

1110839 [2011] RRTA 1043 (22 December 2011)

DECISION RECORD

RRT CASE NUMBER: 1110839

DIAC REFERENCE(S): CLF2011/91700

COUNTRY OF REFERENCE: India

TRIBUNAL MEMBER: Jennifer Eutick

DATE: 22 December 2011

PLACE OF DECISION: Brisbane

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of India, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] April 2009 and applied to the Department of Immigration and Citizenship for the visa [in] June 2011. The delegate decided to refuse to grant the visa [in] September 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention
4. The applicant applied to the Tribunal [in] October 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

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

Definition of 'refugee'

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

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department’s file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate’s decision, and other material available to it from a range of sources.

Background

20. The applicant is a [age deleted; s431(2)] year old male Indian national born in [Town 1], Punjab, India. He arrived in Australia [in] April 2009 as a dependant spouse of the holder of a Subclass 572 (Vocational Education and Training) student visa valid until [June] 2011. This visa was cancelled [in] August 2010 and the primary visa holder returned to India. The applicant states that he was divorced [in] April 2011. F 43

Protection Visa Application

21. The application form indicated the applicant speaks Hindi, Punjabi and English and completed 12 years of schooling in India between [1993] and [2005]. He states that his occupation prior to coming to Australia was farm work and he worked on his parents’ farm occasionally. The applicant’s parents reside in India. The applicant indicates that his ethnic group and religion are ‘Sikh’.
22. The applicant lodged an application for a protection visa [in] June 2011 claiming as follows:

I, [name deleted; s.431(2)] of [address deleted; s.431(2)], an Indian Citizen is seeking protection in Australia because of fear of persecution back in India.

While I was in India, I was involved with Shriomani Akali Dal (MANN). The main stance of the party and Mann is advocacy for an independent Sikh nation. We emphasise that fight for Khalistan should be done in a non-violent manner.

When my parents got the information about my involvement SAD, They got very worried about me. Some my fellow members were killed in an encounter with the security forces and few of them killed by the Hindu nationalist groups.

I was actively involved in demonstration and other activities including recruiting young people to the party and creating Punjab-wide student wing.

The government agencies followed me everywhere and interrogated many times , but the main problems was the Hindu extremists group such as BJP, BHP AND RSS printed flyers alleging that we were Pakistani agents and should be no place in Indian land. They threatened to kill me

while I was involved in demonstration and threatened to kill all my family members.

The government security agencies warned my father about the consequences. My father immediately asked me to leave the country to avoid detention by government authority, perhaps killed by the Hindu nationalist groups.

I am deeply disturbed and worried about my life. I am seeking protection in Australia so that I do not have to go back to India.

23. [In] August 2011 the Department wrote to the applicant inviting him to attend an interview [in] September 2011 to discuss his visa application. The applicant did not attend the interview.
24. [In] September 2011 the delegate refused the application noting that the applicant's written claims were vague and lack the level of detail for a proper assessment of his claims. She further noted that country information did not support the applicant's assertions that he would be harmed because he was involved with Shiromani Akali Dal.

Review application

25. The applicant's review application was lodged [in] October 2011 and did not include any additional information. [In] November 2011 the Tribunal wrote to the applicant to advise him that it was unable to make a decision in his favour on the information provided in the protection visa application and in the application for review. The Tribunal invited the applicant to give oral evidence and present arguments [in] December 2011. The applicant did not respond to the hearing invitation but appeared before the Tribunal [in] December 2011 to give evidence and present arguments.
26. The Tribunal clarified that even though the applicant speaks some English, as it was important to be able to communicate clearly, it was preferable to use the interpreter. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages.
27. The applicant confirmed that he had prepared the application without assistance and did not want to make any changes or additions to his application.
28. He said that he did not attend the Departmental interview because he was sick. When asked why he did not contact the Department he said that he thought that the interview was over.
29. The applicant gave evidence that he came to Australia 2 ½ years ago as a student dependant with his wife. He said that his wife was not happy and they separated. When asked when they separated, the applicant said that he could not remember but thought it was about 6 months after they came to Australia. He said that she went back to India but he was not certain when she returned. He said that his family in India told him that she was back in India. When asked whether his wife's visa was cancelled, he said that it was not cancelled. When asked how he knew this he said that because she went back to India within the amount of time on the visa. He said that they were divorced about 6 months ago.

30. The applicant said that he applied for refugee status about 6 months ago. When asked why he waited so long to apply for protection, the applicant said that he found that his visa was about to end and prior to that he believed he could stay and would be safe.
31. When asked whether he received a copy of the Department's decision, the applicant acknowledged that he had received but he said that he did not read the decision thoroughly. The Tribunal expressed doubt that he would not want to know the basis of the refusal, the applicant said that the decision was on the first page and that was the main issue for him.
32. The applicant described his family's circumstances in India. He said that he was born in his mother's village, [Town 1], Punjab but moved to [Town 2], his father village after his birth and has lived there all his life. The applicant said that his mother still lives there but his father died when he was [very young]. The applicant said that his father's name was [name deleted; s.431(2)]. The Tribunal noted that his father's name was included in the application as a relative not in Australia at the time of application. The applicant said that he misunderstood the question on the form. The Tribunal notes that there is provision to indicate that a relative is widowed. The applicant reiterated that he misunderstood the English.
33. The applicant said that he studied in the village but then attended school in [Town 3]. When asked when he finished secondary school, the applicant said that he was not sure, but thought that it was in 2007. When asked why he was not sure, the applicant said that he has not had to remember it before. He said that he did a course in IT, but did not complete it. When asked the name of the school, the applicant said that it was a private institute. The Tribunal put to the applicant that on his application form he said that he finished secondary school in [2005] which is different to 2007 and it seemed strange that he has difficulty remembering important events that are not that long ago. The applicant reiterated that he had not had to remember it before.
34. When asked what he did when he finished studying the applicant said that he did household work and worked with the Sikh Federation. When asked what his work with the Sikh Federation involved, the applicant said telling people about Sikhism. The Tribunal asked the applicant why he did not mention his work with the Sikh Federation on his application, the applicant said because it was to do with his religion he did not regard it as work. The Tribunal asked how he supported himself at this time; the applicant said that he worked on his farm. When asked why he referred to working on his parents' farm; the applicant said that whatever belongs to the parents belongs to the children and that he wrote parents but meant his mother. The Tribunal expressed its concern at the inconsistencies between the applicant's application and his evidence to the Tribunal in relation to his parents.
35. The Tribunal asked the applicant to describe his activities with the Sikh Federation. He said that it involved him telling people what it is and having rallies. When asked where these rallies took place, the applicant said that they did not have to be big rallies sometimes only 5-10 people or up to 100 people. When asked where they took place the applicant said that it was not in one particular place, that sometimes it was held in school grounds. When asked the names of the schools, he said that it happened after school hours. When asked who was involved with the Federation the applicant said he only knew one person, [name deleted; s.431(2)], and that he did know the names of any other people. When asked what the groups' aims and beliefs were the applicant said

that it was to make people stronger Sikhs and to convert people to Sikhism. When asked whether he had evidence of being a member of the Sikh Foundation the applicant said that it was a religious not a political organisation, but was maybe was a bit political. He said they opposed the other political parties, particularly the Congress party, the Comrade party and the BJP who did not want Sikhs in the Punjab.

36. The Tribunal noted that in his written application, the applicant did not refer to the Sikh Federation. The applicant said that he would have referred to 'Babbar Khalsa' The Tribunal said that the applicant referred in his application to Shiromani Akali Dal and expressed concern and the vagueness of the applicant's evidence and the inconsistency with claims in his written application in relation to the name of the organisation he claims to have been involved with. The applicant said that the name had evolved over time and was known by 3 names the Sikh Federation, Shiromani Akali Dal and Babbar Khalsa.
37. The Tribunal asked the applicant whether he had any problems in India as a result of his activities with these groups. The applicant said that a lot of times that they tried to beat him. When asked for more specific details when and where the incidents took place and who was behind them, the applicant was very vague and hesitant. He said that it was 5-6 times, that he was beaten once but was not hurt. The Tribunal expressed doubt that he would have been pursued 5-6 times and although he was beaten, did not get hurt. When asked who he thought attacked him, the applicant said he did not know. He said he went to the police but they did not assist him. He said that whenever the opposition parties were in [Town 3], they would have a debate. When asked where they had the debates, the applicant said that one time he was repairing his bike outside the cinema members of the Congress party came up to him and started to debate. They told him to wait there and they would be back, but he went away.
38. The Tribunal referred to the definition of persecution discussed at the beginning of the hearing and observed that it did not appear that the applicant had suffered serious harm and asked the applicant why he thought he would be harmed if he returned to India. The applicant said that people had followed him and his mother had received threats asking where he was and telling her that they would kill him if he returned to India. He said that she went to the police, but they told her that she does not have any evidence there was nothing they could do.
39. The Tribunal put to the applicant that the evidence that he has given at the hearing is quite different to the claims in his written statement in particular that he had been involved in demonstrations; that he had recruited young people to the party to create a Punjab-wide student wing; that the main problem was Hindu extremists groups such as the BJP, BHP and RSS who had printed flyers alleging that they were Pakistani spies; that government security agencies had warned his father of the consequences and his father asked him to leave the country to avoid detention. The Tribunal noted in particular that the applicant said that his father had died when he was 5 ½ and asked his to comment on these apparent discrepancies which create significant doubt about the credibility of his claims. The applicant said that he said wrote what came into his mind at the time, and said what he thought today. He said that the tragedies are the same.
40. The Tribunal discussed country information with the applicant in relation to the Shiromani Akali Dal and the possibility of living safely elsewhere in India. The applicant said that a lot of Sikhs have been killed in Dehli and elsewhere. He said that

there may be other Sikhs living in different places but they are not safe and they cannot get protection.

Country information

Sikh Population in India generally and in the Punjab specifically

41. According to independent information accessed by the Tribunal, Sikhs account for 1.9% (19,215,730) of the population of India¹ and are considered to be a minority community under the *National Commission for Minorities Act of 1992*²
42. Punjab is the stronghold of Sikhism. The Sikh population of Punjab accounts for more than 75% of the total Sikh population in the country³ and approximately 60% of the population in Punjab are Sikhs.⁴ Punjab is the second richest state in India with a per capita income of Rs 25,652.⁵
43. Whilst there was a period of militancy amongst Sikhs in Punjab in the past⁶, and whilst some sources indicate that there is an attempt to revive militancy in the State, in its Punjab Assessment of 2010, the South Asia Terrorism Portal (SATP) recorded that Punjab remained peaceful throughout 2009⁷.
44. In its 2009 Human Rights report on India, the Asian Centre for Human Rights (ACHR) continued to assert that little has been done to address Punjab's poor record on human rights noting the ill-treatment of women and Dalits,⁸ however, the ACHR would not appear to be concerned about the treatment of Punjab Sikhs more generally and there were no recent reports of ill-treatment of Sikhs in Punjab were found amongst the research viewed by the Tribunal.

¹ Office of the Registrar General & Census Commissioner, India, (undated) 'Census Data 2001, India at a Glance, Religious Composition',

http://www.censusindia.gov.in/Census_Data_2001/India_at_glance/religion.aspx – Accessed 9 December 2009 – Attachment 27.

² US Department of State 2009, *International Religious Freedom Report for 2009 – India*, October – Accessed 7 December 2009 – Attachment 28

³ Office of the Registrar General & Census Commissioner, India (undated) 'Census Data 2001, Census and You, Religion', http://censusindia.gov.in/Census_And_You/religion.aspx – Accessed 9 December 2009 – Attachment 31.

⁴ 'Punjab' (undated), The Columbia Electronic Encyclopedia website

<http://encyclopedia2.thefreedictionary.com/Punjab> – Accessed 10 December 2009 – Attachment 32

⁵ MACHHAN, R. 2004, 'PUNJAB SECOND RICHEST STATE IN COUNTRY: CII', *THE TIMES OF INDIA*, 8 APRIL

<HTTP://TIMESOFINDIA.INDIA.TIMES.COM/ARTICLESHOW/605728.CMS> – ACCESSED 9 DECEMBER 2009 – ATTACHMENT 33

⁶ ENSAAF, 2005, 'Punjab Police: Fabricating terrorism through illegal detention and torture July 2005 to August 2005', October, p. 5 <http://www.ensaaf.org/publications/reports/fabricatingterrorism/> – Accessed 10 December 2009 – Attachment 36.

⁷ South Asia Terrorism Portal (undated), 'Punjab Assessment Year 2010'

<http://www.satp.org/satporgtp/countries/india/states/punjab/index.html> – Accessed 10 December 2009 – Attachment 37

⁸ Asian Centre for Human Rights 2009, *Human Rights Report 2009 - India*, p. 163

<http://www.achrweb.org/reports/india/AR09/AR2009.pdf> – Accessed 7 December 2009 – Attachment 24.

Shiromani Akali Dal (Mann) – SAD(M).

45. The SAD(M) was formed by radical *Akali Dal* faction leader S.S. Mann in the mid-1990s because, he claimed, other leaders had failed to adhere to the 1994 Amritsar declaration...At the time, the party was also known as the SAD (Amritsar). Mann successfully competed for a *Lok Sabha* seat in 1999. In 2004 the party ran six candidates, all unsuccessful. In June 2005 Mann was arrested for sedition for advocating establishment of Khalistan, a Sikh homeland.

Leaders: Simranjit Singh Mann, Jagmohan Singh (General Secretary) (Banks, A.S. & Muller, T.C. & Overstreet, N.R. (eds) 2007, 'India', in *Political Handbook of the World* (2007), CQ Press, Washington D.C., p. 543 –.

Treatment of members

46. An April 2008 research response from the Immigration and Refugee Board of Canada in relation to the treatment of members of the Akali Dal (Mann) / Akali Dal (Amritsar) party and in particular whether they are harassed and arrested for participating in party gatherings, for publicly complaining about the treatment of Sikhs by Indian authorities or for calling for the creation of Khalistan (separate homeland for Sikhs) commented as follows:

The Panthic Weekly suggests bias within the police force as members of the Akali Dal (Amritsar) were charged under the penal code during a clash between the Akali Dal (Amritsar) and another political party, the Shiv Sena, in December 2007, while members of the Shiv Sena were allegedly not arrested (*The Panthic Weekly* 19 Dec. 2007).

According to an article in *The Tribune*, several persons participating in a Sikh march were charged under the Indian penal code for “anti-national activities” which included slogans in favour of Khalistan (26 June 2007).

Regarding whether the police regard Akali Dal (Amritsar) party members with suspicion, two academics are of the opinion that members of the Akali Dal (Amritsar) are not, in general, ill-treated (Professor of Anthropology 13 Mar. 2008; Professor Emeritus (Missouri) 27 Mar. 2008). More specifically, a professor of Anthropology at the University of Texas whose area of research includes India stated that, to his knowledge, members of the Akali Dal (Mann) are no longer subject to ill-treatment unless the individual is suspected of terrorism or violent activities by police (13 Mar. 2008). Similarly, a professor emeritus of Political Science at the University of Missouri with extensive knowledge on India stated that outspoken members of the Akali Dal (Amritsar) are not harassed or arrested for participating in party gatherings, publicly complaining about the treatment of Sikhs by authorities or calling for the creation of Khalistan (27 Mar. 2008).

Relocation

47. UK Home Office has the following collated information on Internal Relocation for Sikhs, including those who are wanted for suspected militancy:

20.59 As noted in an Immigration and Refugee Board (IRB) of Canada Response to Information Request, dated 18 January 2006, the Indian Constitution allows for freedom of movement of citizens. A human right activist stated that “theoretically, Sikhs can, like others, move and relocate themselves in any part of India that does not come under excluded or restricted zones like some parts in the northeast of India.”

20.60 After consulting various sources, the same source recorded that:

“Although the majority of Sikhs in India reside in Punjab state...there are many Sikh communities in India located outside of Punjab state... In correspondence to the Research Directorate, a specialist in Indian affairs reported that Sikhs are located in every state in India, and in 579 districts out of a total of 593 districts (23 Nov. 2005). After Punjab state, the next greatest numbers of Sikhs reside in northern Haryana state (1,170,662 persons), northern Rajasthan state (818,420 persons), north central Uttar Pradesh state (678,059 persons), northern Delhi union territory (555,602 persons), northern Jammu and Kashmir state (207,154), central Maharashtra state (215,837 persons), north central Uttaranchal state (212,025 persons) and central Madhya Pradesh state (150,772 persons). Statistics on the Sikh population in India received by the Research Directorate from the World Sikh Organization (WSO), which are drawn from the results of the 2001 Indian census, corroborate the information that most Sikhs live in the states cited above by the specialist in Indian affairs, though the numbers of Sikhs reported by WSO are slightly lower in each state, except for Jammu and Kashmir state, in which the number of Sikhs is considerably higher at 500,000 people... Minorities at Risk, a University of Maryland research project that monitors and analyzes ethnic conflict worldwide, also indicates the presence of Sikhs in the capital Delhi, as do news articles...A professor of Asian studies, with extensive experience in India, commented in a telephone interview with the Research Directorate that Sikh communities are ‘doing quite well’ in various states in India and that they consider these places their home (14 Nov. 2005).”

FINDINGS AND REASONS

48. The applicant travelled to Australia on a valid Indian passport and states that he is a national of India. Having seen a copy of the applicant’s passport, the Tribunal accepts that he is an Indian citizen and therefore for the purposes of the Convention the Tribunal has assessed his claims against India as his country of nationality.
49. In considering the relevant and material facts in this matter I have assessed the credibility of the applicant. When assessing credibility, I am mindful that I must be sensitive to the difficulties often faced by refugee applicants and should give the benefit of the doubt to those who are generally credible but unable to substantiate all of their claims. I have not placed great emphasis on minor inconsistencies of fact which I accept can occur for a variety of reasons unconnected with the credibility of an applicant.
50. However, the Tribunal is not required to accept uncritically any and all allegations made by an applicant. In addition, I am not required to have rebutting evidence available to me before I can find that a particular factual assertion by an applicant has not been made out. I am not obliged to accept claims, which may be plausible and coherent, but are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality (*Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J).
51. The Tribunal found the applicant not to be a credible witness. The applicant’s claims made in his written application are vague and stated in the most general terms. The applicant’s evidence to the Tribunal was evasive, non-specific and inconsistent in many significant details to his written application.
52. At the hearing the applicant had difficulty recalling when he completed his schooling saying that it was in 2007 but that he was not sure. In his application the applicant said

that he completed his schooling in April 2005. When asked about the discrepancy and his inability to recall a key milestone that had occurred in the relatively recent past the applicant said that he had not been required to remember this before. The Tribunal does not accept this explanation.

53. At the hearing the applicant said that his father died when he was [very young]. Yet on his written application the applicant provided details of both his mother and father, referred to working on a farm 'with his parents' and most significantly, claimed that 'government security agencies warned his father about the consequences' and that 'his father asked him to leave the country to avoid detention'. The Tribunal put these discrepancies to the applicant who attributed them to his English, saying that he thought he had to give details of both his parents on the form; that his mother is a 'parent' and that he misused the term as a result of his inadequate English. However as discussed with the applicant, the form makes provision for stating that a relative was 'widowed' which should have indicated that it is not necessary to record a relative if they have died. The Tribunal does not accept that inadequate English satisfactorily explains the discrepancies regarding the information he provided with his visa application and his evidence to the Tribunal in respect to his parents, particularly in relation to the clear written statement made by the applicant that 'the government agencies warned [his] father about the consequences' and it was his father who asked him to 'leave the country to avoid detection'. In the Tribunal's mind this seriously undermines the general credibility of his claims.
54. In his written application the applicant said that he was a member of the Shiromani Akali Dal. He said that he feared harm from government agencies and Hindu extremist groups because of his involvement with this group which advocates for an independent Sikh nation. The applicant said that he was involved in demonstrations and recruited young people to the party. He claims that he has been followed by government agencies and interrogated many times. He claims that flyers were printed by Hindi extremist groups BJP, BHP and RSS alleging that he was a Pakistani agent and that these groups threatened to kill him and members of his family. He said that government security agencies warned his father about the consequences and that his father asked him to leave the country to avoid detention. His evidence at the hearing differed markedly from these claims.
55. At the hearing the applicant said that he was involved in rallies, but could not provide any details about where they were held. He said that he told people about the Sikh Federation but had difficulty providing any details about his involvement with this organisation. He said that they held rallies, but these could not provide information on where and when the rallies happened. He said he told people about the Sikh Federation but was unable to say who he passed this information to and could only name one other person who was involved with the Federation. The applicant had no evidence of his membership of the Federation and said that this was because it is a religious organisation. His description of its beliefs and activities was vague and not consistent with someone who had a significant involvement with an organisation which resulted in him suffering persecution as claimed.
56. When asked at the hearing about the harm he had suffered as a result of his activities in India, the applicant spoke about being attacked 5-6 times, but was unable to provide any details about when or where these incidents took place or who he thought was behind them and says that he was not injured. The Tribunal does not accept that the

applicant was attacked as he has claimed. The applicant also referred to giving speeches and being involved in debates with other political parties, in particular the Congress Party. However, when asked for more details, the applicant was unable to provide information about these events. He described an incident in his home town when he claims he was approached by members of the opposition who wanted to debate him while repairing his bicycle outside the cinema. He said he did not wait when they told him to. The applicant said that these people wanted to be in control and wanted Sikhs to change their religion or be killed off, but did not give any evidence of how he was harmed or at threat of harm as a result of these beliefs. The Tribunal does not accept this claim and considers it implausible that members of the opposition party would seek to debate contentious issues with an individual repairing his bike or that he would be asked to wait while until they return.

57. In his evidence at the hearing, the applicant did not mention Shiromani Akali Dal but referred to working for the Sikh Federation. The Tribunal put to the applicant that he had not mentioned the Sikh Federation either in his employment history or in his claims. The applicant said that he would have referred to it as Babbar Khalsa. When the Tribunal put to the applicant that in his application he said that he was a member of the Shiromani Akali Dal, the applicant said that the organisation was known by all three names. Given the inconsistency in the names the applicant has used to refer to the organisations he claims to have been involved with, together with the vagueness of his evidence in relation to the claimed activities with these groups, the Tribunal does not accept that the applicant has been involved with Shiromani Akali Dal or any Sikh group, nor that he has suffered any harm in the past arising from any such involvement. The Tribunal does not accept that the applicant has any genuine interest in Sikh nationalism. It therefore follows that the Tribunal does not accept that applicant would be of adverse interest to the authorities or Hindu extremist groups because of his membership of one of these groups if he were to return to India.
58. The Tribunal put to the applicant that he did not refer to being followed or interrogated by government agencies, fellow members being killed in an encounter with security forces, claims that he was accused of being a Pakistani agent or that members of his family had been threatened. The applicant said that he was followed by someone and that his mother had received phone calls after he left, asking where he was and saying that they would kill him if he returned. He said that his mother went to the police but they said they could not help her as she did not have any evidence.
59. The Tribunal highlighted the significant differences between the applicant's written application and his evidence at the hearing. In response, the applicant sought to explain them by saying that he wrote what came into his mind at the time, and said what he thought at the hearing and though they may be different, the tragedies are the same. The Tribunal does not accept that the applicant would be unable to recount the key events which he claims to have experienced. Given the concerns previously expressed about the applicant's credibility, the Tribunal does not accept that he faces a real chance of Convention-related persecution on the basis of claimed perceptions that he was a Pakistani spy or agent or that fellow members have been killed in an encounter with the security forces.
60. The Tribunal accepts that the applicant is a Sikh and has considered whether he would face a real chance of Convention-related persecution because he is a Sikh or perceived to be a Sikh. The Tribunal has considered country information set out above about the

treatment of Sikhs in India and in the Punjab where the applicant is from. This information suggests that there have been no recent reports of ill-treatment of Sikhs in Punjab or any basis to suggest that the applicant would face a real chance of suffering serious harm because he is Sikh or seen to be Sikh

61. All of this information leads the Tribunal to the conclusion that the applicant is of no interest to the Indian authorities or to Hindu extremist groups because of claimed involvement with the Shiromani Akali Dal, the Sikh Federation or Babbar Khalsa or for any other reason, nor that he has suffered any past harm as a result of his involvement, or perceptions of his involvement, with these groups. On the basis of the information before it, the Tribunal is not satisfied that the applicant or his family has incurred the disapproval of Hindu extremist groups or government authorities. The Tribunal is also not satisfied that the applicant faces a real chance of persecution for any Convention reason.
62. Accordingly, the Tribunal is not satisfied, on the basis of available evidence, that the applicant has a well-founded fear of suffering Convention-related persecution in India in the reasonably foreseeable future.

CONCLUSIONS

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

DECISION

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