

1113757 [2012] RRTA 955 (21 September 2012)

DECISION RECORD

RRT CASE NUMBER: 1113757

DIAC REFERENCE(S): CLF2010/161354

COUNTRY OF REFERENCE: India

TRIBUNAL MEMBER: Ruth Cheetham

DATE: 21 September 2012

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of India, applied to the Department of Immigration for the visas on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] November 2010.
3. The delegate refused to grant the visas [in] November 2011, and the applicants applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. 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 to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. 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 to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. 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.
7. 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, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 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.
14. 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.

15. 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.

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 to 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.
18. 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.

Member of the same family unit

19. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Regulations for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include.

CLAIMS AND EVIDENCE

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

Protection visa application

21. The first named applicant makes claims to protection, the second named applicant does not and relies on his membership of the first named applicant's family unit, being her husband. For convenience, and unless otherwise indicated, in this decision the first named applicant will be described as "the applicant".

22. The applicant lodged an application for a protection visa application [in] November 2010. Accompanying that protection visa application were copies of the applicants' passports, both current and expired.
23. The applicant subsequently provided a written statement in support of her protection claims. The statement is dated [in] March 2011 but it is dated stamped as having been received by the Department of Immigration and Citizenship (Sydney office) [in] October 2011.

Personal details and visa history

24. According to the protection visa application and to the copies of the applicants' passports (current and expired), the applicant was born in [year deleted: s.431(2)] in Kerala, India. She is married (in 1995) to the second named applicant. No details are given in the protection visa application but according to the delegate's decision which accompanied the application for review, they have [details of children deleted: s.431(2)]. The applicant gives no detail of her residential address in India prior to her travel, her schooling or any qualifications obtained other than to state that she attended a [college] from [dates deleted: s.431(2)].
25. The applicant's previous Indian passport was issued in Thumba [in] August 1999 and expired in 2009. The applicant's current Indian passport was issued [in] September 2009 in Thumba. In addition to the biodata pages, the passport bears a visa to New Zealand. It is a visitor's visa granted [in] November 2010 and permits the applicant to travel to New Zealand (arriving not after [a date in] March 2011) and on arrival to be granted a permit to remain for one month. The same page of her passport indicates that the applicant was granted a permit to enter New Zealand [in] November 2010. In her protection visa application, the applicant states that she travelled to New Zealand, arriving [in] November 2010 and departing on [a further date in] November 2010, with the reason given as "visit".
26. The applicant's passport also contains the Australia visa on which she entered Australia. It is a subclass 771 transit visa which was granted [in] November 2010 in New Delhi. The transit visa allowed the applicant to enter and remain in Australia for three days from the date of each arrival, was expressed to be valid for multiple entries, and required the applicant not to arrive in Australia after [a date in] December 2010. According to the stamp in her passport, the applicant arrived in Australia [in] November 2010.
27. The second named applicant travelled to Australia on an Indian passport issued [in] June 2010, and also entered Australia on a transit visa subclass 771, the details of grant and currency of which are the same as the first named applicant's transit visa. Similarly, the second named applicant entered and remained in New Zealand on the same dates and the same class of visa/entry permit as the first named applicant.
28. The second named applicant has previously held two Indian passports. The first was issued [in] April 2001 and expired [in] July 2005. It would appear that it was on this passport that the second named applicant travelled to the United Arab Emirates. No translation has been provided of the "residence" visa of that country which appears in the passport. The second passport was issued in Dubai [in] July 2005 and was expressed to expire [in] July 2015 but has been stamped "cancelled" with a date [in] June 2010. That passport also contains a residence visa granted by the United Arab Emirates, again without accompanying translation. That residence visa or permit is stamped "cancelled" with a date [in] March 2009. Several stamps of the UAE appear, dated [in] September 2007, [the following date in] September

2007, [a date in] February 2008 and [a date in] April 2009, but there is no indication whether those stamps refer to entry dates or exit dates.

Protection claims – protection visa application

29. The second named applicant makes no claims to protection, relying only on being a member of the applicant's family unit and included as such in her protection visa application.
30. In her protection visa application the applicant claims to fear persecution by reason of her religion. In response to the questions in the protection visa application form, the applicant states (questions in italics; spelling and grammar original):

Why did you leave that country

Christian people trying to kill me. They have already attacked me two times.

What do you fear may happen to you if you go back to that country?

Already people attack me before.

Who do you think may harm/mistreat you if you go back?

Christian people and hindu terrorists.

Why do you think this will happen to you if you go back?

People still looking for me to kill.

*Do you think the authorities of that country can and will protect you if you go back?
If not, why not?*

No, they can't protect me because the people are very strong.

31. The applicant elaborated on her claims in her written statement and during an interview with the delegate, which is summarised accurately in the delegate's decision record. Those claims are summarised below.

Protection claims – written statement

32. The applicant claims that she was born into a Catholic family and that she belongs to the Mukkuva caste which is classified as a backward social caste. She was an active member of the Kerala Catholic Students League (KCSL) in high school and the Kerala Catholic Youth Movement (KCYM) in college. After college she did volunteer work for the Trivandrum Social Service Society (TSSS), a Catholic organisation in Trivandrum, where she worked for the promotion and fulfilment of women's rights and position in the community.
33. The applicant claims that from [years deleted: s431(2)] she [worked for] the Catholic Family Unit run by the TSSS, which consists of groups of 20-25 Catholic families in different locations and which meet once a week for prayer meetings. [Details of the applicant's work deleted: s.431(2)]. She undertook this work on a volunteer basis.
34. The applicant's husband, the second applicant, was injured at his work (in the United Arab Emirates) in 2009 and his employer cancelled his work visa (presumably, withdrew their sponsorship for his visa). He returned to India. Without his income, the applicants could not

afford to pay the loan they had taken out to build their house, or to pay their children's school fees. The applicant contacted Catholic religious leaders and the TSSS for financial assistance with living expenses and school fees but all refused to help and they began to avoid her because they could not or would not help even though she had been very active with Catholic organisations.

35. The applicant contacted [Pastor A] at a Protestant church in Trivandrum who had previously helped her mother when she was having trouble raising the applicant and her siblings. Her mother introduced her to [Pastor A], who offered the applicant work because of her experience with social work. In that work she dealt with the local government (the *Panchayat*) and tried to help people find work because there is a lot of unemployment in her area. She worked at the offices of the Panchayat, but received some money and assistance with her children's education from the Protestant Church. Gradually she became interested in the prayers and Gospel mission of the Protestant Church. [Pastor A] invited her to prayer meetings, which she attended with her husband and family, and which were conducted once a month at the houses of friends. She and her family would go to the church in Trivandrum for larger gatherings, there not being any Protestant churches in her rural area. She held a prayer meeting at her home once, prior to her baptism. All this time she was still [involved] with the Catholic Family Unit.
36. The applicant thinks that someone informed the Catholic church that she was doing work for the Protestant church and that she had held a prayer gathering at her home. She does not know who told them but Catholic church leaders became angry with her and in around September 2010 a [man] whom she knew from the Catholic church told her that the Catholic church knew as was unhappy with her. About a week later she received a letter from [Father B] of the Catholic church she attended which stated that the church leaders knew of her activities with the Protestant church and [that] they were not comfortable about her activities and told her to withdraw from those activities or they would take action against her. About three weeks later, [Father B] made a declaration in the church to the effect that the applicant, being engaged in working with the Protestant church which is not desirable as far as the Catholic church policy was concerned and that as a result she was removed from her [position with] the Catholic Family Unit. The applicant stopped her work with the TSSS but continued her work with the Protestant church.
37. [In] October 2010 the applicant's family, together with four Christian families and two Hindu families, converted to Protestantism and were baptised. The baptism was very public, and the Protestant church made much of the fact that the applicant had [worked for] the Catholic Family Units, saying that the applicant had realised that Protestant worship was better than Catholic worship. The Protestant church posted notices on walls to that effect, and the baptism took place on a huge stage in Trivandrum at which about 50 people attended. The two Hindu families who were baptised that same day had been introduced to the Protestant church by the applicant in the course of her work helping people to find jobs.
38. On the evening of the [next day], when the applicants were preparing for bed, there was a knock at the door and 30-40 men with fir torches and wooden sticks were outside their house. The applicants went outside, and the group attacked them and hit them using their hands and the sticks. They set fire to the applicants' house and the windows and doors burned, although the walls were made of concrete bricks. The group told the applicants that India is a Hindu country, that the applicant had converted two Hindu families, and that if she did not stop her work there will be consequences, that they may even kill her.

39. The applicant claims that they took their passports and went to her sister's house, left their children with her sister, and telephoned [Pastor A] who gave her the number of a pastor in Madurai, [Pastor C]. The applicants left that night and took a bus to Madurai, an 8-9 hour trip. They got off the bus and telephoned [Pastor C] and, as they were walking to his place, a car with 5-6 people approached them got out of the car and attacked them with sticks, saying "there are people who are converting Hindu and Christian people to Protestant groups, this is bad for our community" The applicant claims she recognised some of them from the group that came to their house. A crowd gathered, there was a lot of shouting and no one helped them. They did not report either attack to the police, on the advice of [Pastor C] who said that these sorts of incidents are exacerbated when the police are involved, and that it would be bad for the Church. He gave them the name of someone in Madras. They left for Madras that day, by bus In Madras they stayed at the home of a Tamil family referred to them by [Pastor C]. They did not go out at all, fearful of another attack.
40. [Pastor C] told the applicants that it was not safe to stay in India, that he had experience with the RSS and they will follow the applicant. [Pastor C] arranged for visas. They gave their passports to the man they were staying with, about three or four days after they arrived, and about a week later that man gave the applicant a form to sign and told her that they were trying to get visas for Australia. The applicant stated that they did not pay any money for the visa or the plan ticket to Australia and that she does not know who paid. The man gave her back her passport with the visa three days before they left Madras.
41. The applicants left Madras [in] November 2010 for Cochin (the airport through which they departed). [Pastor C] told them before they left that they would travel through New Zealand and would stay there for a few days, and gave her the name of the hotel where they'd be staying. When she asked who was paying for their travel, [Pastor C] said not to worry about it, that he wanted them to be safe. They left Cochin [the following day], stopped over in Dubai, arrived in New Zealand [two days later] and stayed there for six days before travelling to Australia. She did not claim protection in New Zealand, she says, because she did not know this was possible.
42. The applicant states that they arrived in Australia on [a date in] November 2010. They did not have anywhere to go and, at the airport train station, bought a ticket to [Suburb 1] because it was a name they saw on the board of destinations. There was a sign at [Suburb 1] advertising a room for rent, which they called from a public telephone. The owner told them to come. They did not have any money to rent it, but the owner, a Chinese person, let them stay for the night, and told them about a Church nearby.
43. The [next day], they went to the church, called [name deleted: s.431(2)], and spoke to a woman there who told them to apply to the Department of Immigration for a protection visa and to go to the Red Cross for help with living expenses. The applicant went to the Department that day and applied for a protection visa.
44. Since arriving in Australia (and as at the date of the written statement, which is not clear) the applicant says that she had been to a Protestant gathering in [Suburb 2] twice, for prayer, which she saw advertised in the local newspaper, but that they have not been to a Protestant church because they do not know where one is, although they are making enquiries.
45. The applicant states that she is afraid that if she returns to India the RSS will target her as a Protestant who is converting Hindus. She states that she cannot move within India because she and her husband only speak Malayalam, which is only spoken in Kerala, and a little

English, and they cannot move within Kerala because the RSS will find them like they found them in Madurai where they followed them.

Protection claims – interview with the delegate

46. Both applicants attended an interview with the delegate [in] October 2011. That interview was recorded and a copy of that recording is held on the Departmental file. The additional evidence provided by the applicants at the interview is accurately set out in the decision record of the delegate, and may conveniently be summaries as follows
- a. The applicant has a Bachelor [degree] awarded in [year deleted: s.431(2)];
 - b. They have [details of children and their schooling deleted: s.431(2)];
 - c. Her husband returned to India after his work-related injury sometime between January and April 2010, but she does not recall exactly when;
 - d. Both she and her husband are Mukkuva, classified by the Indian government as “other backward community” but neither are eligible for the benefits or “reservations” from the applicable government programme because it is specifically for fishermen and fisherwoman and neither she nor her husband are fishers;
 - e. She worked as a volunteer for the TSSS for five years [details of the applicant’s work deleted: s.431(2)];
 - f. She asked the Catholic church for some financial support. She knew they were not helping anyone financially but thought that they could at least assist with her children’s education since she had volunteered for five years;
 - g. A pastor friend of her mother suggested to her that if the Catholic church did not financially assist them, she could approach the Protestant church. After she did this, she was given the job, at the Panchayat, where she assisted the government to consider applications by people for loans to start small businesses. She was paid both a commission and also a payment from gratitude from the person getting the loan;
 - h. The loan program was intended by the government to be available to all religious communities but the contract for delivery of the service was with the Protestant group and she knew that the Protestant leadership were making sure that Protestants were able to access the service. However, if a really deserving non-Protestant family applied she would negotiate for that person to use the program and sometimes it happened. Some Hindu families saw what she did and were interested and went to Protestant prayers on their own, she was just a means of bringing them, and they did not go to Protestant prayers just in the hope of getting support;
 - i. She said the Protestant church did not initially ask her to join the church but she was impressed with their activities and attracted to their teachings and therefore went to the church voluntarily;

- j. The delegate asked her to explain why there was such publicity, including posters, about her baptism by the Protestant church and why the Protestant church, which is a small minority, would stir up other Christian groups, inviting retaliation and possibly breaking the law in India. The applicant stated that the difference between Protestants and Catholics is over devotion to the Mother Mary, which the Protestants do not have, and that she thought they advertised the fact of her conversion to show Catholics that they could go after Protestant beliefs. She stated that she had not expected the publicity and that she was not consulted before the poster came out;
- k. She stated that she had a copy of the poster and of her baptism certificate at home in India, and that she could ask the Protestant church for copies of the poster or of photographs of the baptism;
- l. She stated that the reason why neither she nor her husband called the police when the large Hindu group assaulted them and attempted to burn their house was because she knew the police would not help. She stated that because Protestants are a small minority the police do not support them because the Protestant leaders do not support the police. In her small village there are many Hindus and she had heard of an earlier case where the police had not supported Protestants. Also she thought that it would be a problem for her children if the police questioned them;
- m. The Protestant church of which she is a member is called [Church 3] and is located in Trivandrum, about [distance deleted: s.431(2)] away from her house, but she does not know the address;
- n. Her children are being looked after by her sister at her sister's home;
- o. She cannot return home. The pastor has told her she cannot expect any help from the police;
- p. She cannot relocate somewhere else in India because neither she nor her husband speak any language other than Malayalam, that there are always Hindus wherever Malayalam is spoken, and if she moves "they" will ask and find out their whereabouts and make trouble for them. Also her husband has chest pains and health problems and cannot earn a living;
- q. She does not know how their travel was arranged or who paid for the air tickets and the visas, but she believes all the expenses were met by the Protestant pastors; and
- r. She could provide the baptism certificates for her and the second named applicant because they were at her home, and stated that she could contact the Protestant church for copies of photographs of her baptism and the poster about it.

47. The second named applicant also gave additional information at the interview with the delegate, also set out in the decision record and which may be summarised as follows:

- a. He finished school at 13 years of age and did not go to college (contrary to the information in the protection visa application). for approximately 10 years he worked as a [tradesman] for a company in the United Arab Emirates. He injured his hip on the job and was unable to continue to [work] because he could not stand. He returned to India about one month later. He cannot recall the date of the injury or the date of his return to India;
 - b. They have [details of children and their schooling deleted: s.431(2)];
 - c. He was baptised in 2010 into the Protestant church at a church called [Church 3], in Trivandrum. He joined the Protestant church because they were told by a Protestant brother that they should approach their Catholic church for help and, if it was denied, they could approach the Protestant church for help. He stated that the condition for help from the Protestant church was that they had to join that church; and
 - d. He did not call the police when he and his family were beaten by a large crowd which came to his house, where the crowd also broke their windows and doors. He stated that he did not believe he had enough evidence to give the police in order for them to act. Instead he took the family to his sister's house.
48. The applicant returned to the Department [in] November 2011 to provide her other (expired) passport and those of the second named applicant and advised that she did not have any further evidence to provide. She stated that the family baptism certificates were destroyed by fire and that photographs and a copy of the poster were not available.

Delegate's decision

49. The delegate noted inconsistencies between the information provided by the applicant and the second named applicant, and between their claims and the independent information relevant to those claims. The delegate concluded that the applicant and her family had not converted to Protestantism, that they had not had the experience of harm by the Rashtriya Swayamsevak Sangh (RSS, a fundamentalist Hindu organisation) which they had claimed, and that they had not escaped from India in the manner which they had claimed.
50. Specifically, the delegate:
- a. was not satisfied as to the existence of a Protestant church in Trivandrum called [Church 3], the address of which the applicant could not provide;
 - b. was not satisfied that the Protestant church assisted with their children's education, when both applicants stated that the children are attending Latin Catholic schools;
 - c. was not satisfied with the applicant's explanation of why she could not obtain evidence of the baptism as she had undertaken to do, when the applicants had both said that the fire only destroyed the windows and doors and that, at the time of the interview, her sister and children were living in that house;
 - d. did not accept that the Protestant church which the applicant claimed had provided so much assistance to her and her family would not provide evidence

of her baptism (certificates, photographs, the poster) if she asked and if that material existed;

- e. rejected as implausible the claim that the Protestant church would advertise by posters the applicants' conversion and baptism in the light of country information the existence of laws prohibiting the promotion of enmity between groups on the grounds of, inter alia, religion, and other the efforts of the Indian government to foster intercommunity harmony;
- f. found unsatisfactory the applicants' explanations for failing to call police to a serious incident of physical assault and property damage, and found that there is nothing in the available country information to suggest that Christians do not call on the police in Kerala or that the police in Kerala are reluctant to take action against the RSS where appropriate; and
- g. the available country information indicates that Kerala is a particularly tolerant part of India in relation to Christians and other religions, being one of the most religiously diverse states in India with far fewer reports of inter-religious violence than other areas in India.

51. The delegate also found that the available country information supported a conclusion that the applicants can access effective State protection in India from religious violence by non-State agents, and that the authorities in India would not fail to provide the applicants with the protection to which they would be entitled should they return to India.

Application to the Tribunal for review

52. The applicant lodged an application for review with the Tribunal [in] December 2011 in her name and including the second named application. The applicants are not represented by a registered migration agent. Accompanying that application was a copy of the decision record of the delegate.
53. The matter was listed for hearing [in] May 2012. Subsequent to that listing, the applicant contacted the Tribunal on [an earlier date in] May 2012 by telephone and, with the assistance of a TIS interpreter, requested that the hearing be rescheduled to a later date to allow her more time to prepare for the hearing. She stated in that telephone conversation that the Refugee Advice and Casework Service (RACS) was helping her to prepare statements. The Tribunal officer to whom the applicant spoke informed her that a request to reschedule the hearing must be made in writing and would then be referred to the presiding Member for consideration.
54. On [the following day] a handwritten request by the applicant for the hearing to be scheduled was received by the Tribunal. In that request, the applicant stated that she had attended a first appointment with RACS and that she was waiting for a second appointment, and that her financial situation was such that she could not prepare a detailed written statement or get a migration agent.
55. By letter dated [in] May 2012, the applicant was advised by the Tribunal that the presiding Member had agreed to her request to reschedule the hearing, and that the new hearing was listed for [a date in] June 2012. The letter included a "response to hearing invitation" form for

completion by the applicant. The applicant did not respond to the hearing invitation although both applicants did attend the hearing on that date.

Pre-hearing submission

56. [In] June 2012 the Tribunal received a handwritten statement signed by the applicant. The statement reads (spelling and grammar original):

I am [name] the applicant for the protection visa I had the first hearing in the department of immigration. After the hearing I had a great hope believe, that I would be granted the protection. The people targeted me in India cannot attack me when I am here. This belief made me really happy. But when the decisions comes out I lost all my hope. I had received the letter from the immigration which state that the application had refused. When I return to India defenitly I will be killed. During the sleps I suddenly wake with thoughts of being killed. I cann't concentrate on prayers. In order to refuse my applications reasons, the case worker found small reasons. here are some of the facts I mention below.

Both of the [number] children is studying in the Latin catholic school. It is with the assistances of protastants church, the immigration officer told me that is hard to belive that my children is studying in christian management school when I am protestant. It was really wrong opinion from case officer. In India specially in kerala the best schools are the christian mangement school. Hindu's, Muslim's protestant all of them studying together is in christian management school. all parents wish that their children must get the best education. The christian management school are the one of the best education system provide us. It doesn't mean that those who studying in christian management school, is a christian. My children are studying in the christian management school with the help of protestant church.

When the people fired my home I lost a lot of important documents. Our Baptisam cirtificate was one of the major document which, I lost in the fire. The wooden furniture, the windows and doors were burned. Only the cement bricks were remained. Later I repaired that home. Now my sister use it.

I never complained to the police for the attack against me. because the people will attacked me home a good influence in the government. The protestant people are alienated groups in kerala.

Most of the people are catholic christians, hindus and the muslim's.

As we have no support even from the christian people its really easy attack us. In my state there is no member of legislative assembly (MLA, MB) belongs to our groups. So there is no one to talk for our rights. Its only "God" who protector. Its only God's grace we have reach this country.

If we complained the police that makes more trouble so it better to adjust ourseleves.

The statement hold the nature of my life. Please don't send me back to the religious extremists. Kindly grant the protection in this country and save me life.

Hearing

57. Both applicants appeared before the Tribunal [in] June 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Malayalam and English languages.

58. The applicant stated that she had prepared the protection visa application form with the help of a friend who speaks English. She stated that her written statement was prepared by RACS (a refugee advice and assistance organisation), that she signed it on [a date in] March 2011 but that the Department had not given her a date by which to submit it, so she, and RACS, submitted it when the Department asked, which is why it was not received by the Department until [a date in] October 2011. She stated that there was an error which required correction, that she had said she had [details of children deleted: s.431(2)]. She stated that she had only given a few stories in her application but that there were more. She also stated that in the interview with the delegate there was a mistake about the name of the church.
59. The applicant stated that her passport issued in 1999 was her first passport, and that her trip to New Zealand and Australia is her only travel abroad.
60. The applicant stated that her mother and sister are resident in Kerala, India, and that her children live with one of her sisters, who returned to their parents' house and lives there with their mother and her (the applicant's) children. She stated that the most recent occasion she has spoken with her children and her mother was the day before the hearing.
61. The Tribunal asked the applicant what she thinks would happen to her if she returned to India. The applicant responded that she is pretty sure that she will be killed by religious fundamentalists. She stated that when she left she was running away for her life, and when she was there they tried to attack her and they also tried to attack her children as part of her family. She stated, in response to the Tribunal's query, that her children are safe in India if she is not there because they only attacked her children as a way of getting to her. Asked who "they" are, the applicant stated that basically it is Hindus but also Catholics joined them because she converted to another group, because her area in Thumba is the area where there are lots of extremists groups, religious extremists and terrorists. She stated that there were shootings in Thumba in the 1990s, that the attacks were on national television.
62. The Tribunal put to the applicant for comment the independent information available which states that there are very few instances of anti-Christian violence in Kerala, which has a sizable Christian population, and that those instances involved identifiable Christians such as priests and nuns, or Church property. The applicant responded that she is also part of the Church community and that is why she was targeted, and why would she leave her children if she did not fear for her life. She stated that she left her youngest child who was [age deleted: s.431(2)].
63. The Tribunal put to the applicant for comment the independent information available that where there are instances of harm caused to Christians in Kerala by members of other religions or by members of Hindu fundamentalist groups such as RSS, the police investigate those incidents, and prosecutions are initiated against the perpetrators. The applicant responded that after she joined the Protestants there were lots of problems. She stated that Protestants had no representative in parliament so they had no voice in the government and the police would not investigate. She claimed that there were many problems with Protestants, that when they made complaints, because there was no Protestant in the government, the police would charge the Protestants instead of accepting their complaints. The Tribunal noted that the independent information did not support the applicant's claim that police won't investigate complaints by Protestants because there are no Protestants in the Kerala parliament. The applicant responded that they cannot complain to the police because if the attacking groups know this they attack them more, and if they complain and are not there, the attacking groups may attack their children.

64. The Tribunal asked the applicant why, if the situation in her village was so hostile, she remained there. The applicant responded that they did not stay there, that after the incident they left. The Tribunal asked the applicant why she did not move away after she began to work with the Protestant group, and the applicant responded that they (she and her husband, the second-named applicant) were not baptised then, that the problems started once they were baptised.
65. In response to a series of questions about her work with the Protestant Church, the applicant stated that her husband had returned to India in April 2009 and they had lots of financial difficulties, and that was when she started working on the Panchayat loans program. She stated that it was local government program but it is run through the Protestant people. She stated that from time to time the local government would declare a program and people can apply for it and get it, but ordinary people do not understand the laws and regulations so the Protestant Church was helping to identify people who were eligible and helping them to apply. Her role was to assist them to apply, to inform them whether they were eligible, then to get all the certificates required and to help them fill in the forms and submit their applications. The applicant confirmed that she was awarded a Bachelor [degree] in [year deleted: s.431(2)].
66. The Tribunal asked the applicant why the Protestant Church was prepared to arrange and pay for visas and air tickets if it was not prepared to assist her financially. The applicant stated that she did not know why but that she did a lot of good deeds for their people so maybe they thought they would help her live safely and they helped her for that reason.
67. The Tribunal asked the applicant which church she attends in Australia since her arrival. The applicant responded that they (herself and her husband) do not attend any church regularly in Australia. She stated that they used to go to conventions in [Suburb 2] but that they mostly just pray at home. Asked why she does not attend church in Australia, the applicant responded that where she lives, in [Suburb 1], she could not find any Protestant church, that when they searched they could not find one in that area. When the Tribunal asked why a church had to be in her suburb, why she could not use public transport or some other means to attend church, the applicant stated that she does not know where there is a church, and that she saw the religious convention in an advertisement.
68. The Tribunal observed that the applicant is an adult convert to Protestantism, that she fled India because of her religious beliefs, and put to the applicant that it would be reasonable to expect her to be devout and to make an effort to find a congregation of fellow believers in Australia. The applicant responded that she was basically a Catholic, that she is a very good Christian and that she is very sure that wherever she sits and prays that God is there. She stated that she has a very strong faith that if she prays to God He will hear her and that she does not need to go to a church for that. She stated that she also went to the religious convention and prayed to God there. The Tribunal asked the applicant whether she could feel part of a congregation or community of fellow believers and the applicant responded that she went to the religious convention and that she was a member of that community.
69. The Tribunal asked the applicant about the religious Convention she attended. The applicant claimed that the last time she attended one was two months ago and, asked how often she attends, she stated that whenever they see an advertisement in the newspaper they attend, that it is a whole day program and they attend all day until it is finished. Asked how many conventions she has attended, the applicant claimed to have attended three since first arriving

in Australia in November 2010, that whenever she saw an advertisement and she had the chance she would attend.

70. The Tribunal asked the applicant where she takes communion. The applicant stated that she went to a hall near [Suburb 2]. Asked where she goes to take communion as a sacrament, the applicant said that she has not taken communion since arriving in Australia. Asked why not, the applicant stated that she can only take communion in a church and she cannot find a Protestant church. When the Tribunal indicated that she could look it up in the telephone directory, the applicant stated that she does not know how to use computers and does not speak English and does not know how to find a Protestant church.
71. When the Tribunal observed that her failure to attend church or to take communion might suggest that she was not devout about her Protestantism, the applicant responded that if she were not she could have gone back to Catholicism and avoided all the trouble. When the Tribunal observed that it was open to disbelieve her claim to have converted to Protestantism, the applicant responded that she could easily go to a Catholic church in [Suburb 1], that there are many of them there. The Tribunal asked how she knew where Catholic churches are but not Protestant churches, the applicant claimed that when they first arrived in Australia they lived with a Catholic family and saw them go to a Catholic church.
72. The Tribunal asked the applicant if the reason why she has not taken communion for 18 months is that she does not know where there is a protestant church, the applicant agreed. The Tribunal asked the applicant why she did not ask her English speaking friend, to which the applicant responded that she had asked her friend several times but her friend only knows where the Catholic church is so she could not tell her where the Protestant church is. The Tribunal noted that her English speaking friend had filled in several forms for her, and asked why she could not ask her to look in the telephone directory. The applicant responded that her friend is a Catholic and is not much interested in her, the applicant, going to a Protestant church, that she had asked her friend but the friend said that she did not want to.
73. The Tribunal asked the applicant whether she had any evidence which would corroborate her claim to have converted to Protestantism. The applicant stated that she had the certificate but that she kept it in a wooden cupboard and that when their house was set on fire the certificate burned, so she did not have proof. The applicant claimed that she has been trying to get a duplicate certificate but she has not got it yet. The Tribunal asked her when she had started trying to get a duplicate and the applicant claimed to have started looking when they got rejected by the Department, that she had called people back home, but that the Pastor's phone number is not working now and she cannot get in contact with him. She claimed that she asked her family to contact the pastor personally but that there has been no response yet, and that it might happen but it might not happen. The applicant confirmed that this was the pastor who is a friend of her mother's and his church is about 15 kilometres from her home.
74. The Tribunal noted that in the interview with the delegate, [in] October 2011, the applicant had told the delegate that she would obtain copies of her baptism certificate, as well as photographs of her baptism and the poster advertising the group baptism she had been involved in [in] October 2010, yet some 18 months had since passed and she had not provided any of those materials. The applicant claimed that the pastor is not living at that church, that he is living a long way away in a Hindu area in the mountains, that her mother became friends with him because she sold fish in that area but that her mother no longer sells fish there so she is unable to meet with him. The Tribunal noted that she claimed to have been [baptised in a church 15 kilometres for her home and that the church should have

records of the baptisms it conducted. The applicant responded that the church which is 15 kilometres away is the one where they used to meet for prayer meetings but that she got baptised in the Church in Trivandrum, which is 30 kilometres away. When the Tribunal noted that she was on notice at least from the interview with the delegate and certainly from the decision of the delegate that corroboration of her claims was an issue, the applicant responded that she had already had a certificate of baptism but that it was destroyed in the fire. She stated that the church had so many problems and they did not want newcomers to the church to be stopped by hearing her stories of trouble. The Tribunal asked why a church which had given her employment, paid for her visa and paid for her airfare would not give her a duplicate certificate of baptism. The applicant responded that the church put a lot of effort into helping her, that there were a lot of issues in the church about spending so much on one family, so that when she approached the church they did not want to do more.

75. The Tribunal asked the applicant whether she had any evidence to support her claim that her house had been burned and damaged, such as photographs or invoices from tradesmen,. The applicant stated that she did not think it would be relevant. She stated that everything had been burned, that it was repaired and that her mother and sister were living in it. The Tribunal noted that the applicant had said that her children and her sister were living at her mother's house and that that was where she had recently called them. The applicant stated that they used to live in a separate house but that when her own house had been repaired they moved into her house because her mother's house was very small. She then stated that she had [number deleted: s.431(2)] sisters who were all married and they all moved out, but that her younger sister had come back to live at her mother's house, then when her, the applicant's, house was repaired, the sister and the applicant's children moved into her house, and that her mother lives at her own house. The Tribunal asked whether she did not telephone to her mother's house recently to speak to her mother and her children and the applicant responded that she must have misunderstood, that she must have said she called her mother and her children.
76. The Tribunal asked the applicant whether she had any evidence to corroborate her claim to have been physically assaulted during the incident in which her house was set on fire, such as evidence of medical treatment. The applicant stated that she was treated in a hospital in Madras, that she got a prescription for medicine but that they did not make a report there. The Tribunal noted that in her written statement she claims to have gone to a chemist in Madras, not a hospital, to which the applicant responded that it was actually a clinic.
77. The Tribunal asked the applicant why she did not seek asylum in New Zealand. The applicant claimed that they were visiting New Zealand, that their visas were for nine days and that for seven days the tour guide took them around in a bus to visit farms and other places, that they were part of a group and she thought this was part of the tour package but that she did not know any of the other people in the group because they were not from Kerala and she did not know whether they joined the group in Dubai or in New Zealand. She stated that on the seventh day she spoke to the tour group guide because she had a nine day visa, seven for New Zealand and two for Australia, and the tour guide looked at her passport and shad she, the guide, had to take them to the airport. The Tribunal noted that in her passport the New Zealand visa was given for one month, from entry on [a date in] November 2010. The applicant said she had no idea, that she cannot read English, and that she was informed that the visa was for seven days.
78. The Tribunal put to the applicant for comment the independent information which indicates that there are no impediments to moving freely within India, and asked why she could not

live elsewhere in Kerala or in India. The applicant stated that the second attack occurred outside Kerala. The applicant stated that each Indian State speaks a different language but that she and the second applicant only speak Malayalam. She also stated that the second applicant is a heart patient and cannot work, that they are being supported by the Red Cross and that this assistance is not available in India. She stated that in India nothing works based on law, it is all based on influence and power, so it is more safe to live here than in India. The applicant stated that if she is somewhere near to her children she will want to see them and if she does then they will be at risk. She stated that if she is a long way away they will accept the situation more readily. She said she wanted help to stay in Australia and to bring her children here so that they could all live safely.

79. The Tribunal asked whether her children had experienced any difficulties since she had left India and the applicant claimed that seven or eight months ago her eldest son was attacked, she thinks by the same group, that he was beaten very badly and was in hospital for a week, and that she had arranged counselling because she was very upset. The Tribunal noted that this was a very significant claim but that she had not mentioned this before, other than, according to the delegate's decision record, to tell the delegate a couple of weeks after the interview, when she attended the Department to present her passport, that one of her sons in India was ill and that she was worried by this and had seen a counsellor. The applicant responded that she told the delegate that her son was ill due to the beating, that the delegate had asked her to bring her passport to the Department for inspection and she told the delegate that her son was attacked and asked the delegate to take that into account. The Tribunal noted that this is not recorded in the delegate's decision, that it was not included in her written submission to the Tribunal prior to the hearing, and that according to the evidence before the Tribunal this was the first time the claim had been raised. The applicant responded that she usually took an interpreter with her to the Department but on this occasion she had relied on her own English, and that it had only come to her mind since the Tribunal had asked her at the hearing about her children. The Tribunal put to the applicant that not having raised an obviously relevant claim of such significance, that since her departure from India her son had been attacked and beaten by the same people who attacked her, at any stage prior to the hearing could lead the Tribunal to doubt her truthfulness. The applicant responded that she would not have told the delegate if it had not happened before, and that maybe the delegate did not understand.
80. At the conclusion of her evidence, the applicant requested that the Tribunal allow her time to provide her certificate of baptism, that her family members are trying to get it but that she cannot guarantee that they would be able to. The Tribunal indicated that it would consider any evidence or material which reached it prior to making a decision, but that it would not delay making a decision on that basis because the applicant had been on notice since the delegate's decision in November 2011 that corroboration of her baptism, and therefore her claims to protection, was at issue.
81. The second applicant was asked whether there was any evidence which he wished to give, to which he responded that most of the evidence had been destroyed and that he had nothing to add to the first applicant's evidence.

Independent country information

Christians in Kerala

82. Christians, in general, are not mistreated in Kerala, although sporadic attacks on Christians by Hindu extremists do occur. The reports of attacks on Christians indicate that these are directed at evangelical Christians and higher profile Christians such as pastors or nuns.
83. The US Department of State reports that there is a large Muslim population in Kerala; however, India's greatest concentrations of Christians are also found in the state.¹ Kerala Chief Minister Oomen Chandy is reportedly a Christian.² *Agenzia Fides*, a Christian news agency, reported in April 2011 that there is a "strong Christian presence" in Kerala and that "cases of violence are rare" in the state.³ A report from *The Washington Post*, published on 4 February 2011, also refers to Kerala as "one of India's most religiously diverse states" that "has rarely experienced the religious violence that has flared in other parts of the country".⁴
84. In February 2012, it was reported that "Asia's biggest Christian convention" was held in Kerala, attended by "three million people [and] addressed by prominent evangelists from across the world". A number of Kerala politicians were expected to attend the event, which was reportedly aimed to "be managed with no police".⁵ In December 2011, Christians in Kerala reportedly celebrated Christmas "with gaiety and religious fervour" at various churches. Churches also reportedly "jointly organised Christmas rallies at various places in the state. In fact, all Keralites, irrespective of religion and caste, celebrated Christmas".⁶
85. In addition, numerous media reports refer to various Christian ceremonies and processions that were held in various parts of Kerala during the 2011 Holy Week (17 April to 24 April 2011). None of these reports refer to any of these being the subject of interference by adherents of other religions, nor to any other interreligious incidents arising as a result of them.⁷
86. Nevertheless, a number of recent reports have been located which refer to Christians in Kerala being the subject of attacks or other adverse attention, including from Hindu

¹ US Department of State 2011, *International Religious Freedom Report for 2010 (July-December)* – India, 13 September, Section I

² 'Kerala Christians follow 'Vidyarambham' Hindu ritual to initiate toddlers in alphabets' 2011, *Asian News International*, 6 October

³ 'ASIA/INDIA – Anti-Christian violence in several states: community prays for peace and seeks volunteers' 2011, *Agenzia Fides*, 28 April – <http://www.fides.org/aree/news/newsdet.php?idnews=28875&lan=eng> – Accessed 6 July 2011

⁴ Wax, E. 2011, 'In a pluralistic part of India, fears of rising Islamic extremism', *The Washington Post*, 4 February

⁵ 'Asia's biggest Christian convention gets underway in Kerala' 2012, *Indo-Asian News Service*, 12 February

⁶ 'Kerala celebrates birthday of Jesus Christ' 2011, *United News of India*, 25 December

⁷ 'Thousands join Palm Sunday fete' 2011, *The Hindu*, 18 April
<http://www.hindu.com/2011/04/18/stories/2011041861770500.htm> – Accessed 6 July 2011; 'Holy Week begins with Palm Sunday' 2011, *The Hindu*, 18 April <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/article1705710ece> – Accessed 6 July 2011; Kerala Christians observe Palm Sunday' 2011, *Deccan Herald*, source: *Indo-Asian News Service (IANS)*, 17 April
<http://www.deccanherald.com/content/154303/kerala-christians-observe-palm-sunday.html> – Accessed 6 July 2011; 'Solemn ceremonies mark Maundy Thursday', *The Hindu*, 22 April <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/article1717464.ece> – Accessed 6 July 2011; 'Christians observe Good Friday' 2011, *Indian Express*, 22 April <http://www.indianexpress.com/news/christians-observe-good-friday/779964/0> – Accessed 6 July 2011; 'Prayers, fasting on Good Friday' 2011, *The Hindu*, 23 April
<http://www.thehindu.com/todays-paper/tp-national/tp-kerala/article1720180ece> – Accessed 6 July 2011

extremists. In February 2012, *The Times of India* cited a report prepared by the Global Council of Indian Christians (GCIC), which ranks Kerala as “fourth in a list of states with the highest [religious] intolerance level”. Although Kerala “claims impeccable secular credentials”, the GCIC reported “10 attacks against Christian missionaries and churches” in the state in 2011. Incidents against Christians in Kerala during 2011 mainly involved “manhandling, beatings, destruction of property and attacks on churches” and, in most cases, targeted evangelists. Sajan K George, President of the GCIC, stated that “[i]n Kerala, Christians are the new target group. People seem to have apprehensions about the work of missionaries and the service in churches”.⁸

87. *Compass Direct News* reports that in June 2011, members of a Hindu extremist group filed a complaint of forcible conversion against a group of Christians, accusing them “of distributing pamphlets and conducting health lessons to promote Christianity” The Christians were later released without charge.⁹ In April 2011, *Compass Direct News* reported that “Hindu extremists... verbally abused [four] Christians and beat them for distributing New Testaments and gospel tracts”.¹⁰ The same source reports that in March 2011 “Hindu extremists attacked [two pastors and] accused them of ‘forceful conversions’... Police arrested 35 Hindu extremists who were involved in the incident”¹¹
88. *Agenzia Fides* reported in April 2011 that extremist Hindu activists attacked a group of Christians in Kerala “who were distributing copies of the Gospel to passers-by”.¹² The Evangelical Fellowship of India (EFI) reported in March 2011 that “miscreants... burned St Mary’s Malankar Church and completely destroyed the holy attire and other belongings in Poddivatuvialla, Kerala.”¹³
89. In December 2010, *Compass Direct News* reported that a nun was attacked by Hindu extremists in Ernakulam. The subject of this attack reportedly stated that “she was targeted because she was a nun”.¹⁴ The same source reported that in September 2010, a Christian convert from Islam was beaten by Muslim extremists in Vikas colony, Ambalavava, after “they saw him worshipping Jesus”.¹⁵
90. The EFI’s 2010 annual report ranks Kerala joint sixth out of 18 states, based on the number of attacks against the Christian community. The six incidents listed for Kerala are as follows:

11 February: In Alappuzha, miscreants damaged a grotto of the Pius X church near the Women and Child Hospital in the Beach Ward.

29 March: In Madakara, Wayanand, police detained Pastor Easow Varghese, his wife and three children, Evg Biju P. George after Hindu extremists accused them of

⁸ ‘Church attacks on the rise’ 2012, *The Times of India*, 11 February

⁹ ‘Recent Incidents of Persecution’ 2011, *Compass Direct News*, 17 June

http://www.compassdirect.org/english/country/india/article_113908.html – Accessed 21 June 2011

¹⁰ ‘India Briefs: Recent Incidents of Persecution’ 2011, *Compass Direct News*, 29 April –

http://www.compassdirect.org/english/country/india/article_111701.html – Accessed 6 July 2011

¹¹ ‘India Briefs: Recent Incidents of Persecution’ 2011, *Compass Direct News*, 8 April

http://www.compassdirect.org/english/country/india/article_110540.html – Accessed 6 July 2011

¹² ‘ASIA/INDIA – Anti-Christian violence in several states: community prays for peace and seeks volunteers’ 2011, *Agenzia Fides*, 28 April <http://www.fides.org/aree/news/newsdet.php?idnews=28875&lan=eng> – Accessed 6 July 2011

¹³ ‘Persecution Watch March 26, 2011’ 2011, Evangelical Fellowship of India website, 26 March <http://www.efionline.org/persecution/439-persecution-watch-march-26-2011> – Accessed 6 July 2011

¹⁴ ‘Recent Incidents of Persecution’ 2010, *Compass Direct News*, 31 December

¹⁵ ‘India Briefs: Recent Incidents of Persecution’ 2010, *Compass Direct News*, 29 October

denigrating Hindu gods. The extremists stopped them as they were returning home after a film show, beat them up and took them to the police station. The Christians were released without charges after area Christian leaders' intervention.

12 April: In Kozhikode, alleged Hindu extremists attacked Pastor Ponnachen from Assembly of God's church, pelted stones at his house when after worship service, the Christians screened a film on social cause.

17 April: In Perumbavoor, alleged Hindu extremists attacked two Christians from Young Men Evangelical Fellowship (YMEF) who were distributing tracts in Christian homes and burned all their tracts.

4 July: In Muvatupuzha, allegedly eight Islamic extremists cut off a Christian professor's T.J. Joseph's hand for preparing a question with an allegedly objectionable reference to Prophet Mohammed.

22 September: In Vikas colony, Ambalavayal, alleged Muslim extremists beat a Christian convert from Islam after they saw him worshipping Jesus on Sept. 22 in Vikas colony, Ambalavayal.. The radicals also damaged Pastor Chacko's pipeline, the source for water for about 10 Christian families, and pelted the pastor's home with stones, damaging the house.¹⁶

91. In its annual report for 2010, the All India Christian Council (AICC) documented 71 attacks on Christians across 13 states, reporting that "the highest number of incidents occurred in Karnataka followed by Andhra Pradesh and Kerala" The report indicates that there were 25 incidents in Karnataka, 23 in Andhra Pradesh, and four in Kerala. The reason for the difference in numbers with the EFI report may possibly be found in the AICC's statement that they only included "independently verified attacks or those reported by a reliable source (e.g. an aicc leader or a mainstream newspaper)".¹⁷
92. The US Department of State reports that in March 2010, "authorities in Kerala arrested six persons, including two pastors, Pathanamthitta district on charges of publishing and distributing a book that promoted enmity between religions. The book, Chinwathu Palam (Bridge to Heaven), allegedly contained sacrilegious comments about the Prophet Mohammad". Those arrested were subsequently released on bail, and the case remained pending at the end of the year.¹⁸
93. Reports have also been located which refer to a recent rise in Islamic fundamentalism in Kerala. A report from *The Washington Post*, published on 4 February 2011, refers to the recent rise of "the Popular Front of India, a fast-growing Muslim political and social organization in Kerala" The growing popularity of this organisation was reported to be "raising concerns as a growing number of its young members embrace a radical brand of Islam". The report indicates that members of the Popular Front had been accused of "severing

¹⁶ Howell, R. 2010, *Religion, Politics and Violence: A Report of the Hostility and Intimidation faced by Christians in India in 2010*, Evangelical Fellowship of India, International Institute for Religious Freedom website, 22 December, p.16 http://www.iirfeu/fileadmin/user_upload/PDFs/2010-12-22-Persecution_Compilation_Report.pdf – Accessed 7 July 2011

¹⁷ All India Christian Council 2011, *2010 Annual Report: A report on activities and accomplishments of the All India Christian Council in 2010*, March 15, pp.2-3

http://indianchristians.in/news/images/resources/pdf/aicc_annual_report_2010.pdf – Accessed 7 July 2011

¹⁸ US Department of State 2011, *International Religious Freedom Report for 2010 (July-December) – India*, 13 September, Section II

the right hand of a Christian professor for what they felt was a slight against Islam” for “mocking the prophet Mohammed in an exam paper”.¹⁹

94. A June 2011 news report makes reference to a woman who was “brutally assaulted” in Kerala by persons acting as “morality police”. The report quotes Sajan K. George, President of the GCIC, who stated that “such incidents are manifestations of the rising tide of fundamentalism which is taking roots in Kerala”; however, the report suggests that the woman in question may be Muslim.²⁰

Mukkuva caste community in Trivandrum

95. The Mukkuva are said to be principally Catholic, having been converted to the faith by St Francis Xavier in the 16th Century, and to be traditionally engaged in fishing. Two sources, a study produced by Kerala University’s Loyola College of Social Sciences²¹ and a study produced by Robert Eric Frykenberg of the University of Wisconsin²², relate that Kerala’s Christian Mukkuva community have, historically, suffered economic and social marginalization as a consequence of their location within the polluted, or untouchable, strata of Kerala’s caste relations. The website of the Kerala state government lists the Mukkuva communities on the “Other Eligible Community (O.E.C) List” as a community which is “Eligible for all Educational Assistance enjoyed by Scheduled Castes”.
96. The Indian Ministry of Culture’s Anthropological Survey of India provides an entry on Kerala’s Mukkuvan Christian community in volume 5 of the 1998 *India’s Communities* series²³ According to this source Kerala’s Catholic Makkuvan’s “speak the Mukkuva dialect of Malayalam language” and “converted to Christianity during the Portuguese period mainly due to the evangelization by St. Francis Xavier from the year AD 1544. The community has synonyms like Aryan and Latin Christian.” Fishing is said to be “the traditional and present occupation of the Mukkuvan Christian” Kerala is also host to Mukkuvan Hindu and Mukkuvan Muslim communities. The entry for Kerala’s Mukkuvan Christians follows below:

MUKKUVAN, CHRISTIAN They are a community in Kerala and Tamil Nadu who were converted to Christianity during the Portuguese period mainly due to the evangelization by St. Francis Xavier from the year AD 1544. The community has synonyms like Aryan and Latin Christian.

In Kerala, the Mukkuvan Christian are distributed in the Alleppey, Ernakulam, Kottayam, Quilon and Trivandrum districts. They speak the Mukkuva dialect of Malayalam language and use the Malayalam script. The womens’ dress comprises of a jacket with long sleeves (rouka) and often a lungi (mundu) and a towel worn across the chest. They also tattoo their hands. The Mukkuvar Christian are non-vegetarian and rice is their staple cereal,

¹⁹ Wax, E. 2011, ‘In a pluralistic part of India, fears of rising Islamic extremism’, *The Washington Post*, 4 February

²⁰ ‘Kerala: ‘morality police’ attacks women because she is out at night’, *AsiaNews.it*, 22 June <http://www.asianews.it/news-en/Kerala:-'morality-police'-attacks-women-because-she-is-out-at-night-21906.html> – Accessed 6 July 2011

²¹ Loyola College of Social Sciences, University of Kerala (undated), *Kerala Society Structure and Change*, Blogger website, (posted by heena 14 May 2008) <http://maloyola20socio.blogspot.com/> – Accessed 17 December 2008

²² Frykenberg, R.E. 2008, ‘Avarna and Adivasi Christians and Missions: A Paradigm for Understanding Christian Movements in India’, *International Bulletin of Missionary Research*, vol.32; no.1, 1 January

²³ Mukkuvan, Christian’ in: Singh, K.S. 1998, *India’s Communities H-M*, People of India, National Series Vol.V, Anthropological Survey of India & Oxford University Press, Delhi, pp.2382-2385

supplemented with tapioca. Social divisions exist among them in the form of titles like Netto, De Souza and Decosta. These are also used as surnames, though nowadays, there is a trend to drop the surnames. Endogamy is practised at the community level, and cross-cousin marriages are permitted after obtaining permission from the church authorities. Junior sororate is also practised. A marriage pendant (thali) and ring (mothiram) are the marriage symbols for women. The system of dowry is prevalent among them. Divorce is prohibited, but remarriage of widows and widowers is permissible. Nowadays, there is a change in rule of residence, as some men choose matrilineal residences after marriage. They follow equigeniture as the rule of inheritance. The Kumbani Appan and Kumbani Amma (godfather and godmother) play an important role in the naming ceremony. On the twenty-eighth day of a birth, waistband-tying is observed. Puberty rites for girls (kuli kalyanam) are observed. The marriage is held at the bridegroom's parish church after the engagement (varthapadu) and tying of tall is an important ritual. The dead are buried and the death pollution is observed for seven days, at the end of which prayers are held.

Fishing is the traditional and present occupation of the Mukkuvan Christian. Some of them are landholders in the coastal villages, while others are employed in the industrial sector (Titanium factory) and shell-crafts. In the villages, the Mukkuvan women barter fish for tapioca and other agricultural products. Social control is exercised by the parish council. The heads of families are members of the council and they have an elected committee headed by the vicar of the church. The committee works for the general welfare of the community. They are Roman Catholics and their pilgrimage centres are the Catholic shrines at Goa, Velanganni and Edathwa. Pre-conversion practices like kuli kalyanam (puberty rites for girls) survive. Special food items are prepared and served to the invited kin. Sidha food is exchanged with all communities and they share water resources, cemetery and religious shrines with other Roman Catholics. They participate in traditional festivals like Onam with all communities. Basic amenities exist in almost all villages. Under the Malsia Fed and the Indo-Norwegian Project, the fishing industry in Kerala has made considerable progress in recent times, the beneficiaries of which include the Mukkuvan Christian.

97. No reports could be located of attacks on the Mukkuva caste community in Trivandrum (or Thiruvananthapuram). Neither could any recent reports be located of attacks on Catholic fishing communities in Kerala, or on Christian fishing communities generally. The only information that could be located of communal violence affecting a Kerala Christian fishing community relates to an event which occurred in Vizhinjam in May 1995. A recent report in *The Hindu*, covering subsequent court proceedings, provides details of this episode of violence. According to the August 2008 *Hindu* report: "a mob of around 500 fishermen belonging to the Christian community gutted nearly 400 huts and vandalised scores of fishing boats and tools belonging to the Muslim community allegedly as a response to an attack on a couple members of the Christian community earlier in the day" The most significant episodes of violence to affect Kerala's fishing communities occurred in Marad over 2002 and 2003 but did not involve Christians; the clashes involved Hindu and Muslim fishing communities²⁴

²⁴ (for information on the Vizhinjam incident, see: 'Trial on Vizhinjam riots begins' 2008, *The Hindu*, 8 August <http://www.hindu.com/2008/08/08/stories/2008080860370300.htm> – Accessed 18 December 2008; and: 'Vizhinjam clashes: 83 acquitted' 2008, *The Hindu*, 30 November <http://www.thehindu.com/2008/11/30/stories/2008113060370300.htm> – Accessed 18 December 2008; for information on the Hindu–Muslim communal violence which occurred in the Kerala fishing community of Marad, see RRT Country Research 2005, *Research Response IND17161*, 7 January; see also Iype, George 2004, 'Riot-hit Marad goes off netas' radar', *rediff.com* website, 7 May <http://us.rediff.com/election/2004/may/07gi.htm> – Accessed 6 January 2004; for further information on the Marad incident see Krishnakumar, R. 2003, 'Kerala's communal challenge', *Frontline*, 24 May <http://www.frontlineonnet.com/fl2011/stories/20030606001904400.htm> – Accessed 14 April 2008).

FINDINGS AND REASONS

Country of reference – finding

98. The Tribunal finds that the applicants are citizens of India.
99. This finding is based on: The biodata page of the applicants' several passport which bear their names and likenesses; the details of residence, education and employment given in the protection visa application; and the applicants' language and claimed ethnicity. All these factors are consistent with Indian nationality, and the applicants have not claimed any other nationality.

Protection claims - findings

100. Only the first named applicant made claims to protection, the second named applicant being included in her protection visa application. The applicant's claims may conveniently be summarised as follows:
- a. That she is a Christian and was assaulted and her house was attacked by fundamentalist Hindus for this reason;
 - b. That she is a convert from Catholicism to Protestantism and was subject to discrimination by Catholics, and lost her volunteer position working with a Catholic welfare organisation, for this reason;
 - c. That she is a member of a particular social group, namely the Mukkuva caste, and was subject to adverse treatment and discrimination in education and employment for this reason.
101. The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for her or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70).
102. The Tribunal finds that the applicant has fabricated her claims to Australia's protection. The Tribunal does not accept the applicant's claim to have converted to Protestantism, to have been the object of discrimination by Catholics or of violence by Hindu fundamentalists, or to have experienced discrimination amounting to persecution on the basis of her caste.
103. The Tribunal is satisfied that the applicant has constructed her claims in order to advance her migration intentions and not because she has a genuine fear of harm for a Convention reason or for any reason if she were to return to India. The Tribunal finds that the applicant does not have a well-founded or any fear of Convention-related persecution in India in the reasonably foreseeable future.

104. The Tribunal put its doubts about the truthfulness of her evidence to the applicant at the hearing and the applicant's responses are set out above in her evidence given at the hearing.
105. The applicant has not provided documentary or any corroboration for her claims to have converted to Protestantism, and gave several explanations for why such evidence did not exist, or could not be obtained, or was refused by the relevant church.
106. The applicant has not provided documentary or any corroboration for her claims to have been assaulted and her house set on fire by fundamentalist Hindus, and gave different explanations for why medical records were not available, and of when her house became habitable again, which the Tribunal is satisfied the applicant constructed in order to address the doubts expressed by the Tribunal.
107. Several aspects of the applicant's claims were, in the Tribunal's opinion, inherently implausible, including:
 - a. That her baptism and that of a number of other families would have been advertised by a church in a poster in a public place;
 - b. That some of the Hindu attackers at her house, after her baptism, would re-appear to threaten her after she had travelled some 8 to 9 hours on a bus to another part of the State;
 - c. That despite the attack on her house and the hostility of people in her village to herself and her family, members of her family including her children remain living in her house in that village; and
 - d. That the church to which she converted and for which she claims she undertook many tasks, and which paid for her and her husband's airfares, would refuse to assist her by providing a duplicate certificate of baptism in order for her to evidence her claim to have converted to that church.
108. Despite being a convert to a new religion, the applicant has made no attempt since arriving in Australia to engage with her religious community in Australia. The Tribunal finds unpersuasive, and does not accept as true, the applicant's explanation for not having done so, being that there is no church in her particular suburb, and that she does not know where the nearest Protestant church is to her residential address and cannot find out because she does not speak English and her English-speaking friend, who provided significant assistance with her protection visa application, was not willing to look it up in a telephone directory.
109. The applicant's claims of religiously-inspired violence are not supported by the reports, few in number and significantly different in nature to the applicant's claims, of inter-religious violence in Kerala State.
110. The applicant's failure, having reached New Zealand, to make any effort to seek asylum in that country despite claiming to have fled India in fear of persecution a short period before arriving is strongly suggestive, in the Tribunal's opinion, of a lack of genuine fear of persecution in India.
111. The indicia of the applicant's education (to Bachelor level) and her unpaid but relatively senior white-collar employment do not support her claim to have been discriminated against by reason of her caste.

112. The applicant has not provided corroborative evidence to support her claims, her claims are not consistent with country information where available, and her claims do not exhibit accurate and persuasive detail or logic.
113. For all these reasons, the Tribunal does not accept that the applicant was attacked by Catholics or by Hindu fundamentalists by reason of her religion, or that she was subject to discrimination by Catholics or Hindus by reason of her religion, or that she has suffered discrimination amounting to serious harm by reason of her caste. The Tribunal is satisfied that the applicant has fabricated her claims to protection.
114. The Tribunal therefore finds that the applicant does not have a genuine fear of persecution for a Convention reason, or for any reason, if she were to return to China.
115. Having considered all of the applicant's claims, singly and cumulatively, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution for a Convention reason if she returns to India now or in the reasonably foreseeable future.
116. 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). For all the reasons set out above, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).

CONCLUSIONS

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

DECISION

118. The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.