

0907562 [2009] RRTA 1129 (18 December 2009)

DECISION RECORD

RRT CASE NUMBER: 0907562

DIAC REFERENCE: CLF2009/92627

COUNTRY OF REFERENCE: India

TRIBUNAL MEMBER: Wendy Boddison

DATE: 18 December 2009

PLACE OF DECISION: Melbourne

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of India, arrived in Australia [in] June 2009 and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] July 2009. The delegate decided to refuse to grant the visas [in] August 2009 and notified the applicants of the decision and their review rights by letter dated [in] August 2009.
3. The delegate refused the visa applications on the basis that the first named applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] September 2009 for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decisions are RRT-reviewable decisions under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
9. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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

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

17. Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
18. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
19. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

20. The Tribunal has before it the Department's file relating to the applicants. 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.
21. The first-named applicant appeared before the Tribunal [in] November 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Gujarati and English languages. For convenience the Tribunal will refer to the first-named applicant as the applicant.
22. The applicant is aged 53 and was born in [Village A], India. He is Hindu and claimed that before he came to Australia he had worked as a farmer since 1996.
23. The applicant's wife was included in the visa application. The applicant indicated that he had two sons and a daughter living in India.
24. The applicant claimed that he lived at [Village A] This place was dominated by Muslims. There were a few Hindu families who had been living in the area a long time who were farmers. The applicant's family had five acres of land, which they cultivated two times a year. They had problems with one of the Muslims, named [Person A], who lived in the village and dominated the Hindus by interrupting their cultural activities. [Person A] had contacts with the underworld gangs and had been arrested by the police on many occasions. He also had contacts with several politicians.
25. [Person A] was planning to build a factory in the village, which was close to the applicant's land. Due to a water problem at his site he wanted to grab the applicant's land by offering a cheap price, but the applicant's family refused to sell. [Person A] then produced false documents and used his influence to force them to leave. One day [Person A] came to the applicant's home and asked the family to vacate the land, claiming that it belonged to his wife. The applicant's family had a fight with him and he attacked their home on two occasions with his gang. The applicant's family made a complaint to the police, but no action

was taken. Finally the applicant's family managed to sell part of their land to a third party, which made [Person A] very upset. Since then he had tried to kill the applicant and his wife on two occasions.

26. The applicant was fearful that if he returned to India he and his wife's life would be in danger. He would never leave them alone. Further, as aged people it was very hard to live in any other place other than their village. They did not have any relatives and friends anywhere – just his children who were hiding at some of their friends' places.
27. The applicant believed that [Person A] had contacts with an underworld gang. He could chase the applicant and his wife even if they hid. He was their main threat. [Person A] would try to harm the applicant and his wife because they had declined his proposal to sell the land. [Person A] had lost his project, which affected his business, and he lost a lot of money and wanted to take revenge on the applicant.
28. The applicant claimed that he never had any support from the police or government in India. There were no human rights in India and there was no justice for poor people in India.

Evidence at the hearing

29. The applicant stated that his wife had not attended the hearing because she was unwell. She was feeling very bad; she had a cold, the flu and was coughing. She had not sought any medical attention. The Tribunal indicated that if the applicant provided evidence (such as a medical certificate) within seven days that his wife was unwell then it would provide her with another opportunity to give evidence to the Tribunal.
30. The applicant confirmed that he had been employed as a farmer since 1976. He stated that he had never had any other employment other than farming. He confirmed that his monthly salary was 200 rupees. He stated that he had owned the land for 15 to 20 years and he was about 24 when he bought the land. He was able to buy the land because his relatives gave him money.
31. Before he purchased the land he was studying. He was going to the village school and completing Year 11. He then stated that he was aged 19 when he completed Year 11 and then he was unemployed until he purchased the land. A maternal uncle gave him the money. The farming land was situated about half a kilometre from where he lived. He grew cotton, wheat and other crops.
32. The applicant's children were still living in India with their uncle. This was about 10 kilometres from where the applicant's land was situated.
33. The applicant did not know anyone in Australia before visiting Australia. He was asked how he could afford the airfare given that his income from farming equated to less than \$4.00 a month. He said his relatives gave him the money to travel to Australia. His relatives conducted businesses. They thought that as his life was in danger and he should leave.
34. The applicant first started to have problems in India in the past two to three years. The applicant's land was producing very good crops; better than the others in the area, and the other farmers in the area started competing for it. [Person A] wanted his land and used to throw his weeds from his farm onto the applicant's land. [Person A] was keen to grab his land.

35. [Person A] wanted the applicant's land because it was adjacent to the well where everyone got water from and [Person A's] own land did not have direct access to this water. The applicant explained that his land was next to the water, then there was somebody else's land and then there was [Person A's] land. [Person A] had owned this land and farmed this land for more than 20 years.
36. The applicant was not able to explain why [Person A] had only started to put pressure on him to give him this land in the last three years. The applicant stated that [Person A] kept eyeing the property and wanting the property. He did not offer to buy it from the applicant – he just wanted it. He said that he did not offer to buy it because the applicant was only a small poor person who had no power and no money. [Person A] did not do the same thing to the applicant's neighbour (who owned the intervening land). [Person A] seemed to think that because the applicant was poor he would give the land away.
37. The applicant was asked how [Person A] could forcibly take the land if the applicant legally owned it. He responded that [Person A] would just try and take the land by force. He kept forcing him to give him the land. He abused him. He said on one occasion [Person A] tried to physically abuse him, but the applicant ran home. He was verbally abused and slapped. [Person A] would come with his relatives and try to attack the applicant and take the land.
38. The applicant never reported his problems to the police or the authorities. He said he did not want the hassle of going to the police. If you reported a crime to them you had to pay a bribe. They did not listen to what you said and in the end it was too much of a hassle.
39. The applicant was asked what had happened to the land since he had come to Australia, and he responded that it was just lying vacant. The applicant was asked why [Person A] had not taken it over given that he was not there to prevent it. The applicant responded that because he was in Australia [Person A] could not take the land. The Tribunal clarified this with the applicant who stated that [Person A] would be able to grow crops on the applicant's land, but he would not actually be able to take it. He said this was because without the applicant's signature he was not able to take the land.
40. The applicant claimed that [Person A] verbally abused him and physically abused him and threatened to kill him if he didn't give him the land. The applicant was vague about what occurred during these incidents when asked for detail and said he believed [Person A] threatened to kill him about one month before he came to Australia. Even when [Person A] threatened to kill him the applicant did not go to the police. He was so scared and he told his family who gave him the money to come to Australia. The Tribunal put it to the applicant that it was odd that he regarded it as too much of a hassle to go to the police when he was scared of being killed. He said that the police were not his friend and all of [Person A's] relatives were Muslims. It was put to the applicant that the fact that [Person A] was a Muslim would make it easier for the applicant to get help from the authorities. The Tribunal discussed with the applicant the fact that the Muslims were very much in the minority in the area that he lived and further that there had been many complaints about the Muslims not being able to get police protection in his area. The applicant responded that the Muslims were very much in the minority in the area – they were few in number, but they were quite large and physically powerful. The applicant denied that the Muslims had had problems in the area that he lived in.
41. It was put to the applicant that the BJP was in power in his state, and the BJP had a policy of Hindu nationalism and would protect Hindus against Muslims. The applicant said that

politics was different to reality and that in his area the Muslims were supported by the authorities.

42. The applicant was asked why he felt he had to leave India – why couldn't he go and live somewhere else in India. The applicant responded that he needed to go somewhere where he was safe. He was afraid that [Person A] would track him down wherever he went in India. It was put to the applicant that if he left the land [Person A] would get what he wanted. The applicant responded that [Person A] was very strong – he was physically strong and well-connected. He had connections with the police as there were many Muslim police officers. [Person A] was very close to them. It was put to the applicant that the Tribunal's understanding was that there were few Muslim police in the area that he resided. The applicant disputed this. He responded that although the population of Muslims in his area was less than 4 percent, when you counted [Person A] and his relatives and the police that helped him he was quite powerful.
43. The applicant had no other problems with [Person A] apart from the issue involving his land. The applicant did not know what [Person A] wanted to do with the land, apart from grow crops on it.
44. It was put to the applicant that in his Protection visa application he had said that [Person A] was planning to build a factory in the village. He said he did not know anything about a factory, and he did not believe he said this in his Protection visa application. He stated that [Person A] did not interfere with their cultural activities, and he did not know this claim was in his application. He was also asked why his application indicated that he had made a complaint to the police and he said that he had not done this. The applicant stated he had not sold any of his land and stated that he was not aware of the statement that they had managed to sell part of his land to a third party, which made [Person A] upset. The applicant was very vague when asked to explain this discrepancy. He said he did not know anything about this claim. The applicant did not know whether [Person A] had harassed or made trouble with any other villagers in his village. [Person A] had verbally harassed the applicant's wife on the street on two or three occasions. There was never any problem with [Person A] interfering with cultural activities. He then stated that during festivals the Muslims would sometimes harass them.
45. The applicant believed that if he had remained in India he would have been killed by [Person A]. He came to Australia to escape and seek protection. The only reason why [Person A] would kill him was for the land – there was no other reason.
46. The Tribunal then discussed with the applicant the contents of his visitor visa application (signed [in] May 2009), which indicated that he was a businessman who was a partner in the [Company A], which was a distributor and wholesaler of medicine in India. He had claimed in his visitor visa application that he had been in this employment for nine years and two months. That application had been supported by tax returns, company documents and bank accounts, to verify his employment and business in India. This material was put to him pursuant to Section 424AA of the Act. The applicant indicated that he would like to make a written response in relation to what the Tribunal had put to him and the Tribunal indicated that he could provide the written response within 14 days of the hearing.
47. After a short break the applicant stated that he was really afraid to go back to India because he was fearful that [Person A] would kill him. The reason he would do this was because he wanted his land. He claimed that what he had stated in his visitor visa application was false.

The documents that were supporting that application were fraudulent, and he had paid 10,000 rupees in order to obtain these documents. He then stated that he just wanted to be allowed to stay in Australia for a period of two years.

48. No further information, submissions or medical evidence was received from the applicant subsequent to the hearing.

FINDINGS AND REASONS

49. The applicant arrived in Australia on a validly issued Indian passport, and the Tribunal accepts that the applicant is a national of India. The applicant's wife also arrived in Australia on a validly issued Indian passport, and the Tribunal also accepts that she is a national of India.
50. The Tribunal did not receive any medical evidence that indicated that the second-named applicant was medically unfit to attend the Tribunal hearing [in] November 2009. The Tribunal is satisfied that the second-named applicant was invited to appear before the Tribunal to give evidence and present arguments regarding the issues arising in her case. She was advised that "if you fail to attend the scheduled hearing, the Tribunal may make a decision without taking any further action to allow or enable you to appear before it" In these circumstances, and pursuant to s.426A of the Act, the Tribunal has decided to make its decision on the review without taking any further action to enable the second-named applicant to appear before it.
51. The Tribunal had concerns with the veracity of the applicant's evidence and claims. There were significant inconsistencies between what the applicant told the Tribunal and what was contained in his Protection visa application. In particular, the applicant stated that [Person A] did not interrupt their cultural activities, which is what he had claimed in his initial application. The applicant also stated he had not made a complaint to the police, whereas his initial application was that he had. The applicant stated in his Protection visa application that he had sold part of his land, which was what had made [Person A] particularly upset, whereas his evidence to the Tribunal was that he had not sold any of his land. Finally he stated that [Person A] wanted the land to build a factory in his protection visa application yet denied any knowledge of this claim in his protection visa application at the hearing before the Tribunal.
52. The applicant also unable to explain how he could afford to purchase this land and why his relatives had bought this land for him. In addition, his claimed monthly income of 200 rupees equates to less than AUD\$4 per month (see XE Universal currency converter <http://www.xe.com/ucc/> accessed 19/11/2009). If the applicant's relatives had been prepared to pay his airfare and expenses to Australia, it would seem a much better alternative would have been to resolve the land issues rather than to take this expensive alternative. Instead of paying his expenses to come to Australia they could have paid the applicant directly while the land dispute was resolved.
53. Some of the applicant's evidence was illogical. The applicant initially stated that since he had come to Australia the land had just been left vacant. It wasn't until the Tribunal asked if this was the case why didn't [Person A] take over the land that he stated that [Person A] was actually working his land.
54. The applicant also claimed that [Person A], as a Muslim, was protected by the authorities, whereas he, as a Hindu, was not. The US Department of State 2009 *International Religious*

Freedom Report 2009 indicates that the population of India is 80.5 percent Hindu and 13.5 percent Muslim. The 2001 Census indicates that in the district of Gandhinagar, situated in the state of Gujarat, that Muslims make up 3.7 percent of the population (Hindus being 1, 269,766 and Muslims being 50,559). The BJP is the political party that is in power in Gujarat. The BJP is linked to the RSS, which are Hindu nationalists. There have been several incidents of violence in Gujarat between Hindus and Muslims. The reports indicate that it is the Muslims who fail to get police protection in these situations.

55. Since 2002 reports have continued to appear which allege that the Gujarat police force is corrupt, ineffective and highly politicized in favour of the BJP and the Hindu nationalist movement (see: Dasgupta, M. 2002, 'Saffronised police show their colour', *The Hindu*, 3 March <http://www.hinduonnet.com/2002/03/03/stories/2002030303170800.htm> – Accessed 8 August 2006; Dasgupta, M. 2004, 'Ex-Gujarat intelligence chief alleges political pressure on police', *The Hindu*, 2 September; and: Kumara, K. 2007, 'India: Gujarat police murders covered up as terrorist "encounters"', World Socialist Web Site, 9 May <http://www.wsws.org/articles/2007/may2007/indi-m09.shtml> – Accessed 21 September 2007; Singh, S. 2002, 'Gujarat police has lost all interest in work', *Times of India* website, 10 April <http://timesofindia.indiatimes.com/articleshow/6404701.cms> – Accessed 21 September 2007; Gatade, S. 2003, 'Lumpens in the constabulary: Gujarat', *Himal South Asian* website, October http://www.himalmag.com/2003/october/report_4.htm – Accessed 21 September 2007; Verghese, B.G. 2008, 'Patronising corruption', *The Tribune*, 22 August <http://www.tribuneindia.com/2008/20080822/edit.htm#6> – Accessed 13 February 2009

56. Gujarat's Muslims live in terror *BBC News* 9 May 2002 states:

It is now more than two months since the Indian state of Gujarat erupted in bitter religious violence.

Unofficial figures say more than 2,000 people have died, the vast majority Muslims killed by Hindus who constitute more than 80% of the state's population.

Independent reports accuse hardline Hindu organisations of orchestrating the violence with the support of India's ruling right-wing Bharatiya Janata Party (BJP) government.

Fresh deaths are still being reported almost every day and an estimated 150,000 Muslims are still sheltering in relief camps.

...

A short drive from the camp, we found the riots still raging, and a group of police officers standing by watching but doing nothing to stop the violence.

Just yards from where the police were standing, we passed the blood-stained bodies of two Muslim men in the road - one dead, one still dying.

Officials later said the riot started when some Muslim families tried to go back to their homes from relief camps and were set upon by Hindus.

Most of those sheltering in the camps fled from Hindu-dominated areas and local Hindus still seem determined to stop them returning.

In other camps, we met Muslims who had had the same experience.

Abdul Jabar has visible head and face wounds. He says six local men beat him up - the police did nothing to stop them.

"The men were shouting: 'Who do you Muslims think you are? Kill them!' There was a police post at the corner and I screamed for help. I said to the mob, the police are right there! They said: 'We don't care - they're on our side.'"

Bias charge

From the beginning, Muslims have accused the police, overwhelmingly Hindu, of deliberately standing by and failing to protect them.

This was confirmed by an independent report by British officials.

Now more than two months later, Muslims say it is still the case.

But it is hard to know if this is still the result of direct orders from political leaders or a symptom of the general collapse of law and order.

RK Mishra of *The Pioneer* newspaper is a veteran investigative journalist. He says the authorities have simply lost control.

"It's developed momentum of its own. When you send a signal down the law and order machinery saying you have to look the other way, it starts looking the other way."

Hindu hardline drive

But while some see the continuing violence as a lack of control - others see something far more sinister.

Many say privately that the violence is part of a careful plan by Hindu hardliners supported by the BJP, to drive Muslims out of mainstream areas.

...

http://news.bbc.co.uk/2/hi/south_asia/1977246.stm

57. The rule of the BJP in Gujarat and its electoral success has been the subject of much controversy and the Gujarat BJP government of Chief Minister Narendra Modi has been accused of encouraging an atmosphere of social intolerance towards Muslims and even of playing an active role in orchestrating attacks on Muslim communities during the Gujarat riots of 2002. (*Human Rights Watch* 2002, *We Have No Orders to Save You: State Participation and Complicity in Communal Violence in Gujarat*, Vol.14, No.3, April).
58. More recently on 27 July 2008 *India Today* reported that 16 bombs had exploded in the city of Ahmedabad in Gujarat resulting in 49 deaths and over 145 injured persons. According to the report a group named 'The Indian Mujahideen' claimed responsibility for the bombings and stated in emails to media organisations that it was "avenging the killings of Muslims in Gujarat in 2002". *India Today* reported that police were on high alert. According to the AFP security patrols by "heavily armed combat troops" were reported to have been deployed in response to the incident. *Agence France* reported that there were some concerns of "revenge attacks on Muslims". However, according to the report many Muslims "were optimistic the city would remain calm, mainly because Gujarat's right-wing Hindu nationalist chief

minister, Narendra Modi, was only re-elected last year so had no need to whip up anti-Muslim sentiment” (‘16 blasts in Ahmedabad; 49 dead, 145 injured’ 2008, *India Today Group Online*, 27 July

http://www.itgo.in/index.php?option=com_content&task=view&issueid=&id=7098§ionid=9&secid=0&itemid=1 – Accessed 8 January; Gupta, P. 2008 ‘Gujarat Muslims hope for no Hindu backlash after bombings’, *Agence France-Presse*, 27 July).

59. Further, the applicant’s visitor visa application indicated that he was a partner in the business, [Company A] who were the wholesalers and distributors of medicines in India. He submitted his drug licence, his tax certificates, partnership deeds, certificate of incorporation for the business, including his tax returns for three years and his bank statements. This material cast considerable doubt on the applicant’s claims. The Tribunal does not accept that the detailed and extensive supporting documentation was fraudulent and obtained as a result of paying a bribe.
60. Based on the inconsistencies between the applicant’s evidence to the Tribunal and his Protection visa application, the vagueness in his oral evidence, the country information that is at odds with his claims, and finally the material in his visitor visa application, the Tribunal does not accept that the applicant’s only income in India is as a farmer. The Tribunal does not accept that a Muslim neighbour is attempting to seize his land from him and threatening to kill him. The Tribunal does not accept that the applicant and his wife have been verbally and physically abused by a Muslim neighbour who was well-connected politically. Finally the Tribunal does not accept that the police would fail to protect the applicant in these circumstances. The Tribunal finds that the applicant does not have a well-founded fear of persecution.
61. Further, even if the Tribunal was to accept that the applicant was being harassed by a neighbour who wanted his land, the essential or significant reason why [Person A] wants the applicant’s land is because of its amenity to water. [Person A] is not motivated by the fact that the applicant is a Hindu, but rather he is motivated by the fact that the applicant has something that [Person A] wants. Thus the Tribunal finds that [Person A] is not motivated by the applicant’s race, his nationality, his religious beliefs, his political opinions, or because of his membership of a particular social group. Further the authorities in India would not discriminatorily withhold protection from the actions of [Person A] for any Convention reason. Therefore the Tribunal finds that the applicant firstly does not have a well-founded fear of persecution and secondly, even if the Tribunal was to accept the applicant’s account, his fear of persecution is not for reasons of any Convention ground and he is not a refugee within the meaning of the Convention. Consequently the Tribunal finds that the applicant’s wife does not have a well founded fear of persecution for a Convention reason.

CONCLUSIONS

The Tribunal is not satisfied that any of the applicants is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

DECISION

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the Migration Act 1958.
Sealing Officer's I.D. RCHADW