

1503327 (Refugee) [2016] AATA 4341 (24 August 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1503327
COUNTRY OF REFERENCE:	India
MEMBER:	Tania Flood
DATE:	24 August 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 24 August 2016 at 2:28pm

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of India, applied for the visa [in] May 2014 and the delegate refused to grant the visa [in] February 2015.
3. The applicant appeared before the Tribunal on 26 July 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Hindi (Indian) and English languages.
4. The applicant was represented in relation to the review by her registered migration agent.

CONSIDERATION OF CLAIMS AND EVIDENCE

5. The criteria for a protection visa are set out in s.36 of the Act and 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 of the same class.
6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
8. 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').
9. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information

assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

10. The issue in this case is whether there is a real chance the applicant will face serious harm for a Convention reason on return to India or alternatively, whether there are substantial grounds for believing there is a real risk she will suffer significant harm if removed from Australia to India. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

Summary of claims

11. In a statutory declaration dated [in] May 2014 the applicant claims the following:
12. She was born on [date] in Kanpur, India.
13. Her [siblings] and mother are Australian citizens.
14. Her son came to Australia to study in August 2010. She and her husband accompanied him to Australia on [class of] visas to settle him into his new home and then returned to India.
15. In January 2013 her husband died suddenly. Following his death she applied for a [certain] visa to Australia so that she could be with her son and family. It was her intention to stay in Australia temporarily to support her son and spend time with her family. Her [sibling] was diagnosed with [medical condition] some years ago and her mother needed regular assistance. In July last year her mother was also diagnosed with [medical condition] and is receiving treatment.
16. She was granted her [visa] in March 2013 and she was happy to leave her city at that time because the law and order situation had been deteriorating for some time. Her home town has a mixed population of Muslims and Hindus and the tensions between the two religious groups often results in violent confrontations.
17. Her state has always been the site of religious and political conflict. The main issue between the two communities is the Babari Mosque in the city of Ayodha. The Hindu's believe that this site is the birth place of Lord Ram and an ancient temple was demolished at the site to build a Mosque. While Muslims believe that the site was rural at that time Barbar Masjid didn't demolish a temple to reconstruct a mosque.
18. In 1990 the chief minister then Mulayam Singh Yadav of the Samaj Vadi Party which is currently in power, ordered firing on Hindu volunteers who were trying to close the disputed structure. Many Hindu's including women and children were killed.
19. Since this incident Mulayam Singh became popular in Muslim communities and some people think the event in 1990 was done to win votes. The agitation continued and in 1992 in an unfortunate event the Mosque was demolished which led to a big rift between Hindu's and Muslim's and rioting all over the nation.
20. Currently Mulayam Singh's son is UP Chief Minister and the Samaj Vadi party is in power. The law and order situation is not under control which led to big riots in the city of Muzaffarnagar on 21 August 2013 leading to many deaths. The current government is seen as supportive of Muslim populations of state and Hindu's feel quite insecure and unheard.

21. Before she left for Australia [in] April 2013, she was assaulted and robbed near her home in Kanpur; two men assaulted her and stole her handbag containing her passport. [She] was injured in the assault.
22. Following the assault she went to the hospital emergency department for treatment. She has a copy of the medical report but it is not very detailed.
23. She reported the incident to the police; they were not interested in making a report but she insisted. When she later requested a copy of the police report she found that the police had not bothered to record the details of the assault and robbery.
24. She was traumatised by this incident; it happened during the day in an area close to her home and it left her feeling unsafe and vulnerable. She is still suffering post-traumatic stress disorder and receives regular counselling and takes [medication]. She still has nightmares about this incident and she cannot go out to a public place alone without suffering a [psychological condition]. She left India shortly after this incident and arrived in Australia [in] June 2013.
25. Since she left Uttar Pradesh the political situation in that state of India has deteriorated; the tension between the Hindu's and Muslims in the area has escalated and there has been violent protests and conflicts involving deaths and injuries to ordinary people.
26. The police are totally ineffective and corrupt. The police refuse to investigate or take any action against those responsible for the violent crimes because they fear repercussions.
27. She has read in the Indian newspapers almost on a daily basis of the trouble and violence in her home state and the surrounding states in India.
28. The ethnic tensions and violence are not new to this area of India but in the past she has always had the protection of her husband and family. Her house is in [a] suburb which is heavily populated by Muslims and a single Hindu woman is always at risk.
29. She is now a widow and the status of widows in India is very bad. She will be treated as an outcast and will not be invited to any gathering of her extended family, festivals or ceremonies. Widows are stigmatized and are regarded as a bad omen. Widows are considered "untouchables".
30. She fears returning to her country because it is very likely that she will be harmed because of her status as a widow and because she is a Hindu woman alone without protection. She knows through experience that the authorities will not be willing or able to protect her.
31. In a submission dated [in] February 2015 it is noted that during the delegate's interview the applicant identified several reasons for wanting to remain in Australia. Namely that she wants to be with her family and care for her mother and [sibling] as well as fear of returning to India as a widow. It is submitted that having more than one reason for wanting to remain in Australia does preclude a finding that seeking protection is the, predominate and most significant reason for applying for protection.
32. It is submitted that the applicant fears that if she is returned to India she will suffer persecution and/or substantial discrimination amounting to a gross violation of human rights in the form of psychological harm, extortion, physical assault and torture due to her membership of a particular social group, "widows in India". As a single woman living alone and as a widow she fears being ostracised from society and shunned by her family in India and her community in general. Country information is referenced concerning the persecution of widows in India as well as reports that the police and security forces are often

the perpetrators of violence against women. Given her circumstances and the nature of her claims and profile, it would be neither reasonable to expect, nor possible, for her to safely relocate to another area within India.

33. In a further submission dated [in] July 2016 it is submitted that the political unrest in Kanpur and the applicant's home state of Uttar Pradesh appears to be under control at the moment and as such she does not intend to claim that she could be targeted for persecution due to her religion. However, she maintains that her status as a widow and/or a single woman will mean that she is at a real risk of being seriously harmed and will be subject to constant systematic discrimination that amounts to significant harm.
34. It is submitted that the applicant will face serious or significant harm on the grounds of membership of particular social groups of 'widows' or 'single/unmarried women' in India. It is submitted that the treatment that the applicant will be subjected to on a daily basis in India would amount to degrading treatment. It is maintained that as a widow the applicant would be denied employment and that people in the community would refuse to enter into transactions with her because she is a widow and therefore she will effectively be denied services by the private sector. Country information is referenced which indicates that widows and single or unmarried women in India suffer discrimination throughout the country and are frequently the victims of violence. In addition, despite laws that are intended to address violence against women, frequently there is a discrepancy between the provisions of the laws and effective implementation. The applicant's evidence is that in her experience the police are not able to provide protection and not willing to enforce existing laws. Further country information about the treatment of women in India is referenced.
35. The Tribunal has read the country information referenced in these submissions and has taken account of this information and the submissions made on the applicant's behalf in arriving at this decision.

FINDINGS AND REASONS

Country of reference

36. Attached to the Department's file is a copy of the applicant's Republic of India passport with number [deleted] which confirms her claimed identity and nationality. The Tribunal accepts that India is the applicant's country of nationality for the purposes of the Refugees Convention and is the receiving country for the purposes of s.36(2)(aa) of the Act.
37. At the commencement of the Tribunal hearing the applicant stated that she was born on [date] in Delhi and later moved to Kanpur in Uttar Pradesh where she completed her studies, married and lived prior to departing India. She said her family home in Kanpur is still in her possession but is closed up for now. She said she has an elderly [relative] in Kanpur but no other family, claiming her husband was an only child. She said her son, mother, [and siblings] are all currently living in Australia. The applicant confirmed she has a [higher tertiary qualification] in [a certain field] and worked as a [occupation] for [number] years in Kanpur.

Hindu living in mixed religion area

38. The applicant claims that her state has always been the site of religious and political conflict. She claims that her hometown has a mixed population of Muslims and Hindus and tensions between the two groups often result in violent confrontations. Further, she claims that the current government is seen as supportive of Muslim populations and that Hindu's feel quite insecure and unheard. She claims the police are totally ineffective and corrupt and refuse to investigate or take any action against those responsible for the violent crimes. She claims

that in the past she always had the protection of her husband and family and now that she does not she is at risk of harm.

39. In a submission made on the applicant's behalf dated [in] July 2016, it is written that the political unrest in Kanpur and her home state of Uttar Pradesh appears to be under control at the moment and that the applicant does not intend to claim that she could be targeted for persecution due to her religion. When asked at hearing whether the applicant stands by this submission she stated that Muslims don't respect Hindu's and they will not want her to continue living in that area. She said they may even hurt her. In view of these comments, the Tribunal is of the view the applicant maintains her claimed fear of harm for religious reasons and has considered whether there is a real chance she will face serious or significant harm for this reason.
40. The Tribunal accepts that the violent events in Ayodha and Muzaffarnagar, which are referred to in the applicant's written submission, occurred in the past,¹ and asked whether she was personally involved in either of those incidents. The applicant confirmed that she does not get involved in such events but stated that the tension affects everyday life and it is not possible to live peacefully. The Tribunal asked whether she had ever personally experienced any past harm in her local area due to being Hindu and she said she did not. However, she said the political system does not work and the police don't help if problems arise.
41. The Tribunal pointed out that various country reports² indicate that it is minority religious groups who are most likely to be at risk of harm in India. Further, the Tribunal pointed out that the persons most affected by the 2013 violence in her state were Muslims and that it appears the authorities are more likely to fail to investigate reports of violence against Muslims than Hindus. The applicant replied that the information available on the internet is not reliable; that she has experienced these problems and there is no security for single, widowed women in India.
42. The applicant informed the Tribunal at the commencement of the hearing that she moved to Kanpur with her family from Delhi and completed her schooling and university studies, married, worked and lived in Kanpur until the time of her departure from India. Based on her oral evidence, in all that time she has suffered no past harm due to being a Hindu living in an area inhabited by Muslims.
43. The Tribunal acknowledges that outbreaks of communal violence do occur from time to time in the applicant's home state and accepts she may feel insecure returning to her area now that she is alone. The Tribunal has empathy for this concern but has not found information which supports there is a real chance or risk she will be harmed on the basis she is a Hindu or Hindu widow or single woman living in a mixed religion area.
44. In assessing the level of risk to the applicant, the Tribunal has had regard to DFAT's 2015 report which provides information on the extent of religious-based violence in the country. The report indicates that in 2014, 561 incidents of communal (religious-based) violence occurred throughout the country, down from a total of 823 incidents in 2013. The number of those killed and injured in rioting stood at 90 and 1,688 in 2014 down from 133 and 2,269 the previous year. While recognising there is variation between states, DFAT assesses that overall there is a low level of discrimination on the basis of religion. In the applicant's home

¹ India: IND34174 – Uttar Pradesh – state of politics – characteristics of Jatavs and Kasais – interrelationship between Hindu's, Christians and Muslims – Islamist terrorist activities – Muslim mafia – Land mafia – Landholding system – Protection of Hindus – geographic data, 19 January 2009

² DFAT Country Information Report, India: 15 July 2015; US State Department, International Religious Freedom Report of 2014, India

state of Uttar Pradesh, Hindus constitute 80.61% of the population compared to 18.5% Muslims³ and as noted those most at risk of harm are reportedly persons from minority religious groups. Having regard to all these factors the Tribunal is satisfied the chance or risk of the applicant facing serious or significant harm on return to her area for reason of being Hindu or a Hindu widow or single woman is remote.

Past Assault

45. When discussing the assault, which it is claimed occurred after her husband's death, the applicant stated that the attack occurred after she had taken some funds from the ATM. She said that she was returning home in a rickshaw and that [number] men on a motorcycle snatched her bag from her shoulder. She said she screamed for help but nobody did anything to help her.
46. The Tribunal put it to the applicant that it appears the assault was a random act of criminal violence and that any risk of further attacks of this nature would appear to be the same for her as it is for the general population. The applicant replied that being a widow and a woman means she has no protection and the police will not assist her.
47. The Tribunal asked the applicant what happened when she went to report the matter to the police. She said that she was given the usual excuse that the senior officer was not there and told she should come back later. When she went back and told them what had happened, the police said they could not promise they would get her bag back as the attack occurred on a secluded road. She said they told her there was no point writing a complaint but they would try to get her bag back and return it to her. The Tribunal agreed that it might be difficult for the police to apprehend the suspects in those circumstances and suggested it is possible the same might happen in any country. The applicant disagreed stating that in India as a woman she is scared to even enter the police station.
48. The Tribunal put it to the applicant that based on her evidence it doesn't appear she was targeted for harm because of any of the five Convention reasons and that it also doesn't appear the police refused to help her for those reasons. The applicant stated she is not saying the police didn't pay any attention to her and she is not saying the attack occurred for a Convention reason. She said she is not scared of physical harm but rather it is mental depression that is troubling her.
49. According to a US Department of State report on Human Rights Practices in India⁴, citizens of India have access to a reasonable level of protection provided to them by the state. However, as DFAT reports, a 2009 report by Human Rights Watch and other sources notes the capacity of India's police forces is limited by poor infrastructure, insufficient personnel, inadequate training, poor living conditions for low-ranking officers, insufficient remuneration and a lack of training and equipment to conduct their duties.⁵
50. The Tribunal found the applicant to be a generally credible witness and accepts her bag was stolen in the manner described but does not find it was for reason of her race, religion, nationality, political opinion or for reason of her being a widow or single/unmarried woman. The Tribunal is of the view the incident which was described was a random act of bag snatching which could easily have happened to anybody, anywhere. Based on her oral evidence, the applicant was not dismissed outright by the police but rather it appears she was not given a positive indication that her bag could be recovered. Even if the police declined to take a statement and it could be said she was denied adequate protection, the

³ India Census 200 – State wise religious demography, 2006, Crusade Watch website, 26 December

⁴ US Department of State, Country Reports on Human Rights Practices, India, 19 April 2013

⁵ DFAT Country Report, India, 15 July 2015

Tribunal is of the view, based on the applicant's oral evidence and above country information that it was more likely due to police ineffectiveness rather than for a Convention reason.

51. On the evidence before it, the Tribunal is not satisfied there is a real chance or risk the applicant will be singled out and intentionally targeted for such criminal attacks in future. In the event she returns to India and does fall victim to such a random criminal act, the Tribunal is of the view that while there are reported problems with the efficacy of the police, she could nevertheless lodge a complaint. Despite claiming to fear going to the police station, based on her past actions, the Tribunal is also satisfied she would be willing to do so. In the unfortunate event the police denied her protection, based on country information reports the Tribunal is of the view this would be due to the ineffectiveness of the police in general rather than for a Convention reason.

General law and order

52. It is also claimed that the political, and law and order situation has generally deteriorated and the police are ineffective and corrupt. The Tribunal acknowledges the applicant's claim that the information on the internet is unreliable but is required to make a decision on the independent country information which is available. Various country information sources⁶ confirm that despite reported unrest and crime India has a functioning political system and institutions for maintaining law and order. DFAT's advice of 15 July 2015 states that the sheer size and diversity of India means that most Indians live their lives with a relatively low risk of violence. The Tribunal is therefore not persuaded the applicant faces a real chance or risk of serious or significant harm for these reasons.

The applicant's health

53. The applicant claims that she suffered post-traumatic stress disorder as a result of the abovementioned attack. When asked if she is still suffering from [psychological conditions] she said that when she thinks of the situation she sometimes has these kinds of attacks. When asked if she has sought medical treatment in Australia she said she is taking medication for depression and has attended counselling although not routinely. She says that here in Australia she has the support of her family to rely on.
54. DFAT⁷ notes that according to the World Health Organisation, India's health indicators have improved over the last decade but continue to lag behind those of comparable countries on indicators such as average rates of life expectancy and infant mortality. Many people lack access to affordable public health care and out of pocket health expenses are high. Overall the quality and affordability of health care varies across the states.
55. Despite that the quality and affordability of health care in India is variable, there is no medical information before the Tribunal to support the applicant is undergoing ongoing medical treatment for post-traumatic stress disorder. The Tribunal acknowledges the applicant is reportedly taking medication for depression but is not persuaded she is under the regular care of a counsellor or other health professional for a stress related condition.
56. In any event, the Tribunal put it to the applicant that there is no indication she could not access the medical care she requires in India or that her being returned to India will exacerbate a medical condition or that she would be denied medical treatment intentionally on return to India. While the Tribunal is sympathetic with the applicant's claim she will not

⁶ US Department of State, Country Reports on Human Rights Practices, India, 19 April 2013

⁶ DFAT Country Report, India, 15 July 2015

⁷ DFAT Country Report, India, 15 July 2015

have the support of her relatives on return it is not satisfied that her health concerns present a real chance or risk of her suffering serious or significant harm on return to India.

Fear of harm due to being a widow or single/unmarried woman in India

57. In her written statements the applicant claims that the status of widows in India is very bad. She claims she will be treated as an outcast and will not be invited to any gathering of her extended family, festivals or ceremonies. She claims that widows are stigmatised and are regarded as a bad omen and as “untouchables”. At hearing the applicant stated that she will face insecurity as a widow and a single woman and will be continuously afraid and in physical danger. It is also submitted that it is likely the applicant will be denied employment and will have trouble accessing basic services and protection from violence.
58. A recent US Department of State report⁸ confirms that discrimination against widows occurs throughout the country. According to some cultural traditions, a widow is a bad omen and is often outcast by her own family. Many widows end up destitute and are forced to resort to begging for survival.
59. Notwithstanding the above, a 2013 report by the Immigration and Refugee Board of Canada⁹ states that media sources report there are approximately 36 million women in India who are widowed, divorced or separated from their husbands. The report also indicates that these single women can be rejected by society and treated with indifference by the federal government. For example, widows are said to face “deep social stigma”..., “social marginalisation”...and “cruel” treatment by in-laws. Women who are unmarried or who were left by their husbands generally “live invisibly, often at the mercy of callous family customs”. However, media sources also indicate that India's economy is booming, leading to an increase in the number of young, single women working in cities. These women have greater freedoms and opportunities than in the past. Finding safe housing is one of the “main” problems for women who move to larger cities in search of employment. Media and academic sources also report on the difficulties single women face trying to rent apartments in metropolitan areas. While access to housing is “significantly improving” for middle-class and high-income single women (including divorced and widowed women), there continue to be significant social and cultural barriers around women's sexuality. Women residing alone may be viewed as having suspect reputations and may have to have family members vouch for them in order to gain access to housing. Women from lower caste backgrounds or lower income groups may have additional burdens of caste discrimination and may not have the financial means to gain access to housing.
60. A BBC News report¹⁰ states that India's fast-changing cities are slowly beginning to accept single women for what they are but the change is extremely slow. It is reported that being single sometimes relegates a woman to the background, with divorce being especially traumatic. The report indicates that Vrindavan, is a city where large numbers of Indian widows take refuge if life with their family becomes unbearable. Reportedly many of the widows of Vrindavan are mostly from poor, rural backgrounds. It is said that the reasons for tensions between widows and their families are primarily economic, with a widow being considered another mouth to feed and someone who could stake a claim to family property.

⁸ US Department of State, 2015 Country report on human rights practices, India, 13 April 2016

⁹ Appears in UK Home Office, Country information and guidance report: women fearing gender-based harm/violence, India, April 2015

¹⁰ BBC News, India's Invisible widows, divorcees and single women, 7 March 2014

61. The Tribunal put it to the applicant at hearing that there is evidence of discrimination against widows in India but pointed out that this would not necessarily reach the threshold required for a finding of serious or significant harm. The applicant stated that nobody is particularly out to take her life but she feels that as a single woman she is much more appreciated in Australia. In India, she says she will be looked down upon.
62. The Tribunal noted that the applicant's husband died in January 2013 and asked her to relate her experience as a widow before she departed the country in June 2013. She said she was very depressed and people gave her a hard time. She said she was continuously worried that people would come into the house and attack her. She said even if she does not die of a physical attack her mental stress will kill her. The Tribunal suggested that she is speculating she will be attacked and noted that nothing has happened to her previously. She said her experience is that women are not respected in India. When asked for further particulars of actual experiences, she said that before she left India she had to go to Delhi and she approached some distant friends to ask if she could stay with them. She said they did not turn her away but said she could leave her bag in the garage and couldn't stay long. She says this kind of disrespect is mentally disturbing. She said that widows are generally asked to where white and eat simple food and are not allowed to enjoy life.
63. Referring to available country information, the Tribunal pointed out that one of the biggest issues for widows appears to be financial survival and housing. The Tribunal put it to the applicant that she is a well-educated woman with a [higher tertiary qualification] and years of [occupation] experience and she previously informed the Tribunal that she owns her own house in India. The applicant replied that there is absolutely no chance she will obtain employment on return to India as people will not hire widows.
64. The Tribunal pointed out that discrimination in employment is prohibited by law¹¹ which means that redress is available and while it is possible some women are underpaid and promoted less frequently, a woman such as herself, with a [higher tertiary qualification] and lengthy [occupation] experience, ought to have far better chances of finding employment. She added that if she wants to go out somewhere she will not be able to and despite trying to contact friends from the past they do not want to talk to her. The Tribunal said it found it difficult to accept she would not be able to go out anywhere or interact with anybody noting that Kanpur is a city of over 3 million people, and not everyone she comes into contact with in the course of everyday interactions will know she is a widow particularly as there won't be anybody to enforce the custom of her wearing white or eating simple foods. Further, the Tribunal suggested it is unlikely she went everywhere accompanied by her husband before he died. Also, the Tribunal said it found it difficult to accept, noting the large number of widows in India, that all were destitute. The applicant replied that people will quickly come to know she is a widow and those widows which don't have problems have some family to support them whereas she does not. She added that she is not used to living alone and is used to having family love and affection in her life. She said that psychologically she will not be able to survive and the isolation and loneliness will amount to mental torture.
65. The Tribunal has considered the applicant's responses and the available country information and accepts that some widows and single/unmarried women are subject to discrimination in India. The Tribunal accepts the applicant may experience some social stigma, marginalisation, indifference and even exclusion from social events and gatherings because she is a widow and widows are regarded by some as a bad omen or 'untouchables'. While the Tribunal understands that this may be upsetting and may negatively impact her enjoyment of life, it is not persuaded in her particular circumstances she will be unable to go out in public alone or that she will be denied everyday basic services or isolated from human interaction of any kind. The Tribunal has had regard to the explanations and definitions of

¹¹ US Department of State, 2015 Country Report on Human Rights Practices, India, 13 April 2016

'persecution' and 'significant harm' as set out in the Act and does not consider the discrimination and social ostracism she may experience will amount to persecution or significant harm.

66. Further, the aforementioned country information indicates that it is widows from poor, rural backgrounds who face severe economic and other problems and in the Tribunal's view, the applicant's circumstances are distinctly different. On her own evidence the applicant will not experience a housing problem on return to India and given her level of education and work experience together with evidence of some, albeit slowly, changing attitudes towards widows and single women in the larger cities, and the existence of employment discrimination law, the Tribunal is not satisfied that she will be unable to find any work on return to India such that she faces a life of destitution. In the circumstances, the Tribunal is also not satisfied the applicant will have no access to basic services in India.
67. The Tribunal has considered and is sympathetic to the applicant's claims that she does not want to live alone without family support and love. The Tribunal acknowledges that the prospect of living alone is causing the applicant a degree of mental anguish. However, in considering the situation, and having regard to the concepts of 'persecution' and 'significant harm' as explained and defined in the Act, the Tribunal is not satisfied that there is a real chance or risk she will suffer serious or significant harm for reason of having to live alone or on the basis of family separation.
68. It is also submitted that the applicant is at greater risk of cruel treatment, physical harm, extortion and torture due to her being a widow or single/unmarried woman and that the police and security forces are often the perpetrators of violence against women. The Tribunal acknowledges that crime occurs in India and that there are high levels of reported violence against women. Further the Tribunal acknowledges that there are reports of human rights abuses carried out by the police.
69. The Tribunal informed the applicant that it has to consider her claims in the context of the size of the population and that it has also had regard to the reported crime statistics in the country. In this respect the Tribunal notes the population of India is reportedly 1.2 billion including some 430 million women. In 2013 the National Crime Records Bureau registered 309,546 cases of crimes against women. Of these the highest number of cases reported were cases of domestic violence (118,866).
70. The Tribunal considers the applicant's circumstances are such that she is not at risk of harm from domestic violence. Further, the Tribunal put it to the applicant that country information indicates that efforts have been made in recent years to strengthen legislation to protect women victims of violence. For instance it is reported that legislation to protect victims or potential victims of targeted harm has been strengthened. The Protection of Women from Domestic Violence Act 2005 aims to protect women who face abuse from a spouse or family member and has a broad definition of domestic violence and includes provisions for issuing protection orders.¹² Furthermore, new legislation was adopted in 2013, including a Criminal Law (Amendment) Act which according to the United Nations Special Rapporteur on violence against women has improved the legislative framework significantly, introducing new criminal offences and stronger sanctions. The Special Rapporteur did, however, note in a report of April 2014 that effective implementation of these laws, and the allocation of financial resources to support their execution adequately, was reportedly lacking in many

¹² Republic of India 2005, Protection of Women from Domestic Violence Act, 2005, Act No 43 of 2005 promulgated 14 September 2005

instances, but in general, a person is likely to be able to access effective protection from the state.¹³

71. Despite ongoing challenges with implementation and resourcing, in view of this information the Tribunal is satisfied that increasingly stronger legal protections now exist to protect women from domestic and other violence. On this basis the Tribunal finds the applicant does not face a real chance of serious harm or a real risk of significant harm due to her being a widow or single/unmarried woman.
72. The Tribunal has considered all the applicant's circumstances, individually and cumulatively and notes that there are compassionate aspects, in particular that she is widowed and wishes to live with the support of her family in Australia. However, based on the evidence before it, the Tribunal finds that there is not a real chance the applicant will suffer serious harm and nor are there substantial grounds for believing there is a real risk she will suffer significant harm if she returns to India now or in the reasonably foreseeable future for any of the reasons claimed.
73. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(a) or (aa) of the Act.
74. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

75. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Tania Flood

Member

¹³ UK Home Office, Country information and guidance report: women fearing gender-based harm/violence, India, April 2015