

1220700 [2013] RRTA 790 (12 November 2013)

DECISION RECORD

RRT CASE NUMBER: 1220700
DIAC REFERENCE(S): CLF2012/149613
COUNTRY OF REFERENCE: India
TRIBUNAL MEMBER: Bruce Henry
DATE: 12 November 2013
PLACE OF DECISION: Brisbane
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) 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 (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of India, applied to the Department of Immigration for the visa [in] July 2012 and the delegate refused to grant the visa [in] November 2012.

RELEVANT LAW

3. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

Refugee criterion

4. 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).
5. 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.
6. 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.
7. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
8. 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)). Examples of 'serious harm' are set out in 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.

9. 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.
10. 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.
11. 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 being persecuted for a Convention stipulated reason. 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.
12. 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.
13. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of 'practicable', to expect him or her to seek refuge in another part of the same country. What is 'reasonable' in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.

14. Harm from non-state agents may amount to persecution for a Convention reason if the motivation of the non-State actors is Convention-related, and the State is unable to provide adequate protection against the harm. Where the State is complicit in the sense that it encourages, condones or tolerates the harm, the attitude of the State is consistent with the possibility that there is persecution: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [23]. Where the State is willing but not able to provide protection, the fact that the authorities, including the police, and the courts, may not be able to provide an assurance of safety, so as to remove any reasonable basis for fear, does not justify an unwillingness to seek their protection: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [28]. In such cases, a person will not be a victim of persecution, unless it is concluded that the government would not or could not provide citizens in the position of the person with the level of protection which they were entitled to expect according to international standards: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [29]. Harm from non-State actors which is not motivated by a Convention reason may also amount to persecution for a Convention reason if the protection of the State is withheld or denied for a Convention reason.
15. Whether an applicant is a person in respect of 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.

Complementary protection criterion

16. 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').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act. 'Cruel or inhuman treatment or punishment' for the purposes of s.36(2A)(d) is exhaustively defined in s.5(1) of the Act to mean an act or omission by which severe pain or suffering, whether physical or mental, is inflicted on a person, or pain or suffering, whether physical or mental, is inflicted on a person, so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature. The pain or suffering must be intentionally inflicted.
18. However, 'cruel or inhuman treatment or punishment' does not include an act or omission which is not inconsistent with Article 7 of the International Covenant on Civil and Political Rights (the ICCPR), nor one arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the ICCPR. Article 7 of the ICCPR prohibits torture and cruel, inhuman or degrading treatment or punishment.

19. The final type of significant harm listed in s.36(2A) is degrading treatment or punishment: s.36(2A)(e). Degrading treatment or punishment is exhaustively defined in s.5(1) of the Act to mean an act or omission which causes, and is intended to cause, extreme humiliation which is unreasonable.
20. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Section 499 Ministerial Direction

21. 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.

CONSIDERATION OF CLAIMS AND EVIDENCE

22. 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.
23. The issue in this case is whether the applicant has a well-founded fear of persecution on the basis of his membership of a particular social group, being people who have married someone from a higher caste. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
24. The applicant arrived in Australia [in] March 2009 as a dependent of his wife, who held a student visa. The Tribunal notes that the Departmental files in relation to the student visa applications by the applicant and his wife show that her father provided the evidence of financial support necessary for the visas to be granted. It is also clear from those files that the applicant was included in his wife's applications, and that the financial resources required were for the support of both the applicant's wife as the primary visa applicant and himself as her dependent.

Protection visa application

25. At the time of lodging the application, the applicant was [age deleted]. He claims that he was born in Ahmedabad, Gujarat, and is an Indian citizen by birth. The applicant indicates that he speaks, reads and writes Gujarati and reads and writes English. He claims to belong to [Caste 1] ethnic group and claims to be Hindu in religion. He states that he came to Australia with his wife but has been separated from her since July 2011.

26. The Tribunal notes that in his protection visa application the applicant provided an address in [Town 2] and in response to the question ‘Give details of all addresses in Australia where you have lived for any period’ he provided 2 addresses at which he said he had lived from March 2009 until the date of the application, both of which were in [Town 2]. He did not provide any address in [City 3] in answer to this question.
27. The Tribunal also notes that the applicant stated in his application that he had lived at the one address in India from 2002 until March 2009, [City 4] , which was the address provided by his wife in her student visa application as the residential address both for herself and her father, who provided the funds for her study.
28. In answer to the question on the application form ‘Give details of all your past employment’ the applicant stated that he had worked [in a profession] from 2005 to 2006. No other employment details were provided. The Tribunal notes that the [business] is located about 28kms from [location deleted].
29. The applicant’s application was accompanied by a written statement in which he said:

I was born in a lower caste family in India. After finished my higher secondary school certificate I have done one year [studies] and worked in [business]. I arrived in Australia as dependent with my wife. We got married in India without our parents consent. Our relationship has developed immensely over the time we have been together and became soul mate. We had deep understanding that goes beyond words. But our relationship could not accept by her family. When we got married it became a big issue in my local area. The higher caste fundamentalist threatened to kill me. They attacked my family members and I had to limit my movement in the town. Then we decided to move to Australia to avoid any persecution. We were leading happy and prosperous family life in tranquillity until my wife contacted to her family. After that I noticed she has changed. I was shocked and terrified after noticed her behaviour. When I tried to talk through the issue she refused to listen any suggestion and forced me leave the home. She asked me to singe divorce paper but I refused to singe it. [sic]

My father rang me and old me that a group of thugs went to my place and ransacked my parent's house and my parents were dashed to the ground and kicked. They warned my family that if I ever go back to India they will kill me. I have no idea what she told her family in India about me which created a big issue. My family members are hiding in India because of the fear of further violence. This higher caste people are ferocious and they have very little value for human life and well connected with current BJP government.

I got few phone calls from private number and asked me where I am living now when my visa is going to expire, I am terrified can not sleep at night at all. My family members are blaming me for all difficulties they are going through and they do not know when it is going to be over.

My family warned me the gravity of the situation and said that I should not go back to India in near future. In this kind of situation is uncontrollable by the authorities and could lead to serious harm perhaps death.

I am still going through emotional and psychological effects of all that I have been through last couple of years. I am traumatised over my helpless situation. Therefore I am seeking protection in Australia.

30. [In] December 2011 the applicant was interviewed by the department. A copy of the record of that interview appears on the departmental file.

Tribunal file

31. The applicant lodged an application for review at the Tribunal [in] December 2012. The applicant attached to the review application a full copy of the decision record of the delegate. The decision record stated in part:

- *The applicant confirmed at the beginning of the interview that his address in India was the address listed on the back page of his passport ... He advised that he was born into that house, he lived there with his [family], and they still live at that address.*
- *The applicant claimed that he decided to come to Australia in 2008 after he married his wife. He stated that she belonged to a higher caste and their parents did not approve of the marriage, especially her family.*
- *The applicant claims he was threatened by his wife's father while he was in India. They were now aware that they had married, and when the applicant went to his wife's house after being married for three months, her father raised his hand to him.*
- *The applicant claims he tried to lodge a complaint against his wife's father, but the police did not want to know about it as her father was a member of the BJP.*
- *The applicant was asked about the threats he had received in India and he stated that he only received threats from his wife's father. He claims he raised his hand to him and threatened him on two occasions when the applicant went to his wife's house.*
- *It was put to the applicant that in his written claims he stated that he had been threatened by higher caste fundamentalists, and he was asked to explain the inconsistency in his testimony. He stated that an anti-social element connected to his father-in-law beat his family members one and a half years after the applicant left India. He claims they were admitted to hospital after the attack, they tried to lodge a complaint with the police but they are corrupt and if you give money to them, they can't touch you.*
- *The applicant was asked why his wife's father is still interested in harming him if he and his wife are now separated. He stated that they are separated here, but her family do not know, they think they are still together.*
- *The applicant was asked why he returned to India in 2011 if he feared harm, and he stated that [Relative A] was seriously ill at the time.*

...
At interview the Refugee Convention was explained to the applicant and he was asked which ground he believed applied to him. He stated "ethnicity" as he fell in love with a girl from a higher caste. As ethnicity is not a ground under the Convention, I have considered whether the applicant's claims have a convention nexus.

The applicant advised both in his written claims and at interview that his father-in-law has links to the BJP political party in India. He claims that as a result, the police will not listen to his complaints or protect him from his separated wife's family should

he return to India. At interview the applicant was asked about his father-in law's role in the BJP and he stated that he was just a member of the party. There is no evidence to suggest that the applicant's father-in-law holds a prominent role in the BJP, or that he is in any way politically active in their home state of Gujarat. The applicant has not put forward claims that he has had any involvement with politics in India, and there is no reason to believe that he will be imputed with a political opinion just because his father-in-law was against the applicant's marriage to his daughter. I note that the applicant and his wife have been separated for over one year, and that the applicant's father-in-law in fact funded his daughter's travel and study in Australia, while the applicant was a dependant on her Student visa application. Based on this information, there is no evidence to suggest that the applicant would in fact be of continuing interest to his father-in-law. At interview it was put to the applicant that I found it unlikely that his father-in-law would support and fund his daughter's Student visa for Australia if he didn't approve of their relationship, and he stated that he begged a migration agent in India to add him as a dependant applicant without the knowledge of his father-in-law. ...

Secondly, I have considered whether the applicant's claims could be considered under the Convention ground of membership of a particular social group. The applicant claims to be of a lower caste to his wife, and therefore, her family does not approve of their relationship. In his written claims the applicant also states that higher caste fundamentalists threatened him because of their marriage. Nevertheless, at interview the applicant was asked about the threats he received in India and he stated that only his wife's father threatened him.

The applicant claimed at interview that he is a member of [Caste 1], however he did not articulate which caste his separated wife belongs to. He did not put forward claims that he has received any threats or harassment in the past because of his caste. He has only put forward claims that his wife's family do not approve of him on that basis. I note that the applicant is now separated from his wife, they have not seen each other for over a year, and therefore it is unlikely they will reconcile.

Country information

32. The Tribunal has before it information on whether the caste system is problematic for persons of upper and lower castes marrying each other in Gujarat. An article in *The Indian Express*¹ states that there is a “*deep-rooted caste divide in the Gujarati society*” and “*Gujarat, by and large, is an ultra casteist state where marriage between two sub-castes is taboo*”. This is said to have spurred the creation of a marriage bureau exclusively for Scheduled Castes. The article adds that “*Several incidents of marital discord due to caste mismatch have been reported in the state*”, and mentions the incident of a highly educated girl from the lower Vankar caste eloping with a less educated boy from a higher caste. The boy’s family refused to accept the girl and asked her to return to her family. The boy’s family is said to have reasoned that the marriage would make it harder for their own daughters to marry.

¹ Didyala, A 2009, ‘Gujarat has its first exclusive marriage bureau for Scheduled Castes’, *Indian Express*, 26 January <<http://www.indianexpress.com/news/gujarat-has-its-first-exclusive-marriage-bureau-for-scheduled-castes/415319/>> Accessed 30 September 2013

33. On the other hand, a 2011 paper presented to the Population Association of America² claims that Gujarat is the state with the third highest percentage of women reporting that their husband is from a different caste. Gujarat has 8.2%, only surpassed by Punjab with 12.2%, and West Bengal with 9.3%. The national average is 5%. Punjab, however, also had one of the highest rates of honour killings in India, suggesting that prevalence does not necessarily mean acceptance.
34. Also of note is the 2009 marriage fair in Gujarat which provided an opportunity for people to choose life partners from different castes. The caste groups were, however, limited to the Brahmins, Patels, Vaishnav and Jains. An organiser of the event quoted in *Daily News and Analysis* stated that “*The idea of this mela is to gather maximum candidates along with their parents at one place in order to give them a wider choice in choosing their life partner irrespective of their castes*”³. The author of the article states that “*Gujaratis are increasingly becoming open to out-of-caste marriages*”.
35. Further, in relation to the status of [Caste 1] in Gujarat in comparison to other groups/castes according to a 2000 study in the journal *Economic Geography*⁴, [Caste 1] rank in the upper-middle. [Information deleted]
36. A 2004 Times of India report⁵ stated:
- [Information deleted]*
- [Information deleted].*
37. [Information deleted].
- [Information deleted].*
- The community's supremacy extends to politics and the powerful cooperative and education sectors in the state. [Information deleted]. Their drift towards the BJP in the late '80s catapulted the party to power in 1995. The community's support continues to be crucial for the party's fortunes in the state.*

CONSIDERATION OF CLAIMS

38. As noted above, the applicant gave evidence to the Tribunal at a hearing. The Tribunal found him to be evasive and unconvincing in his evidence.
39. The applicant’s claims centre on the problems which he claims to have experienced and which he continues to fear should he return to India as a result of his marriage to his wife, from whom he separated sometime after their arrival in Australia. He claims that

² Singh, D & Goli, S 2011, ‘Exploring the Concept of Mixed Marriages in Indian and selected states: First Time Evidences from Large Scale Survey’, *Population Association of America 2011 Annual Meeting Program*, Princeton University website, p.3 <<http://paa2011.princeton.edu/download.aspx?submissionId=111966>> Accessed 19 March 2012

³ Krishnan, S. 2009, ‘At this marriage fair in Gujarat, you can look beyond caste’, *Daily News and Analysis*, 16 December <<http://www.dnaindia.com/india/1324222/report-at-this-marriage-fair-in-gujarat-you-can-look-beyond-caste>> Accessed 30 September 2013

⁴ [Information deleted]

⁵ [Information deleted]

these problems are due to the difference in the castes of himself and his wife. The Tribunal will examine these claims below. Given that his marriage is claimed to be the reason for the treatment that he fears should he return to India, the Tribunal considers it appropriate to comment firstly on his evidence as to his relationship with his wife.

The applicant's relationship with his wife

40. The applicant told the Tribunal that he had first met his wife in 2007 on a bus in the city in which he was working as [occupation deleted]. He said he travelled on the same bus each day, and saw his future wife who used to travel on the same bus to school each day. He said that one day when the bus was very crowded he had kept a seat for her.
41. The applicant told the Tribunal that when he met his wife in 2007 she was '[age]' years old, and he was [age deleted]. He told the Tribunal that he and his future wife initially communicated with their eyes, and that she accepted his proposal of marriage when he asked her at the end of 2007. He said that she was about [age deleted] when they married in 2008.
42. As the documents provided by the applicant to the department indicate that his wife was [age deleted] when he said that they met in early 2007, and [age deleted] when he claims that they married, the Tribunal asked him whether he knew how old his wife actually is. He responded that he did not ask her age, and did not really know how old she is, just made an assumption based on her appearance.
43. The Tribunal then asked the applicant when his wife had finished school, and what she was studying when he met her. He replied that he did not ask her. He said he knew she took the bus, so he kept a seat for her, but did not ask her anything.
44. When the Tribunal then asked the applicant how he had come to ask her to marry him, he responded that he had not asked her, she had asked him. He said that she asked him when they were sitting in a garden one day asking about each other. She knew he was [Caste 1], a lower caste person, but they had not discussed their families' attitudes to the marriage.
45. The Tribunal found the applicant's evidence about the circumstances of their meeting and the development of their relationship not credible, particularly given the applicant's own evidence of the attitudes to inter-caste marriage, as well as the available country information. The Tribunal also considers that the applicant's inability to answer basic questions about his wife's age, her family, and her studies make it very difficult to accept that theirs was a genuine marriage.
46. The applicant's evidence about his life with his wife in Australia raises further concerns for the Tribunal about the nature of their relationship and his credibility in general. He initially told the Tribunal that while he could not remember how long they were together in Australia, he was sure that they were together until she returned to India to visit her family, and that when she returned to Australia after that visit 'we are not together'. He said that they had come to Australia together in March 2009, and that his wife had returned to India in 2010. He said that they lived together at [a suburb] in [City 3], and were together the whole time prior to their separation.

47. The Department's movement records confirm that the applicant's wife left Australia in July 2010 and returned in September 2010.
48. The applicant said that after his wife returned from India she called him and told him that their relationship was over.
49. The Tribunal then asked the applicant whether he was living with his wife when her second student visa application was lodged in October 2010. He said that he was, and when the Tribunal pointed out to him that the relevant application form gave an address in [Town 1] for both he and his wife, he said that she was actually still living in [City 3] and that he worked in [Town 2] and visited her on the weekends.
50. He said that his wife had to stay in [City 3] because she was studying there. He was unable to tell the Tribunal where in [City 3] she was studying.
51. The Tribunal pointed out to the applicant that this information conflicts with the answers given in his protection visa application stating that he had lived in [Town 2] from his arrival in Australia in March 2009 until the date of the application. He said that he could not remember when he had gone to [Town 2] to live, but again said that he had lived in [City 3] with his wife when they first arrived.
52. The Tribunal does not accept that the applicant and his wife lived together in Australia until she returned from visiting her family. His evidence on the matter was contradictory and self-serving. As noted above he initially told the Tribunal that he had lived in [City 3] with his wife until she returned from India, and did not refer to living in [Town 2] until the Tribunal brought to his attention the addresses he had provided to the Department.

The applicant's claim for protection

53. The applicant claimed membership of [Caste 1] in his visa application, and confirmed in his evidence to the Tribunal that this is the caste to which he belongs. He said that his wife is from the Brahmin case, and when asked by the Tribunal about their relative positions in Gujarati society he said that the Brahmins are the highest caste while [Caste 1 is] 'way down' in the hierarchy.
54. The country information before the Tribunal, as set out above, is that [Caste 1] is in fact one of the higher castes in Gujarat. The Tribunal put that information to the applicant, who repeated that the Brahmins are a higher caste than [Caste 1]. The Tribunal notes that while this may be true, the country information available to it does not support the applicant's claim that [Caste 1 is] a low ranking caste in Gujarat.
55. The applicant said that he and his wife married at a ceremony organised by a friend of his in a courthouse in [City 4]. Neither his family nor his wife's family knew about the wedding, and after the ceremony he and his wife went away for 2 days together. He said that his wife was living at home with her family at this time, and he did not know what she had told them about where she would be for the 2 days that they were away. He said that at this time she was still going to school and was [age deleted].
56. The applicant said that he and his wife were traveling in a bus on their way home from their two days away when her mother saw her and because she had the red (henna) colouring in her hair knew that she had married. He said that his mother followed them onto the bus and was very angry with her daughter, saying that when she returned home she would 'break her legs'. He said that his wife returned home, and her parents would then not allow her to leave the house or to go to school.
57. The applicant said that with the help of a friend of his wife's whom he had also met on the bus he arranged to meet her. They decided that if they stayed in India, they would not be able to continue to see each other, as her parents would not allow it. A friend of his suggested that they should go to Australia, and they decided to do that. His wife told her parents that she would not see him again, and she then arranged to sit her IELTS exam and went to an agent and asked him to 'put her file in for Australia'. He said that neither his family nor his wife's knew that they had applied to go to Australia, the only people who knew were he and his wife, the agent, and one other friend. He said that his wife had not considered coming to Australia before they were married, and only decided to do so to avoid the persecution they would suffer in India because of their marriage.
58. The applicant told the Tribunal that as he and his wife did not have any money, the agent agreed to pay all the money needed for their application. He said that the agent agreed to do this as he was a very rich man, and the applicant had sent 'a lot of people' to him for visa services while he was [working]. He said that he and his wife agreed repay the money when they were in Australia.
59. In response to questions from the Tribunal, the applicant said that they had not repaid the money to the agent, but that was not a problem because 'he is very rich and feels he has helped a friend'.

60. The Tribunal asked the applicant what he and his wife had planned to do after marrying. He said that they had planned to tell her parents about the wedding after it had occurred, but her mother had seen them on the bus before they had an opportunity to do that. He said that had not expected problems when they told her parents, as they were 'soft hearted people' and would probably accept the marriage. He said that he was surprised by their reaction when they learned about the marriage.
61. The applicant said that about two weeks after her mother had seen them on the bus, he was attacked by a group of men when walking home from the bus after work. He said that the people who attacked him had their faces covered, but he knew that they were from the BJP because her parents would have brought BJP people [where] he worked to see him and follow him home. He was also sure that they were BJP people because he has no other enemies and carried no money. He had used that road all the time and no one had attacked him before.
62. As noted above, the applicant stated in his application that he feared '*higher caste people*' because they '*are ferocious and they have very little value for human life and well connected with current BJP government*'. He said that these people had '*attacked my family members and I had to limit my movement in the town*'. After he came to Australia '*My father rang me and told me that a group of thugs went to my place and ransacked my parent's house and my parents were dashed to the ground and kicked. They warned my family that if I ever go back to India they will kill me.*' When interviewed by the Department he said that he feared returning to India because his father-in-law's links to the BJP political party in India would make it unsafe for him to live there.
63. The Tribunal asked the applicant if he had ever spoken to his wife's father, and he answered 'no'. He was then asked if her father had ever threatened him, and he said that he had threatened him once, after the attack on him described above. When the Tribunal reminded him that he had said that he had never spoken to his wife's father, he said that the father had seen him on the bus and recognised him, and then had come to [where] he was working and said that '*if I kept living with his daughter he would have me killed*'. In answer to a question from the Tribunal, he confirmed that he was not living with his wife at the time because she was living at home with her parents.
64. When the Tribunal returned to this issue later in the hearing, the applicant stated that he was sure that he had only met his wife's father once, when he came to [where] the applicant worked and threatened him.
65. As noted above, the applicant told the Department that his wife's father was an ordinary member of the BJP. He told the Tribunal that he was a member of the BJP and worked fulltime for the party. He said that he had an office at the BJP headquarters in Gandhinagar, and did not other work.
66. The applicant told the Tribunal that when he returned to India in 2011 to visit his family he did not have any problems because he had grown a beard and moustache so that people would not recognise him. He said that he did not visit his family home, but arranged for his parents to meet him in a hotel. He said that he returned to India because his family had been attacked and his father was seriously injured.

Information from the applicant's student visa applications

67. The Tribunal put to the applicant information contained in the student visa application files for he and his wife as follows:
- His wife had in fact taken her IELTS test [in] 2007, some 9 months prior to their marriage – he responded that his wife had not told him this, and ‘it may have been a secret that she didn’t want to tell me’;
 - His wife’s father had provided the necessary financial guarantees for her student visa application – he responded that the agent had organised this, because he knew her parents ‘very well’ as he used to meet her father very often, and he had told her father that his daughter may wish to go to America to study. When pressed on this matter by the Tribunal, he then said that the agent did not know her father very well, but they used to talk from time to time. He said that her father had been happy to provide his financial details to the agent, because he was very persuasive, and ‘in India if you speak nicely to someone they will do what you ask’;
 - According to documents attached to the application, his wife’s father is a farmer who has owned his farm for [many] years – he responded that this did not mean that he was not being truthful about his father-in-law’s BJP activities, as ‘*he could be farming as well*’, and it was ‘*possible that he has been a farmer for [many] years, but farmers can do other things*’; and
 - The application form for their second student visa application lodged in Australia in 2010 gave an address in [Town 2] for both he and his wife – as noted above, the applicant said that she was actually still living in [City 3] and that he worked in [Town 2] and visited her on the weekends. His evidence was also that he and his wife had not lived together after her return from India in September 2010.
68. The Tribunal notes that the explanations provided by the applicant for the provision of the financial guarantees by his wife’s father are inconsistent with the information provided to the Department at his interview, where he said that ‘*he begged a migration agent in India to add him as a dependant applicant without the knowledge of his father-in-law*’.
69. The Tribunal also notes that the explanation that the applicant provided in his evidence for his visit to India in 2011, that he returned because his family had been attacked, conflicts with the information he provided at his departmental interview, where he said that he returned because [Relative A] was seriously ill. The Tribunal put this inconsistency to the applicant, who responded that it was ‘possible’ that both stories were true, as [Relative A] may have become ill when hearing about the attack on his family.

Discussion of claims

70. As set out above, the Tribunal has found the applicant’s evidence to be contradictory and self-serving. He has made inconsistent statements about his marriage to his wife, his contact with her family, the process of obtaining his and his wife’s visas for Australia, how her father’s financial assistance for that application was obtained, the problems he suffered in India, his relationship with his wife both in India and in

Australia, the reasons for returning to India in 2011, the end of his marriage, and the basis of his fear of return to India.

71. Because of these inconsistencies in his evidence, the Tribunal does not find the applicant to be credible. It does not accept his evidence that he is from a lower caste than his wife, that he experienced persecution in India because of his marriage, or that he will face a real chance or risk of harm in the future for that reason. He has provided inconsistent and conflicting stories to the Department and the Tribunal as to who he claims was responsible for attacking him in India, stating in his application that it was '*higher caste people*', in his departmental interview that it was his wife's father who had struck him on two separate occasions when he visited her home, and at the Tribunal that he had never visited her home but had been attacked by masked men he believed to be from the BJP. His evidence about his wife's father was equally inconsistent and conflicting.
72. The applicant also provided conflicting explanations to the Department and at the hearing as to why he returned to India in 2011 given that he claimed there had been threats made against his life and attacks on his family. The Tribunal does not accept his claims about his wife's father's standing in the BJP, and does not find the applicant's claims to fear persecution in India credible at all.
73. For the reasons given above, the Tribunal is not satisfied that the applicant faces a real chance of serious harm for a Convention reason, or that he is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
74. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant faces a real risk of significant harm should he return to India, and finds that he is not a person in respect of whom Australia has protection obligations under s.36(2)(aa), again because it does not accept his claims to fear violence should he return to India, whether at the hands of higher caste people or BJP people or his father-in-law.
75. 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

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

Bruce Henry
Member