

**1106976 [2011] RRTA 985 (28 November 2011)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1106976

**DIAC REFERENCE(S):** CLF2011/12080

**COUNTRY OF REFERENCE:** India

**TRIBUNAL MEMBER:** Mary Urquhart

**DATE:** 28 November 2011

**PLACE OF DECISION:** Melbourne

**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] March 2009 and applied to the Department of Immigration and Citizenship for the visa [in] January 2011. The delegate decided to refuse to grant the visa [in] June 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] July 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.

#### **The primary application**

20. The Department file reveals and the applicant confirms that he first arrived in Australia as a dependant of his wife's Student visa valid until [a date in] June 2011.
21. [In] August 2010 the applicant's wife advised the department that the marital relationship with the applicant had ceased. [In] September 2010 the applicant's dependant Student visa was cancelled under s.116(1)(a).
22. The applicant was granted various bridging visas valid until [a date in] February 2011. On [this date] the applicant was granted a bridging visa E.
23. The applicant states he was born [in] Punjab, India. He speaks Punjab, Hindi and some English. He states he is of Sikh religion and from the Jatt Sikh ethnic group. He states he is now separated from his wife. He has family living [in] Punjab, India.
24. The applicant claims that his wife's parents did not consent to or give permission to them to marry. He claims that since they have been in Australia his wife's parents have threatened his parents saying they will not allow the applicant to live if he returns to India. The applicant fears they will kill him on his return to protect their honour. He believes the authorities have never intervened and will not protect him.
25. The delegate found no claims or evidence to indicate the applicant's fear of harm was Convention based. The application was refused.

#### **The Review**

26. The applicant appeared before the Tribunal [in] November 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages.

*Summary of evidence at the hearing*

27. The applicant confirmed his name and date of birth as [date deleted: s.431(2)]. The applicant said he was born [in] Punjab, India. He said he was of the Sikh religion and Jatt Sikh ethnicity. He said he spoke Punjab, Hindi and some English.
28. The applicant said he first arrived in Australia [in] March 2009 as a dependent of his wife. He gave evidence that he married his wife in India [in] March 2008. The applicant said his wife's religion was the same as his, Sikh, and that she was Jatt Sikh by ethnicity. The applicant said he was now separated from his wife.
29. The Tribunal asked the applicant when he and his wife separated. He replied 2010. The Tribunal asked him to be more specific with the date. The applicant responded after they arrived in Australia they were together for two months; he went to Adelaide looking for work, came back in June, then went to Brisbane, couldn't get a job and then went to Canberra. After this there were arguments between them and he said they separated [in] August 2010.
30. The Tribunal asked the applicant where in India he lived after he was married. He replied Chandigarh. The Tribunal asked the applicant what work if any was he doing before he came to Australia. He replied he was not working, he was free. The Tribunal asked who supported him for the year he was in India after his marriage. He replied "his family" He said he lived with them until he was married and then lived with a cousin after he was married.
31. The Tribunal asked the applicant when the last time he spoke to his family was. He replied 'yesterday' The Tribunal asked if he told them about the hearing today. He said he did. The Tribunal asked when he last spoke to his former wife. He replied in December 2010 when his visa was cancelled. The Tribunal asked the applicant if at that time he was illegally in Australia. He replied he did not know he was illegally here because he received no letter to that effect.
32. The Tribunal reminded the applicant of his evidence that he came as a dependent on his wife's Student Visa and asked whether his wife's father was supporting their visa in any financial way. The applicant said he was not. The applicant said an agent said he had to show money from his wife's parents' side. The applicant told the agent he was not speaking to his wife's parents because they married without her parent's consent. He said he couldn't "get this". The Tribunal asked the applicant if he was saying that any information that his former wife's father was supporting their visas financially was false. The applicant replied it could be that the agent got false documents because you can do so in India.
33. The Tribunal asked the applicant what his wife did for the year after they were married in India. He replied she was preparing her English test and finishing her graduate studies. She was not working. The applicant gave evidence that his father was supporting both of them.
34. The Tribunal asked what his wife's family were thinking their daughter was doing during the year after they married. The applicant said after they married she was in college and he was with his cousin. The Tribunal asked the applicant if he was saying they were not together. The applicant said after their marriage they 'were together living at his cousin's place'.
35. The Tribunal asked if, in that year whilst in India, the applicant's wife's family came to visit. The applicant replied they didn't know. He said he and his wife came to Australia to be safe from her family. The Tribunal asked if his wife's application to study in Australia was a sham, just so they could get away from her family. The applicant replied "no" He said after

they married they thought they would have a better future in Australia. He said they were fearful of her family, that they may find them and kill them.

36. The Tribunal asked the applicant who made the threat to kill him. The applicant replied his wife's father and brother. The Tribunal asked when the threat was made. The applicant said before they married they "knew and mostly threatened him". He said her father threatened him in mid-December 2007.
37. The Tribunal asked the applicant what the circumstances were when her father threatened him. The applicant said he loved his wife and wanted to marry her but her father didn't want her to marry of her own will. The applicant said he spoke to her parents and told them that they could live together nicely. Her father replied that if they married he would kill him. The applicant said they then made a plan, they married and lived together.
38. The Tribunal asked the applicant if they belonged to the same caste. The applicant said he belonged to the Malhi caste and his wife belonged to the Aulakh caste.
39. The Tribunal referred to the applicant's claim that the threat was an honour killing and asked why he said this. The applicant replied his wife's father said he had insulted them by marrying her without permission.
40. The Tribunal asked the applicant what if anything he knew about honour killing. He replied anybody or girl who married without permission, they kill them. The Tribunal asked how often the applicant had seen this happen. The applicant said mostly he'd seen reports in the papers.
41. The Tribunal asked the applicant if he went to the police and complained about the threat made by his wife's father to kill him. He replied "yes" he called the police. The Tribunal asked when it was that he called the police. The applicant then said he didn't call the police. He said he meant to say he knew the police wouldn't do anything so he didn't call them.
42. The Tribunal referred to the 2005 US Department of State Country Report on India, and indicated the Report has not carried any reports of incidents of serious threats of honour since the report of 2005. The applicant responded to this information saying that he had sometimes read in the newspaper about honour killings. He was scared so he left his country.
43. The Tribunal asked if the applicant told his father of the threat. He said he did. The Tribunal asked what his father suggested he do. He replied his father said if it is not safe and if you will be happy go overseas, and so they came to Australia.
44. It was the applicant's evidence that after he and his wife came to Australia her father and uncle tried to find them. The Tribunal asked the applicant how he knew this. He replied he came to know through friends of his wife.
45. The applicant told the Tribunal that his father had complained to the police that they had threatened to kill him. It was his evidence that his father complained to the police [in] 2008.
46. The Tribunal pointed out to the applicant that it was now 2011 and that he had been separated from his wife for some time and asked why he thought her father would still be after him. The applicant replied when his visa was cancelled he found out that his former wife's father said if he came back to India they would kill him. He said that threat was made in 2010.

47. The applicant said his wife's father had said words to the effect, "Even if we stopped you why did you get married without consent." The applicant told the Tribunal that her father wanted her to marry someone else.
48. The Tribunal raised with the applicant the possibility of returning to India and relocating as it was a big country with many people. The applicant replied he couldn't settle anywhere else because of money and he didn't have many skills. The Tribunal asked the applicant what work he was doing in Australia. He replied he was cleaning. The Tribunal asked the applicant what would stop him doing such a job in India. He replied he wouldn't earn as much money.
49. The Tribunal asked the applicant how he thought his wife's father would find him. He replied he didn't know but if her family saw him or found out where he was he would not be safe. The applicant said his former wife's father has been [vocation deleted: s.431(2)] and could find him here or there going places.
50. The Tribunal referred to country information which indicates that in a hearing by the Indian Supreme Court in a case which attracted various threats to kill the husband and destroy his family on the ground that a marriage had taken place outside the bride's caste, the court ended the proceedings with a general direction to the police across the country to take stern action against those harassing couples in relation to inter-caste or inter-religious marriages ("Honour killing is Act of Barbarism; Supreme Court 2006, outlookindia.com website 8 July.") and asked the applicant to comment. The applicant replied he didn't know anything about that.
51. The Tribunal reminded the applicant of the definition of a refugee discussed at the outset of the hearing and explained that definition again. In response the applicant said he couldn't say anything about that. The applicant added inter-caste marriage shouldn't be any problem but the elders still believe that it should not be there.
52. The Tribunal asked the applicant if it was the case that as he was no longer married the threat would be diminished. In response he said his wife's father has said he had insulted them by marrying her without consent.
53. The Tribunal asked the applicant if he or his wife had applied for divorce. He said he hadn't and he didn't know if she had. He said the first he knew that she had written to the Department about their separation was when the police came in December to his home early in the morning. He said at that time he was still trying to persuade her to stay with him. The Tribunal asked if that was still the case that he was trying to persuade her to stay with him. He replied it was not and they haven't spoken.
54. The Tribunal asked if he had told his family they have separated. He said he had. The Tribunal asked if she had told her family, and he said she had told her family and that she speaks with her family.
55. The Tribunal asked the applicant about the threat made by his wife's family to kill his wife as well as to kill him. The applicant said initially her father threatened they would kill both of them but then the argument was more against him, with his father in law saying why did you get married to our daughter.

56. The Tribunal then put information to the applicant, including for the purposes of s.424AA of the Act. The Tribunal referred to the interview the applicant had with the Department of Immigration and to the information that twice he went to Immigration and that on neither occasion did he mention that he had any fear of being caught up in an honour killing for marrying without the consent of the bride's father. The Tribunal invited the applicant to comment. The applicant said that at the time the compliance people raided his home it was 6am in the morning and they came with a lot of police. He was sleeping at the time. He was woken and taken out of his room. He said he was nervous and scared as to why they had come and asked for his passport and checked his visa. He said his visa was cancelled, and they asked him why he was staying here as his visa had been cancelled.
57. The Tribunal asked the applicant why the second time he went to the Department he did not raise the story of his fear of being killed by his former wife's family. He replied he was still scared.
58. The Tribunal continued putting adverse information as to why he had told the officer of the department that he would return home voluntarily but then did not. The Tribunal invited the applicant to comment. The applicant said he just said "yes, yes, yes to everything" and his mind was blocked.
59. The Tribunal suggested to the applicant that he may have taken the opportunity to tell the police in Australia of his fears in relation to the claimed threats of honour killing. In response the applicant said he was scared and nervous to see police.
60. The Tribunal asked the applicant why, given he claims to have been frightened in the year before he came to Australia, indeed since the time of his marriage in March 2008, he had not lodged a Protection Visa application sooner than he did. He replied he thought he was safe once he came to Australia.
61. The Tribunal reminded the applicant he said his wife was also threatened with being killed by her family, and that when they both arrived they were both under threat, and asked if they discussed seeking protection. The applicant said they didn't think like that. The applicant then reiterated that the threat was more against him than his wife. He said the threat was that they would kill him first.
62. The Tribunal asked the applicant if having heard something of the country reports raised by the Tribunal he would now go to the police if he returned home. He replied he could talk to the police, but as her father, uncle and brother had threatened they would kill him and what can he do then.
63. The Tribunal asked the applicant if he mentioned in his application for protection that his wife was also under threat. He replied he didn't mention it.
64. The Tribunal asked the applicant if anyone assisted him with the preparation of his application. He replied he downloaded the forms and filled them in with a friend. He said everything contained was true and correct.
65. The Tribunal asked the applicant when his wife's family first came to know they were married. The applicant replied he didn't know when they found out but he believes it was two months after they were married in March 2008.



66. The Tribunal asked the applicant if his wife's family threatened anyone else apart from threatening him and his wife. He replied they threatened his parents that if he came back they would kill him, but they didn't threaten anyone else. The Tribunal pointed out to the applicant that in his written application he states that they threatened to kill his family. The applicant said what he meant by this was that they told his family about the threat directed towards him.
67. The Tribunal read from the applicant's application where he states, "They threatened me that they will kill my family in India if I do not leave their daughter. Even though we love each other so much I could not take a chance of getting my family killed to fulfil my wishes." In response the applicant then said they threatened his family on the phone.
68. The applicant gave evidence that his family met his wife's family face to face and they threatened his family that if their son comes back they will kill him, so his family thought if he came back they may kill him and that's why he wrote this in his application.
69. The Tribunal asked the applicant if what he was saying was that his wife's family didn't actually threaten to kill his family but his family thought if they killed their son they may kill them as well, so he wrote that. The applicant agreed.
70. The Tribunal asked the applicant when it was that he and his wife started living together. He replied it was in 2008. The Tribunal asked when in 2008. The applicant said "after their marriage in March. The Tribunal pointed out to the applicant that in his application in response to Question 43 he states that his wife "[name]" and he "started living together on arrival in Australia" and asked why he had said this. The applicant said that they did not start living together as they were both scared to do so.
71. The Tribunal compared this evidence to the applicant's earlier evidence where he said when they married they stayed together for a few days, and that after her family found out they were married they stayed together and asked the applicant if when he stated in his written application that they only started living together in Australia it was true or not true. He replied they started living together in India after their marriage.
72. The Tribunal asked the applicant if it was the case that for eight months or so after their marriage in India they were living together in Chandigarh. The applicant said "yes".
73. The Tribunal asked why in those eight months they weren't found and killed as threatened. In response the applicant said her family didn't know where they were staying. If they found out they could be found and killed so they came to Australia. He said their life in India was not safe.
74. The Tribunal referred to the applicant's written application where he states that honour killings are on the rise and asked him why he said so. The applicant replied he had read it in the newspaper and heard it.
75. The applicant said to the Tribunal that he wished to have a better future and for this reason hoped to stay in Australia. He said in India his future was finished.

### **Country Information**

76. US Department of State's *2010 Country Reports on Human Rights Practices* (8 April 2011): \\NTSSYD\REFER\Research\2011\USDOS\HRP\154480.htm reports as follows:

So-called honour killings continued to be a problem, especially in Punjab and Haryana, where as many as 10 per cent of all killings were honour killings. Although statistics for honour killings are difficult to verify, on October 10, *The Guardian* reported police officially recorded 19 honour killings in the northern part of the country between April 19 and June 30. According to the same report, one recent study estimated more than 1,000 honour killings every year, most of them occurring in the northern states of Haryana, Punjab, and Uttar Pradesh. The most common justification for the killings offered by those accused or by their relatives was that the victim married against their family's wishes. During the year a survey conducted by the NCW along with the NGO Shakti Vahini revealed that in 88.9 per cent of the cases, the perpetrators of the honour killing were the girl's family members. In 2009 the MHA issued an advisory to all state governments and union territories to review their policies and tackle the problem of such killings.

On May 13, relatives of newlywed bride Gurleen Kaur killed Kaur and her mother-in-law and injured the groom, reportedly because the couple had married against the wishes of the bride's family. Police had registered cases against eight persons at year's end. The incident happened despite the couple being under the protection of the Punjab and Haryana High Court after their marriage.

On June 22, two male cousins killed their sisters for marrying outside of their caste in New Delhi.

On July 15, Aisha Saini's father and uncle beat Saini and Yogesh Kumar, both 19 years old, with rods and electrocuted them to death allegedly because they disapproved of the teenagers' relationship. At year's end police had arrested the girl's father and uncle, but three other accused remained at large.

On March 30, five men were sentenced to death and one jailed for life for the 2007 murder of a young couple, Manoj Banwala and Babli, who married outside the wishes of village elders in Haryana.

## **FINDINGS AND REASONS**

77. The applicant travelled to Australia on a valid Indian passport and claims to be a national of India. The Tribunal accepts that the applicant is a national of India and has assessed his claims against India as his country of nationality.
78. The applicant claims to fear his former wife's family will kill him if he returns to India to protect their honour as they did not give consent to the marriage between the applicant and their daughter the applicant's former wife. He believes the authorities will not protect him.
79. The mere fact that a person claims fear of persecution for a particular reason does not establish the genuineness of the claim or that it is "well founded" or that it is for the reason claimed. The Tribunal is not required to accept uncritically the assertions made by the applicant (*MIEA v Guo & Anor* (1997) 191 CLR at 596) and it remains for the applicant to satisfy the Tribunal that the statutory elements are made out.
80. In the Tribunal's view the applicant understood the proceedings and acknowledged he had no difficulties with the interpreter. However, the Tribunal whilst allowing for a reasonable margin of appreciation to flaws in his testimony finds the applicant has exaggerated and embellished his claims and that there are serious inconsistencies in his evidence. For the reasons that follow the Tribunal finds the applicant's evidence in relation to his claims for

protection cannot be regarded as reliable or truthful. The Tribunal finds that he is not a credible witness.

81. Having said that, the Tribunal does accept that the applicant is a [age deleted: s.431(2)] year old male, born [date deleted: s.431(2)] [in] Punjab, India. The Tribunal accepts the applicant's information that he speaks Punjab, Hindi and some English. The Tribunal accepts he is of Sikh religion and is of the Jatt Sikh ethnic group. The Tribunal accepts the applicant wife's is also of the Sikh religion and of Jatt Sikh ethnicity. The Tribunal accepts the applicant and his wife belong to different castes. The Tribunal accepts he first arrived in Australia as a dependant of his wife on her Student visa which was valid until [a date in] June 2011. The Tribunal accepts the applicant married in India in March 2008, came with his wife to Australia and that he and his wife have since separated.
82. There were a number of serious conflicts and inconsistencies in the applicant's evidence.
83. The Tribunal having given the applicant a second explanation of s.424AA of the *Act*, including the purposes and consequences of adverse information, put information to the applicant given by him at interview with the department on two occasions, which is in conflict with the claims he makes at the hearing and invited him to comment. That information was that twice he was interviewed by Immigration and on neither occasion did he mention that he had any fear of threats or of being caught up in an honour killing for marrying his former wife without the consent of her father or family.
84. The applicant commented that on both occasions he was scared and nervous. He said on the first occasion the compliance people raided his home at 6 am; he said they came "with a lot of police" He said he was woken and taken out of his room. He said he was nervous and scared as to why they had come. When asked specifically why the second time he went to the department he did not raise his fear of being killed by his former wife's family. He commented that he was still scared.
85. The Tribunal put to the applicant the adverse information that when asked about returning home to India he had told the officer of the department that he would return home voluntarily. The Tribunal invited the applicant to comment on this. The applicant commented that he just said "yes, yes, yes to everything" and his mind was blocked.
86. The Tribunal finds it significant that the applicant when interviewed about his illegal immigration status and given an opportunity to discuss any reasons why he could not return to India did not at that time indicate that he held a fear of returning to India. Whilst the Tribunal accepts the applicant may have been scared when compliance officers first came to his home, it does not accept as plausible that the applicant would not have raised his serious claims with the department at the very least on the second occasion if they were genuinely held. The Tribunal notes that on the contrary the applicant stated there was no reason why he could not return. For this reason the Tribunal finds the applicant is not a reliable or truthful witness and is therefore unable to rely on his evidence to find that his claims in regard to his need for protection are genuine.
87. The applicant's fears are based on threats of retaliation by his former wife's father and brother because of his and his former wife's failure to obtain their consent or permission to marry. The applicant gave a variety of reasons as to why his former father in law wished to kill him. He variously claimed his former wife's father said it was because he had insulted

her family by marrying her without permission. The applicant gave evidence his former wife's father wanted her to marry someone else. He also said it was to be an honour killing.

88. The Tribunal accepts country information that inter-caste and inter religious relationships may not be acceptable in India and may lead to violence and even to honor killings. Relying upon country information the Tribunal notes that the family of a girl of a higher caste may be unhappy about a marriage or relationship between their daughter and a man of a lower caste. The Tribunal accepts that if this were the case such family may threaten a person assisting such relationship. However, on the basis of the information before it the Tribunal does not accept that the applicant in this application was threatened in this way as claimed.
89. The Tribunal asked the applicant what if anything he knew about honour killing. He replied "anybody or girl who married without permission, they kill them". The applicant said he'd seen reports of this in the papers. The Tribunal notes no reference to caste or religion was made by the applicant in his understanding of honour killings. The Tribunal finds his evidence to be vague and lacking in detail. On the basis of the evidence before it the Tribunal finds no reliable evidence that the applicant is targeted for an honour killing on the basis of caste or religion or indeed because he may have married without his former wife's family giving permission.
90. The applicant gave evidence in relation to the threats he claims were made by his wife's father and brother. When asked when the threat to kill him was made the applicant's response was that his former wife's "father threatened him in mid-December 2007". The Tribunal notes this date is chronologically before the date of his marriage in March 2008.
91. When asked what the circumstances were when her father threatened him the applicant said he spoke to her parents and told them that they "could live together nicely" and then her "father replied that if they married he would kill him". The applicant also claims his former wife's family threatened to kill his wife as well as to kill him although he was the primary target. He gave evidence that they said they would kill him first. The applicant said initially her father threatened they would kill both of them but then the argument was more against him. In this regard the Tribunal notes the applicant's evidence that his former wife is in contact with her family and reconciled to them. On the basis of the evidence before the Tribunal it does not accept that the applicant's wife is or was ever under threat of harm from her family.
92. The applicant claims that since being in Australia his former wife's parents have threatened him through his parents by stating that they will not allow him to live if he returns to India. The applicant also claims that when his visa was cancelled he found out that his former wife's father said if he came back to India "they" would kill him; he claims they are keeping an eye on his house. He claims that threat was made in 2010. He claimed variously that his own family were threatened then claimed the threat to them was to kill him. The applicant claims that after he and his wife came to Australia her father and uncle tried to find them. When asked how he knew this he replied he came to know through friends of his wife.
93. The Tribunal has carefully considered all these claims. The Tribunal finds each of the integers that make up his claims is an assertion without any specific information. His claims are vague, lack detail and frequently appear to be responses to Tribunal questions made up along the way. His claims contain inconsistencies. For example when asked if his wife's family threatened anyone else apart from threatening him and his wife he said they threatened his parents that if he came back they would kill him, but they didn't threaten

anyone else. When the Tribunal pointed out that this was inconsistent with his written application where he states that they threatened to kill his family, the applicant said what he meant by this was that they told his family about the threat directed towards him. He added shortly afterwards that they threatened his family by phone.

94. The Tribunal finds the applicant's evidence is exaggerated and embellished. The Tribunal finds no reliable evidence that the applicant has had threats made against him as claimed. The Tribunal has found the applicant is not a reliable or truthful witness and is therefore unable to rely on the applicant's evidence to find that his claims are genuine. The Tribunal finds his evidence of threats against him to be fabricated for his own purposes.
95. At the hearing the applicant told the Tribunal that he and his wife lived together for some eight months after their wedding whilst still in India. The Tribunal finds it implausible that the applicant and his wife would remain in India together at the home of the applicant's cousin for some eight months after they married and for some six months after the time the applicant claims his wife's family found out about the marriage if they were genuinely in fear for their lives.
96. Furthermore the Tribunal finds the applicant's explanation that no harm came to them at that time because his wife's family did not know where they were to be highly improbable given his wife was at college completing her English language studies and other study during this time.
97. The Tribunal has taken into account other evidence of the applicant that he and his wife did not live together until they arrived in Australia because of fear of harm from her family. This claim is clearly set out in the application for protection. On the basis of the inconsistent evidence given to the Tribunal in this regard, the Tribunal does not accept the truth of this claim. The Tribunal has found the applicant is not a reliable or truthful witness and is therefore unable to rely on the applicant's evidence to find that his claims are genuine.
98. The applicant gave seriously conflicting evidence about whether or not he complained to police about threats he claims he received. At first when asked if he had been to the police he replied clearly "yes" he "called the police". Inconsistently when asked when it was that he called the police the applicant said he didn't call the police. He explained the inconsistency by stating that he meant to say he knew the police wouldn't do anything so he didn't call them. The Tribunal does not accept the applicant's explanation and for this reason finds the applicant is not a truthful or reliable witness. The applicant later gave vague evidence that his father complained to police. The Tribunal finds that evidence unconvincing and of recent invention.
99. The Tribunal finds the evidence of threats to be extremely vague and lacking in detail and exaggerated for the applicant's own purposes. The Tribunal finds no reliable evidence that the applicant and his former wife have been threatened by her family as claimed or that the applicant is at risk of harm from his former wife's family as claimed and that they are not seeking to harm him or indeed his family. The Tribunal finds that the applicant would not face a real chance of persecution from them if he returns to India now or in the reasonably foreseeable future.
100. The Tribunal notes the applicant arrived in Australia [in] March 2009 but delayed in lodging any application for Protection until [a date in] January 2011. The Tribunal acknowledges that at times there are valid reasons for delay in making an application for a Protection visa. In

this case the Tribunal has considered the various explanations for delay given by the applicant. In particular the Tribunal notes the applicant's evidence that he did not apply earlier because he thought he was safe in Australia. When asked if he and his wife discussed applying for protection when they first arrived given his evidence that they were both under threat the applicant replied vaguely that "they didn't think like that" The Tribunal does not accept the applicant's explanations for delay. The Tribunal finds there is no plausible evidence to indicate any circumstances which would have prevented the applicant from seeking protection in Australia immediately or soon after his arrival in Australia if his claims were genuine.

101. The Tribunal finds the applicant's delay in submitting a Protection visa application raises serious concerns about the immediacy, gravity and credibility of his claims to fear persecution in India immediately before his departure in April 2010.
102. Having considered the applicants claims singularly and cumulatively the Tribunal finds that the applicant does not have a well-founded fear of persecution from the family of his former wife for any Convention reason and would not face a real chance of serious harm in India should he return there now or in the reasonably foreseeable future.

### **CONCLUSIONS**

103. 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**

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