in September 2011, and an application for Ministerial Intervention made in October 2011 was rejected in November 2011. He applied to be a dependent on his wife's [visa], but was excluded from the application due to the operation of section 48 of the Act. [In] July 2012 the applicant lodged his protection visa application.
 - He commenced his relationship with his (now) wife, [name deleted: s.431(2)], in Australia in mid-2010. They had previously met whilst studying for the IELTS test in India, at which

time she had been married, and her first marriage broke down after she arrived in Australia in May 2009.

- They started living together as friends in mid-2010 and they formed a committed relationship shortly thereafter (his wife said 2011 and at interview he said 2009 however the Tribunal has decided to disregard these discrepancies).
- He told his parents in mid-2010 that he had a relationship with a Hindu woman and they were against this. He decided to ignore them and wanted to make his own decisions. He said that he started avoiding conversations with them because they always start on this topic. He speaks to his mother every week but only with his father every 2-3 months.
- He married his wife, who is some [years] older than him, and is a Hindu, divorced woman, [in] December 2011. She was born, and comes from [Town 1] Punjab, [a long distance] away from the applicant's home.
- At the time they got married, her mother and brother knew, but her father did not. They didn't want anyone else to know in the community, they were hiding from them. Her family wanted to force her to get remarried to someone else as arranged by her family and the community.
- Both parents, and society, reject the marriage. The applicants' parents and (Sikh) community will kill them, as will his wife's (Hindu) community, they will be subjected to an honour killing. The Tribunal put to the applicant that the information available suggested that it is not uncommon for Sikhs and Hindus to get married, and although in some interreligious relationships (involving for example Christians and Muslims) there have been problems, the situation is not the same for marriages between Sikhs and Hindus. The applicant responded that he was not aware of any marriages between Sikhs and Hindus, and that often these matters are not reported in the newspaper as honour killings, instead they are reported as accidents.
- Four days after the wedding in Australia the wife returned to India for a six-week period (the predominant reason for her trip was [reason deleted: s.431(2)]), during which time she made enquiries about whether they could be protected if they lived in India. According to the information in the applicant's protection visa application, she was informed by the police that they are not allowed to go against any religious matters and if they support the marriage, then there would be a chance of religious riots¹. As a result of those enquiries the applicant considers he will not obtain state protection.
- Whilst she was in India she spent about 3 weeks living with her parents, and about 3 weeks living in Delhi with her aunt.
- Within 1 month of her return, because of the pressure to marry someone else, she told her father that she was already married. All the relatives came to know and they disapprove, it is a matter of whole community's pride. Her father said don't come home, get a divorce, leave him, or they will kill both of them.

¹ According to his application form he intended to provide "report copy at police station" however this was never provided. What actually occurred at the police station became an issue, as referred to below, and the applicant later claimed that only a general, unofficial enquiry had been made.

State protection and relocation

11. The applicant and his wife come from neighbouring states and the applicant and his wife speak [several languages]. The Tribunal discussed with him the possibilities of state protection and relocation if he returns to India. The Tribunal said to the applicant at hearing that if he returned he could approach the police, and his response was that his wife already did. The Tribunal noted that according to his evidence she only approached one police officer, unofficially, in one police station; but there are many police stations in different areas and states. The Tribunal said that there are different attitudes depending on where one goes in India and if their families didn't accept the relationship they could move to a city, for example in Haryana or Delhi. He agreed but said there is no guarantee for their safety. The Tribunal explained that no law provides 100% guarantee of safety, including the law relating refugees or complementary protection, but that having regard to the country information it appears that as marriages between Hindus and Sikhs are not uncommon, they should not experience harm if they moved to a city. The Tribunal noted they are both educated and would be employable, and suggested that there was no problem for them to move elsewhere.
12. The applicant responded that there is a lot of corruption and honour killings, and if he is killed it will be noted as an accident. It will not be reported as a hate crime or killing. He said he is not denying that there are inter-religious marriages but they could be the victim of a hate crime. The Tribunal repeated the information from the available country information: that there have been some significant difficulties for inter-religious marriages involving Muslims and Christians, and for inter-caste marriages (which the applicant did not suggest was applicable) but again the information suggests that marriages between Hindus and Sikhs are not uncommon. He said he knows there was an incident in a city next to him, when he was about 15-16 years old, a man was murdered with a knife because his marriage involved a Sikh and a Hindu, and then at the end they said it was an accident.

Relevant background country information

13. The Canadian IRB report in 2006² on inter-religious marriages states:

India is a secular state, prohibiting discrimination based on religion (India 26 Nov. 1949, Art. 15; AFP 10 July 2004), and "government policy does not favor any [particular] religious group" (Country Reports 2001 4 Mar. 2002, Sec. 2.c.). Despite these provisions, in 2002, state and municipal government officials only "partially respect[ed] religious freedom" (ibid.) and in 2004, religious differences "deeply divided" Indian society (Country Reports 2004 28 Feb. 2005, Sec. 5).

According to a professor of Asian Studies who specializes in Indian affairs, inter-religious marriages are more common between students and among professionals in urban areas, and are less likely in rural areas (Professor of Asian Studies 14 Nov. 2005). This professor also commented that marriages between Sikhs and Hindus are "not uncommon" in the state of Punjab, where the majority of Sikhs reside (Specialist on India 23 Nov. 2005), since Hindus have always numbered prominently there (Professor of Asian Studies 14 Nov. 2005).

14. More recently, in 2011, a DFAT report provides that:

² Immigration and Refugee Board of Canada 2006 , *IND100661.EX India: The situation of couples in inter-caste and inter-religious marriages, including societal attitudes, treatment by government authorities and the situation of children resulting from such marriages (2000 - 2005)*, 9 January - <http://www.irb-cisr.gc.ca/en/research/ndp/ref/?action=view&doc=ind100661ex>

Despite legal protection, inter-religious marriage is regarded with scepticism among parts of Indian society. Discrimination against those who engage in inter-religious marriage is varied. It may range from passive discrimination such as social exclusion to violent attacks. Treatment depends on many factors including the respective religions to which the parties belong and geographic and socio-economic factors. In certain cases, especially in the case of Hindu-Muslim marriages, respective communities and in some rare cases even local politicians become involved.

Some inter-religious marriages attract milder social sanction than others. Hindu-Sikh marriages, although they may be frowned upon, do not attract severe societal sanctions. Hindu-Muslim marriages can attract not only the disapproval of the families involved but the collective objection of broader communities. There have been reported cases Hindu-Muslim couples being murdered....

Inter-religious couples can request court-ordered police protection if they are harassed. But police protection is only temporary and not easily available unless there is a strong case against the harassers...

Many inter-faith couples from rural areas relocate to the more liberal cities for protection.

15. Concerning the issue of relocation, Indian law provides for freedom of movement within the country, and the government generally respects this in practice.³ According to the UK Home Office, there are no checks by authorities on newcomers arriving from another part of India; local police “have neither the resources nor the language abilities to undertake background checks on individuals relocating within India” Furthermore, there is no registration system for citizens. It is common for a person not to carry an identity card, although identity cards can be easily forged.⁴ Sikhs form a majority in Punjab, and there are significant Sikh communities in Chandigarh, Haryana, Delhi, Uttaranchal and Jammu and Kashmir. Hindus form a majority in all states except for the following: Manipur, Arunachal Pradesh, Mizoram, Lakshadweep, Nagaland, Meghalaya, Jammu and Kashmir and Punjab.⁵ Generally recognised as a national language, Hindi is understood by around 40 per cent of the population, with the exception of some southern states.⁶ Hindi is spoken as a first language by approximately 425 million people across India, and as a second language by an additional 120 million.⁷ Additionally, English is recognized as an “associate” official language to Hindi, and is used predominantly by educated and professional groups, the media, and in administrative contexts.⁸

First Information Reports

16. According to a human rights activist and lawyer cited by a Canadian authority:

³ US Department of State 2011, *International Religious Freedom Report for 2010 (July-December)* – India, 13 September, Section I

⁴ UK Home Office 2010, *Country of Origin Information Report – India*, 21 September, p.95

⁵ US Department of State 2011, *International Religious Freedom Report for 2010 (July-December)* – India, 13 September, Section I; Census and You – Religion’ n.d., Ministry of Home Affairs, Government of India website http://censusindia.gov.in/Census_And_You/religion.aspx – Accessed 2 April 2012

⁶ ‘Languages of India’ n.d., Online Computer Library Center website <http://www.oclc.org/languagesets/educational/languages/india.htm> – Accessed 7 February 2008

⁷ ‘Hindi language’ n.d., Encyclopedia Britannica Online website <http://www.britannica.com/EBchecked/topic/266241/Hindi-language> – Accessed 4 October 2011

⁸ ‘Languages of India’ n.d., Online Computer Library Center website <http://www.oclc.org/languagesets/educational/languages/india.htm> – Accessed 7 February 2008

. . . the First Information Report (FIR) . . . is the most important step in terms of arrest, because once an FIR has been registered the police have the power to arrest a suspect. The rules state that ordinarily the police should not make an arrest immediately, but in actual practice, once an FIR is registered under a serious provision of law, the police will go ahead and arrest the person. A suspect may remain in police custody for a maximum period of 15 days, after which time he must be turned over to judicial custody, where he will remain until released on bail. If no charge sheet is presented the suspect is entitled to be released on bail after 30 days for minor offences, after 60 days for serious offences and after 90 days for the most serious offences. If a charge sheet . . . is presented the accused will remain in judicial custody either until he obtains bail or the trial is completed. The investigation period is unlimited⁹.

THE TRIBUNAL'S FINDINGS AND REASONS

Country of reference

17. The applicant presented to the Tribunal his Indian passport, and claimed in his application form to be an Indian national. There is no evidence that he is a national of, or has the right to enter or reside in, any other country, and accordingly the Tribunal finds that the appropriate country of reference for the assessment of his refugee and complementary protection claims is India.

Credibility

18. The Tribunal found the applicant's evidence to be vague, unpersuasive, and both internally contradictory at times, as well as inconsistent with his wife's evidence, and the Tribunal is not satisfied that he was telling the truth when he claimed there were reasons for him to fear persecution in India. The Tribunal sets out its reasons as follows:
19. *Firstly*, the Tribunal considered that the applicant gave contradictory evidence about the attitude of both sets of parents towards the marriage. Initially, the applicant told the Tribunal that since he told his parents about his relationship and intention to marry his wife in mid-2010, he had been avoiding conversations with them about the relationship (but that he still spoke to his mother every week and to his father every 2-3 months). Later however, when the Tribunal asked the applicant why they delayed in getting married until December 2011 (even after he said her divorce came through in March 2011), he said that they delayed in getting married because they both wanted to get their parents' blessing. He then said that he had been trying unsuccessfully for over one year to obtain his father's blessing.
 - Concerning his parents, as put to the applicant at hearing, it does not seem credible that he could have been trying to obtain his parents' blessing for the marriage if he had actually been avoiding conversations about the relationship with his family.
 - Concerning the wife's parents, as also put to the applicant at hearing, it is hard to understand how he could claim that they were waiting to obtain her parents' blessing in advance of the marriage if, as claimed, his wife did not even tell her father about the relationship until after the marriage (and until after she returned from India in February 2012).

⁹ Immigration and Refugee Board of Canada 1998, *IND30788.E - India: Information from Chandigarh-based human rights lawyer Rajvinder Singh Bains on the rules and procedures involved in filing First Information Reports (FIRs), charge sheets and arrest warrants, and how these procedures are used by the Punjab police*, 23 December

20. The applicant did not offer any plausible explanation for his contradictory evidence when it was raised as a concern. The Tribunal considers the applicant's inconsistent and contradictory evidence undermines his claims that he and his wife were unsuccessful in seeking to obtain their parents' blessings for the marriage, and that the parents objected to their marriage in the manner claimed.
21. **Secondly**, the Tribunal was concerned about the applicant's failure to mention at hearing that when she was in India, his wife had made enquiries about whether they could be protected. The applicant suggested in his application form that when his wife had returned to India, she had discovered that they would not be able to obtain protection from the authorities. However, when the Tribunal asked the applicant what his wife did when she was in India, he said she [reason deleted: s.431(2)], she stayed with her parents and with her aunt, she went on trips with her parents; this was how she spent her time. He did not mention, until he was reminded by the Tribunal, his claim that his wife had attended upon the police to ascertain whether they could obtain protection in India. The Tribunal considers that this omission undermines the applicant's claim that his wife sought information about whether they would be safe in India in December 2011.
22. **Thirdly**, the Tribunal was also concerned about the inconsistent evidence at hearing between the applicant and his wife (which the Tribunal considers undermines the credibility of the applicant and his wife) concerning his wife's attempted contact with the police when she was in India in December 2011, once the applicant had been reminded that his wife had made contact with the authorities when she was back in India. The inconsistencies, as put to the applicant at hearing and pursuant to s.424AA of the Act, include:
- What the applicants' wife actually discussed with the police: The applicant initially said that his wife went to the police station in [Town 1]. When the Tribunal expressed surprise that she had approached a police station in her home town, the applicant said that she did not do it officially because she did not want it to get out, she just spoke to a police officer unofficially, just to get legal advice from him. The applicants' wife said however that she went to [Town 1] police station, told them that she is Hindu and had married a Sikh male, and said she needs protection because she is scared of his family and community, and she told them she needs protection from them.
 - The issue of lodging a first information report: When the Tribunal asked the applicant if he had considered lodging a first information report because of the threats he said that his fear is against the whole community and you cannot lodge a first information report against a whole community. The applicants' wife said however that she had lodged a first information report both against his family and against the whole Hindu community.
 - What the police told her: The applicant initially said that his wife had been informed that the police could help them to get married in a court, and the maximum protection that could be provided would be 6-7 days, and after that the police won't provide protection (even though they said that they could be the victim of a hate crime or riots, but that is not a police concern). The applicant's wife said however that the police told her they could protect her for 6 weeks.
23. When the Tribunal informed the wife how her evidence was different to that of the applicant, she then said that she didn't tell him because he would be upset if she told him she got a first information report against his family. She said she didn't tell him anything about the trip to the police station. The Tribunal asked how then did he know she went to the police station and she

said maybe someone from her family told him (and later after a break the applicant said that her brother was the one who had told him about it and who had said that she did not do anything official). The Tribunal notes that the applicant's subsequent explanatory evidence that it was her brother who told him about the trip to the police station is in contrast to his earlier evidence to the Tribunal of what *his wife* had told him about her trip to the police station. The Tribunal considers that the applicant is willing to change his answers to respond to the Tribunal's concerns, which undermines his credibility as a witness.

24. The applicant also said, after the break, that they had discussed the issue outside and he asked her if they had given her any paper and she said they were just writing on a normal paper, he said there is no evidence of an FIR. He said if there was an FIR his family would know about it. Concerning the difference in their evidence concerning the length of time that the police would protect them, the reason they told her they would protect them for a longer period was because they wanted a bribe, however she didn't pay anything so it didn't go through.
25. The Tribunal has considered the explanations of the applicant and his wife but does not find that they are satisfactory. The applicant claims that he and his wife will be *killed*. He also claims that his wife made enquiries of the police about whether they could be *protected from being killed*. If these claims were true, the Tribunal would expect that the applicant could give coherent evidence, and evidence consistent with that of his wife, about the actual conversation his wife had had with the police, noting this was the only information they had about whether they could be protected from the feared harm. The Tribunal considers that the inconsistencies in their accounts in this regard undermine the claim that the applicant's wife did approach the police to make enquiries about whether they could have police protection as a couple in fear of harm if they returned to India.
26. **Fourthly**, the Tribunal considered that the applicant exaggerated the source of his feared harm, when he told the Tribunal that he fears harm from *every single* Sikh person in India and from *every single* Hindu person in India, and maintained this claim, even once the Tribunal put to the applicant that according to available country information, marriages between Sikhs and Hindus are not uncommon, and there is no evidence to suggest that all such marriages are targeted by every member of the Sikh and Hindu community in India. The Tribunal considers that the applicant's claim is unsupported by the country information or any other evidence, and considers that his claimed fear is exaggerated, which undermines his credibility.

Credibility finding

27. For the reasons referred to above, the Tribunal does not accept that the applicant is a credible, truthful or reliable witness in relation to claims of past or future persecution.

Other matters

28. The Tribunal notes that there were a number of inconsistencies in the applicant's evidence at hearing, compared to his evidence to the delegate at the interview, for example (as recorded in the decision record), at interview he said that his relationship started in July 2009, a few months after his wife arrived in Australia in May 2009, whereas at hearing he said the relationship started in mid-2010. The Tribunal has not placed any weight on these discrepancies in dates, and has given the applicant the benefit of the doubt in relation to the existence of his genuine marriage.
29. The Tribunal has also considered that the applicant and his wife gave consistent evidence about a number of matters, for example they both said that her father did not know about the marriage

when she went to India, and that both parents were against the relationship. The Tribunal considers however that the wife has a vested interest in the applicant being granted his protection visa, and gives her consistent evidence little weight, especially in light of the inconsistent evidence between them concerning the claimed visit to the police.

30. The Tribunal has also considered the wife's claims that she was not feeling that well, and was suffering from sinus, and that she gets nervous in speaking in English (the Tribunal notes she said she is able to speak in English and is currently studying, in English, [courses deleted: s.431(2)]. The Tribunal has also considered that the applicant did not request an interpreter and gave his evidence in English, and that he may have been nervous in appearing before a Tribunal. However the Tribunal considered that both applicants were able to give evidence to the Tribunal about a number of matters without difficulty, and the Tribunal considers that these other factors do not explain the inconsistencies' in their evidence and the applicant's contradictory, changing, exaggerated evidence as well as his omission.

Finding in relation to the applicant's abandoned claim relating to debts

31. At the hearing the Tribunal asked the applicant, after discussing issues in relation to his marriage, if there was any other reason why he feared a return, and he said no. The Tribunal noted that he had previously claimed that there was a problem with debts (according to his application form his father said he would kill him because he has not returned a loan, and he also feared harm from other family members for the same reason, and that his father and family members had been made bankrupt and put in gaol a few times for this reason). The applicant told the Tribunal that the issue is resolved, and when the Tribunal asked how it was resolved he said he doesn't know but they do not talk about it anymore.
32. As the applicant has expressly disavowed any fear relating to the debts he claimed to have had, the Tribunal finds that there is no reason for the applicant to fear harm for this reason upon return.

Finding in relation to past harm in India

33. The applicant did not claim to have suffered any harm whilst he was in India and the Tribunal so finds.

Finding in relation to the marriage

34. On the basis of their evidence, the Tribunal accepts that the applicant and his wife have a genuine marriage, that he is Sikh and she is Hindu, that she is older than the applicant and she is a divorced woman.

Finding in relation to past and future threats/harm from families and communities towards the applicant and/or his wife

35. The Tribunal has considered the available evidence in relation to the claimed opposition of the families, the claimed threats from the families (and communities) that the applicant and/or his wife will be killed and that his wife will be forced to divorce the applicant, and the claimed attempts to obtain police protection/ information about available police protection. The Tribunal is not satisfied that the applicant has provided persuasive evidence of the opposition of their families or their communities to their marriage, or the prospect of any harm to either him or his wife, or of any threats, or of any attempts to contact the police or obtain information from the

police, and in light of the credibility findings concerning the applicant and his wife, the Tribunal does not accept that the claims made of past threats and rejection, or feared future harm, are true.

36. The Tribunal has considered that his wife provided some consistent evidence, however as noted in paragraph 29 above she has a vested interest in the success of his application and the Tribunal does not consider that her evidence overcomes the other difficulties with the evidence referred to above. The Tribunal also acknowledges that there is some country evidence suggesting that some inter-religious couples have experienced discrimination and have relocated for protection or have obtained police protection, however the Tribunal is not satisfied that there is evidence to suggest that this will be the situation for the applicant and his wife. The Tribunal is not satisfied on the available evidence before it that there is a real chance that the applicant or his wife will be killed or otherwise subjected to serious harm, or that the applicant's wife will be forced to divorce the applicant, in the reasonably foreseeable future, nor does the Tribunal accept that anyone has expressed a wish to harm them to date.

Finding on refugee claim

37. The Tribunal finds there is no basis for the applicant's claims to fear persecution. The Tribunal is satisfied that if the applicant returns to India there is no real chance that he will be harmed by his family, his wife's family, or any communities, or anyone else for a Convention-based reason, nor that his wife will be forced to divorce him. The Tribunal is also satisfied that there is no real chance that the applicant will face persecution for a Convention-based reason in India in the reasonably foreseeable future.
38. Accordingly the Tribunal finds that there is no real chance that the applicant will face persecution if he returns to India now or in the reasonably foreseeable future and he does not have a well-founded fear of persecution on any Convention ground.
39. Whilst the Tribunal has found that the applicant does not face a real chance of serious harm, it considers in any event that it would be reasonable for the applicant and his wife to relocate as discussed with the applicant at hearing (paragraph 11 above).

Complementary protection

40. The Tribunal has rejected the applicant's claims and is not satisfied, on the evidence before it, that he is at risk of harm, and specifically not significant harm, from his family, his wife's family, a forced divorce, or the Hindu or Sikh communities if he returns to India.
41. The Tribunal considers there is no basis to find that the applicant fears, or will be subjected to, significant harm in India. The Tribunal is not satisfied that there are substantial grounds for believing, that, as a necessary and foreseeable consequence of the applicant being removed from Australia to India, there is a real risk that he will suffer significant harm.

CONCLUSIONS

42. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
43. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that

the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

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

DECISION

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