

1504780 (Refugee) [2015] AATA 3604 (2 November 2015)

**DECISION RECORD**

**DIVISION:** Migration & Refugee Division  
**CASE NUMBER:** 1504780  
**COUNTRY OF REFERENCE:** India  
**MEMBER:** Tigilagi Eteuati  
**DATE:** 2 November 2015  
**PLACE OF DECISION:** Brisbane  
**DECISION:** The Tribunal affirms the decision under review

Statement made on 02 November 2015 at 5:22pm

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

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration [in] March 2015 to refuse to grant the visa applicant a protection visa under the *Migration Act 1958 (the Act)*.
2. On 6 October 2015 the Tribunal dismissed the application under section 426A(1A)(b) of the Act as the applicant did not appear before it to give evidence and present arguments at the time and date of the scheduled hearing.

### Background

3. The applicant initially arrived in Australia on a TU-572 visa [in] April 2009. He returned to India for over two months in 2013 and for over a month in 2014.
4. The applicant applied for a protection visa in 2014, claiming that he would be harmed by his uncles and their supporters if he returned to India. In answer to a question in his protection visa application as to why he thought he would be harmed on return to India, the applicant stated:

*“Back home my parents and my uncles are fighting the partition of land, that is my grand parents. My dad got hurt before, that is why my family want me to stay in Australia. I am the only son of my parents. For money and land I think anything can happen.”*

5. The applicant claimed that he did not think that the authorities in India could protect him because:

*“In India the system is so corrupted. All the authorities they don't work if you don't give them money, as they help the people who give them ransome to them.”*

6. No further information or claims were provided by the applicant in relation to his application. The applicant did not attend the interview with the Department of Immigration and Border Protection (**Department**) to articulate his claims. The Minister's delegate refused the application [in] March 2015. In his decision the delegate recorded that:

*“The applicant was contacted on [date] February 2015 by telephone to confirm that he was attending the interview, to which the applicant stated that he needed to check with his migration agent. On [date] February 2015 I called the applicant on the telephone number which he had previously answered however the applicant did not answer. The applicant's migration agent contacted me on the day of the interview and stated that he had spoken to the applicant the day before, and indicated that the applicant had been unsure about whether he would attend the interview.”*

7. The delegate found that he was not satisfied that the applicant had a well-founded fear of persecution for a Convention related reason.
8. On 9 April 2015, the applicant applied to the Tribunal for review of the Minister's delegate's decision. The applicant again nominated [name deleted] of [agency] as his representative in the proceedings. On 24 August 2015, the applicant was invited to attend a hearing before the Tribunal on 6 October 2015. [The agent] was invited to provide written submissions setting out all the claims made and maintained by the applicant by 29 September 2015. The

Tribunal received no response to the invitation to hearing and no further material from the applicant or [the agent]. Short Message Service (SMS) text messages reminding the applicant of the upcoming hearing were sent to the applicant's mobile telephone on 28 September 2015 and again on 2 October 2015.

9. Neither the applicant, nor his representative appeared at the hearing listed for 6 October 2015. No correspondence was received by the Tribunal from the applicant or the representative prior to the hearing or on the day of the hearing.
10. On 6 October 2015 the Tribunal dismissed the application under section 426A(1A)(b) of the Act as the applicant did not appear before it to give evidence and present arguments at the time and date of the scheduled hearing.
11. The applicant was notified of the dismissal decision and given a copy of a written statement setting out the decision and the reasons for the decision, in accordance with section 426B(5). The applicant was advised that reinstatement of the application could be sought within 14 days of receiving the dismissal statement and that a failure to apply for reinstatement within the 14 day period would result in confirmation of the dismissal decision.
12. The Tribunal received an email from the applicant's [representative] [in] October 2015, the last day upon which an application for re-instatement could be made. [The agent]'s email stated:

*"Dear Sir or Madam,*

*[The applicant] requests that his AAT appeal, case number 1504780, be reinstated. He unfortunately could not attend the hearing as he was quite unwell, and has only recently recovered from the flu. He requests that the appeal be reinstated so he can have the opportunity to attend a hearing and provide further explanation as to why his Protection Visa application should not have been refused by the Department.*

*Best regards,*

*[Name deleted]"*

### **Legislation**

13. Section 426A of the Act relevantly provides:

*"(1B) If the Tribunal dismisses the application, the applicant may, within 14 days after receiving notice of the decision under section 426B, apply to the Tribunal for reinstatement of the application."*

*(1C) On application for reinstatement in accordance with subsection (1B), the Tribunal must:*

*(a) if it considers it appropriate to do so--reinstatement the application, and give such directions as it considers appropriate in the circumstances, by written statement under section 426B; or*

*(b) confirm the decision to dismiss the application, by written statement under section 430. "*

## Reasons

14. For the following reasons, the Tribunal does not consider it appropriate to reinstate the application and confirms the decision to dismiss the application.
15. No proper explanation has been provided as to why, if the applicant was medically unfit to attend the hearing, neither the applicant nor his representative contacted the Tribunal to inform the Tribunal, at least on the day of the hearing, that the applicant was unable to attend the hearing due to his medical condition. This causes the Tribunal to doubt that the applicant was medically unfit to attend the scheduled hearing.
16. Further, there is no explanation as to why, if the applicant was medically unfit to attend the hearing, he did not seek medical attention for his condition and obtain evidence, from a medical professional, that he was unfit to attend the hearing. If the applicant did seek medical attention and evidence of a condition which prevented him from attending the hearing, the applicant has failed to provide an explanation as to why he has failed to provide that evidence to the Tribunal. This also causes the Tribunal to doubt that the applicant was medically unfit to attend the scheduled hearing.
17. In these circumstances, and in the absence of medical evidence indicating that the applicant had a medical condition which prevented him from attending the hearing, the Tribunal is not satisfied that the applicant was medically unfit to attend the hearing. There is no evidence that [the agent] is qualified to provide evidence as to the applicant's medical state at the time of the hearing.
18. In these circumstances, where the applicant has failed to provide a reasonable explanation for failing to attend the scheduled hearing the Tribunal does not consider it appropriate to reinstate the application and confirms the decision to dismiss the application.
19. The decision to dismiss the application is confirmed. Section 426A(1F) provides that where a dismissal decision has been confirmed, the decision under review is taken to be affirmed.

## DECISION

20. The Tribunal affirms the decision under review.