

1200852 [2013] RRTA 207 (7 March 2013)

DECISION RECORD

RRT CASE NUMBER:	1200852
DIAC REFERENCE(S):	CLF2011/198652
COUNTRY OF REFERENCE:	India
TRIBUNAL MEMBER:	Sophia Panagiotidis
DATE:	7 March 2013
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of India, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] November 2011.
3. The delegate refused to grant the visa [in] January 2012, and the applicant 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 in respect of 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 in respect of 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 in respect of 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 in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
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 *SZFDV 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 in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
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.

The protection visa application

19. The following information was obtained from the protection visa application lodged [in] November 2011:
- The applicant was born in born in [city deleted: s.431(2)] India on [date deleted: s.431(2)] and is a citizen of India. He is the holder of an Indian passport issued [in] 2002 and expiring [in] 2012.
 - The applicant is a Sikh and has never been married. He speaks Punjabi, English and Hindi.
 - He has not lived in any other country other than India and Australia
 - He completed his secondary education in India
 - Between 2006 to 2008 he was enrolled in a [qualification and institute deleted: s.431(2)].
 - At question 42 – "*Why did you leave that country?*" (India), the applicant wrote:
"To study in Australia but things dramatically and I fear for my life at this moment. I came in contact with a girl who belongs to Islam a minority religion. Her name is [Ms A] (name supplied) who lives in my town in Punjab (India) we fell in love and then the trouble started as I am in a fix at the moment to get things sorted. I would be executed if I

go back at the moment to my country because my parents and girl's parents don't accept this relationship." (sic)

- At question 43 – *"What do you fear may happen to you if you go back to that country?":*

"I fear for my life and I am sure I will be executed if I go back on the basis of religion. I am true Sikh and follow my religion regularly. I came to Australia to study and successfully complete my studies and go back to my country.

In India I belong to staunch religious group. I came into contact with a girl who is from another religion/group and we fell in love. Slowly we try to meet each other and started meeting at different places.

I always miss her as she is in India. She belongs to Muslim religion and in India it is totally against the belief or faith to have a relationship with a girl from a religion (minority) Islam.

I fear for my life as if I go back they will execute me as the girl's parents and my parents are against this relationship." (sic)

- Question 45 – *"Why do you think this will happen to you if you go back?"* the applicant wrote:

"Because in that part of the world we do have honour killing and the people could do anything for their honour and I am sure I go back to my country they will definitely kill me or execute me.

I fear for my life and if I go back then it would be hard for me to be alive. So I fear for my life and I don't want to go back in this fear." (sic)

- Question 46 – *"Do you think the authorities of that country can and will protect you if you go back? If not, why not?"* the applicant wrote:

"I don't think that I would be protected or the system will protect me." (sic)

Interview with the Department

20. The Tribunal considered a copy of a transcript of an interview held [in] January 2012 in which the applicant is recorded to have said the following:

- He met the girl at secondary school in [years deleted: s.431(2)];
- After he finished school saw her again at a wedding and then started seeing her. This was in 2004;
- They each spoke to their parents about getting married. His parents were OK about it but her parents were not. They are very strict about religion;
- He asked her to marry him in 2005;
- He tried hard to convince the parents;
- One day he was going somewhere and some guys stalked him and started beating him. They pushed him. He did not report it to the police, but he told his parents;
- He has not seen or spoken to her since he came to Australia in 2006;

- The applicant was asked if he is still in a relationship. He said that he does not know if she is married as he has had no contact with her since 2006.
- Her parents are still trying to find him. One of his friends has told him this, six months ago. His friend is his neighbour in India;
- He fears harm from the girl's parents;
- The applicant was asked what would happen if he were to return to India. People who follow religion strictly will do anything – honour killing;
- The applicant was asked to comment on country information reports that state that the Indian authorities and Indian society in general are extremely tolerant of different religions and mixed marriages/relationships between Sikhs and Muslims are legal and accepted. The applicant said that this depends on the families. His parents are fine with it but her parents are not.
- The applicant was asked about his two trips to India, the first [in] September 2007 [to] October 2007 and the second trip [in] May 2010. The applicant said he went on the first occasion because his father was sick and on the second occasion as his father passed away;
- The applicant was asked if he experienced any incidents of threat or harm when he returned. He said that when he went back, no-one knew that he had returned as he went to another state – [State 1] as this was where his [sibling] lives;
- The applicant was asked how he found out about applying for protection. He said he heard that a person can apply if they are in danger. He was asked why he did not apply for a protection visa earlier. He said he did not apply for a protection visa until November 2011 because he finished study in 2008 and he thought he would get permanent residence but he did not get the IELTS score, as such he applied for protection;
- The applicant was asked about relocation and he said he cannot relocate anywhere else in India as he believes he will be found. If he returns to India, they can find him wherever he goes.

Pre-hearing submission

21. The Tribunal received a letter from the applicant's representative dated 29 May 2012 who writes:

“As claimed [the applicant] has fallen in love with a girl who is a Muslim and as the applicant's parents do not approve of the relationship he claims that should he return to India, he will be killed or attacked as a result of this relationship. He is unable to make any contact with her as they monitor her whereabouts. He claims that he is unable to break up with this girl as they have had a very strong relationship and he fears that he will be killed if he returned to India.

We have informed our client that he needs to put forth evidence to the Tribunal as to why he has the right to enter and reside in Australia...

Further we wish to draw the Tribunal's attention to fact sheet 61a which relates to 'Complimentary protection' The case officer at the department has made the decision to refuse the application in question on [date] of January. As this additional requirement came into effect on the 24th March, we request that the Tribunal assess the client's claims under this basis as well prior to making a decision."

CLAIMS AND EVIDENCE

22. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
23. The applicant appeared before the Tribunal on 30 May 2012 to give evidence and present arguments.
24. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.
25. The applicant confirmed his date of birth and that he was born in India. His mother and [siblings] also live in India. Father passed away in 2010. The applicant confirmed that he has no family in Australia.
26. The applicant confirmed that he completed the application form himself and had some help from his representative. There was nothing he wanted to change in his written statement.
27. The applicant said he completed secondary school in India. He did not work in India prior to coming to Australia. He said he arrived in Australia in August 2006 on a student visa. He studied [course deleted: s.431(2)] at a private college and completed the course in 2008. He said that in 2008 he applied for a skilled graduate visa but this was refused because of his IELTS scores. He said that he appealed that decision to the Migration Review Tribunal last year but was unsuccessful.
28. The applicant said that after he completed the course he worked as a [occupation deleted: s.431(2)] part time and he also tried to get work in the [sector deleted: s.431(2)]. At the moment he is working doing [occupation deleted: s.431(2)] part time. He shares a house with friends. He is not in relationship.
29. The applicant said that he lodged a claim for a protection visa because when he was at high school in India he had a girlfriend, [Ms A], who was Muslim. Her parents and his parents did not approve of the relationship. After they each told their parents about their relationship, things went wrong. His father disapproved of the relationship as did her parents. He and his girlfriend thought about running away and getting married in a civil ceremony, however her family found out and they started threatening him. He does not know how they found out. One day the girl's brothers took him and tried to kill him with sticks. He told his parents and they tried to talk to the girl's parents to try and sort things out. He went to his [sibling]'s place and some people from the girl's family followed him. He was afraid. After three months he returned home. He used to get calls and was threatened. When he returned home he decided to apply for a student visa and come to Australia.
30. The applicant said he met [Ms A] in high school in [year deleted: s.431(2)] the year before he finished school. She was in the year below him. He was [age deleted: s.431(2)]. She was [age

deleted: s.431(2)]. They liked each other but they were young and could not meet outside school. They used to call each other on the telephone at the time. Her parents knew they were telephoning each other. After that her parents took her from the school and he did not see her for a while. They stopped her from going to school because they did not approve of the relationship. He did not see her after that as she did not return to school. He only saw her once in the local market in 2003 or 2004.

31. Before the applicant came to Australia the applicant said he had some problems. The applicant said that her family members used to call him on the telephone and threaten him. He said he was taken and beaten twice with hockey sticks and rods. This was about 2002. He used to wear a turban and after the attack he cut his hair so that they would not recognise him and he went to stay with his [sibling]. Somehow they found out where he was.
32. The applicant said that after [Ms A] left school they did not talk again.
33. The applicant said that they tried to hurt him and he was attacked because he and [Ms A] were thinking of running away together. They attacked him because of their family's honour and for the respect of their family. They are Muslim and it is not a big community.
34. The applicant confirmed that he is a Sikh. It was difficult for him to make the decision to cut his hair. His parents told him to do it just for this situation. He was supposed to grow it back later.
35. The applicant said he does not know what has happened to her after he left India.
36. The applicant said that since he left India there have been no threats either to himself or to his family.
37. The applicant told the Tribunal that his [siblings] live in a different state, the eldest lives [State 1] which is where he stayed. This is in a different state. [Details of siblings deleted: s.431(2)].
38. The applicant was asked if could relocate and live in another state like [State 1] or in [state deleted: s.431(2)]. He replied that he could not because somehow they found him last time when he was with his [sibling] in [State 1]. He was asked if they would try to find him now and he said that anything can happen. They have tried before and it could happen again. He does not know what has happened to her now, whether she has married, had children or moved away.
39. The applicant told the Tribunal that he told his parents about the attacks and they talked to the girl's parents but nothing was resolved. He did not complain to the police as it was too complicated. His parents did not want him involved with the police for a situation like that. They wanted to sort it out. His parents spoke to her parents and they agreed that nothing would happen to him but after a few months they saw him again and troubles started again.
40. The applicant said that he and the girl never went out together they were only at school together. They have spent time together at the school café.
41. The applicant was asked why he did not claim protection earlier. He said that once he finished his studies he thought he could get permanent residency easily, but it turned out to be complicated because he could not get a high enough IELTS score. He then appealed to the

Migration Review Tribunal as he did not have any other course of action but he was not successful.

42. The applicant was asked about his statement that the system cannot protect him in India and why does he think that when he has not made a formal complaint to the police or allowed them to try and help him. The applicant said that if he complained to the police they would tell him to try and sort it out himself and with his family. If it cannot be sorted out then they will investigate. His parents do not want him to complain.
43. The applicant's representative said that to complain to the police is a social stigma in a traditional society like his in Punjab. Social obligations in his situation are a big thing. His parents were trying to hide it as far as possible so that people did not know because of the social stigma of being involved with a Muslim girl.
44. The applicant was asked how badly he was beaten. He said not that badly but his back was hurt and his wrist. He thought it was broken.
45. The applicant was asked about the telephone interview he had with the Department.
46. The Tribunal arranged for the applicant to have a copy of the transcript of the interview in order to comment on information contained in it. The Tribunal told the applicant that there was adverse information contained in that transcript and in the delegate's decision statement which would be the reason or part of the reason for affirming the decision. The applicant was also told that if he needed more time to comment after the hearing to let the Tribunal know. He was also told he could confer with his representative.
47. In the transcript of that interview he is recorded to have said that he saw the girl at a wedding in 2004. He is recorded to have said that he talked to his parents and she talked to her parents about getting married. He stated that his parents were OK with it but her parents were not because they are very strict with their religion. He is recorded to have said that he asked to marry her in 2005 and tried very hard to convince the parents. He stated that one day he was going somewhere and some guy stalked him and started beating him and pushed him. He is also reported to have been asked if he was still in a relationship and he replied that he did not know if she was married and there has been no contact with her since 2006. He stated that her parents are still trying to find him, he was told this by one of his friends six months ago. The friend is a neighbour back in India and so he fears harm from the girl's parents.
48. The Tribunal explained that this was different to his written claims where he said that his parents had also objected to the relationship. He also stated earlier during the hearing after being asked when he last saw [Ms A] that he had only seen her once at a local market in 2003 or 2004.
49. The Tribunal also asked him to note the delegate's conclusion that since he had returned to India twice without incident in 2007 and 2010 he would not be targeted.
50. The Tribunal asked the applicant and his representative to read the copy of transcript of the interview and the delegate's decision statement and to respond to these.
51. The Tribunal arranged for a short adjournment in order for the applicant to confer with his representative.

Resumption of hearing

52. Once the hearing was resumed, the applicant told the Tribunal, in response to the information put to him that he did see the girl at a wedding. He said that he was stressed when he spoke to the delegate and he forgot about that. The girl's family does not live far away from his house and he saw her at a wedding. He did not attend the wedding. This was in 2004 or 2005. After the wedding he saw her again after a few months. He saw her for no more than an hour and he asked her again to marry him. He persuaded his parents to agree to the marriage. She asked her parents again for permission to marry him. When she again asked her parents, they did not agree. That is why they are still threatening him. He did not see her again after that. His parents spoke to her parents again about them getting married. They told him that they would do so but this was the last time. They said no straight away.
53. The Tribunal asked the applicant why, after not having seen the girl for quite some time, and having seen her only briefly, he asked her to marry him. Why did he do so even though he does not know this girl very well? The applicant told the Tribunal that he has an attachment to her and he wants to spend his life with her.
54. The applicant said that his friend told him last year that she was about to get married. He felt that she had to settle down someday with someone and there is nothing he can do about it. He felt bad about that.
55. The Tribunal asked if it was a usual situation where a young man like the applicant meets a girl while they were both very young and they decide they wanted to get married but cannot as they do not have their parents' approval, he then does not see her for a few years, speaks to her for a short amount of time and again asks her to marry him. The applicant said that he knew where she and her family live and that she was not married or in any relationships and did not go out. She is a good girl. He thought that he could convince her and her parents to allow them to marry.
56. The applicant was asked when was the last time he was approached or attacked by members of her family. He said that the last time he was approached or attacked by her family was in 2004 before the wedding. He remembers that they each spoke to their parents and his parents spoke to her parents again and his parents said that if they don't agree they won't do so again. Her parents said no straight away.
57. The Tribunal asked the applicant if a Muslim girl wants to marry a Sikh boy what would happen and whether one or the other could offer to convert to the others' religion The applicant said that this does not happen in India. He said he would accept her as she is.
58. The applicant's representative told the Tribunal that there are situations where one could offer to convert to the other religion. This does not happen frequently. Where this does happen, it is usually where the parents agree. In the north of India there are strong ethnic and religious feelings and honour killings are prevalent, especially in Punjab and Haryana. There are also strong caste and tribal feelings.
59. The representative said that his client was stressed out when all this started. The applicant's story is that they he and the young woman were minors and started interacting with each other, at school, in cafes, parks, there was a feeling and this built up and an attachment was formed. In about 2001/2002 it came to a point that they thought they wanted to get married. However, due to unforeseen circumstances, the girl's brothers started problems and started to threaten the applicant. The applicant and the girl believed everything would go smoothly but it did not, it became nasty. Due to the fear, the relationship went quiet but the relationship

was on and off. They feared attacks and so that is why the relationship was on and off. In 2004 they met somewhere again and he proposed again. Things did not work out. In 2004 or 2005 he was attacked again and in 2006 he departed India.

60. The applicant told the Tribunal wants to more time to be able to stay in Australia. If he goes back know it would be hard for him to live there. He wants to be able to work or find an employer to sponsor him so that he can remain. If he goes back, anything can happen and they will find him and things will start again. He cannot take any more. Maybe they will change their mind over time.
61. The Tribunal asked the applicant if he had any further comments about his written statement and the transcript of the telephone interview.
62. The applicant said that the telephone call by the delegate was confusing. He became confused when he was speaking. He was given notice of the telephone interview but he was not given an option of seeing the officer personally.
63. The Tribunal asked the applicant and his representative if they wanted to make any submissions to address the Convention on Refugees that is that he has a fear of persecution on the basis of race, religion, nationality, membership of a particular social group or political opinion and whether the government of his country is unable to unwilling to protect him.
64. The applicant's representative said that the relevant consideration in his client's case is that there are compelling reasons. The circumstances are not exactly related to the Convention but do relate to religion being a constraining factor. His fear is of being a victim because of his religion and there is likelihood that he would be killed or persecuted based on his religion.
65. The Tribunal was asked whether relocation is a real possibility. The applicant's representative said that the applicant has the same fear of being attacked anywhere in India. As an example, when the applicant went to his [sibling]'s place in [State 1], another state, they were still chasing him and he was getting threats. Even if he goes to other states within the country he will have the same fear.
66. The Tribunal asked the applicant, given how populous the country is, how these people found him. The applicant said that people use their networks because there is a big Muslim population in the Punjab.
67. The Tribunal asked the applicant why the girl's parents would want to advertise the fact that their daughter was interested in a man who was not a Muslim. Wouldn't that affect her chances of making a suitable match? The applicant said that in Muslim families, they keep their girls inside and they want them to marry suitable Muslim boys. It is very complicated. He thinks they will find him no matter where he goes, even if he goes to Mumbai or Delhi.
68. The Tribunal asked the applicant and his representative about whether they wanted to make any submissions about complementary protection.
69. The applicant's representative said that in relation to the complementary protection criteria, the Tribunal should focus on complementary protection by taking into account the period of the applicant has been in Australia as well as his circumstances. The applicant came to Australia in 2006 and successfully finished his studies in the [course deleted: s.431(2)] and paid his fees and has tried for a sufficient level in the IELTS test in order to at least get a

graduate temporary skilled visa. He was denied because of the results in his English test. He has been in Australia since 2006 and has strong connections to the Australian way of life and system. His qualifications should be added to the above in consideration of his circumstances and the Tribunal should consider his request for complementary protection. In the meantime he is trying to find some way of staying in Australia because of his fear of persecution. His mother has told him that they could arrange a match for him in Australia to settle him down. His father has passed away and his mother is on her own and she is keen on getting her son married and settled.

70. The applicant was given additional time to provide further information.

Post hearing submission

71. The applicant provided an Affidavit from his mother on 9 August 2010 who writes:

“I would request him to stay back in Australia as he would be executed or killed if he comes back to India on the interreligious marriage.

I would like to state that he was threatened when he came last time and he was attacked very badly. I would like to state that he will be safe in Australia as the state will protect him but he won't be safe in India as there is no protection for him in India.

I would like to state that I am a widow and dependent old lady so it would very hard for me to survive without my son.

I would like to request that Australia should protect my son or else he will be in danger of getting executed.”

Country information

Religious freedom in India

72. According to the U.S. Department of State's International Religious Freedom Report for 2011, released in 2012, India's constitution and other laws and policies protect religious freedom and, in practice, the government generally respected religious freedom, although some state-level laws and policies restricted this freedom. The country is a secular republic, with all religions offered equality under the law. The government did not demonstrate a trend toward either improvement or deterioration in respect for and protection of the right to religious freedom. There have been reports of societal abuses or discrimination based on religious affiliation, belief or practice. The country is the birthplace of several religions including Hinduism, Buddhism and Sikhism, and for thousands of years home to Jewish, Zoroastrian, Muslim and Christian communities. The vast majority of citizens of all religious groups lived in peaceful coexistence and was conscious of religious freedom and minority rights, although at times violence between religious groups and organized communal attacks against religious minorities occurred. However the Ministry of Home Affairs reported that incidents of communal violence decreased during 2011 compared to 2010. The country's democratic system, open society, independent legal institutions, vibrant civil society and free press actively provided mechanisms to address violations of religious freedom when they occurred.

Sikhs generally

73. No independent human rights organisations report that ordinary Sikhs in India are discriminated or targeted for harm on the basis of their religion, identity, or appearance. Neither the US Department of State *International Religious Freedom Report 2011 – India* or the United States Commission on International Religious Freedom report discrimination of Sikhs.¹ A professor emeritus of political science at the University of Missouri “who has written extensively on India and Sikhs” informed the Immigration and Refugee Board of Canada (IRBC) in February 2012 that “Sikhs, in general, do not suffer discrimination in Punjab more than any other group”.²
74. While there is no evidence that ordinary Sikhs are currently at risk of serious harm by state or non-state actors, Sikhs complain that they continue to be the subject of derogatory and demeaning stereotypes and humiliating jokes; the latter commonly referred to in India as ‘Sardar’ jokes. *The Times of India* reported that “[t]he concern is that the stereotypical idea of a dim-witted Sardar tends to generate a certain degree of prejudice and negates the positive traits which are commonly associated with the community”.³ Some Sikhs complain that the Indian film industry reinforces these stereotypes.⁴
75. A 2007 paper in *Third World Quarterly* argues that “[t]he Indian state seems to have learnt bitter lessons from the violent conflict with the Sikhs in the 1980s and 1990s” and consequently governments now pursue a “policy of accommodating the Sikhs” The author, Pritam Singh, also suggests that the elevation of Sikhs to the Prime Ministership and the Armed Forces is indicative of a new “policy paradigm” in the Indian political system.⁵

“Mixed” relationships

76. Marriage in India continues to occur largely within caste, religion and economic group.⁶ Sources which address inter-religious marriage, inter-caste marriage and divorce note that these phenomena are not the norm.^{7 8 9} For the purpose of this discussion a ‘mixed’

¹ US Department of State 2012, *International Religious Freedom Report 2011 – India*, 30 July; United States Commission on International Religious Freedom (USCIRF) 2012, *USCIRF Annual Report – The Commission’s Watch List: India*, 20 March

² Immigration and Refugee Board of Canada 2012, *India: Treatment of Sikhs in Punjab (2007-February 2012)*, IND103968.E, 2 May http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453967&l=e Accessed 31 May 2012

³ ‘Sikhs ask cops to ban ‘Sardar’ jokes on Net 2007, *The Times of India*, 19 March http://articles.timesofindia.indiatimes.com/2007-03-19/mumbai/27874138_1_sikh-youths-sikh-community-mumbai-police Accessed 29 August 2012

⁴ Kaur, S n.d., *Indian Film Art: A Vehicle To Humiliate Sikhs*, Shaheed Khalsa website <http://shaheed-khalsa.com/film.html> Accessed 29 August 2012

⁵ Singh, P 2007, *The Political Economy of the Cycles of Violence and Non-Violence in the Sikh Struggle for Identity and Political Power: Implications for Indian Federalism*, *Third World Quarterly*, Vol. 28, No. 3, JSTOR, p.567 <http://www.jstor.org/stable/pdfplus/20454946.pdf?acceptTC=true> Accessed 13 August 2012
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⁶ Singh, D & Goli, S 2011, ‘Exploring the Concept of Mixed Marriages in Indian and selected states: First Time Evidences from Large Scale Survey’, *Population Association of America 2011 Annual Meeting Program*, Princeton University website, p.3 <http://paa2011.princeton.edu/download.aspx?submissionId=111966> – Accessed 19 March 2012

⁷ A state-by state comparison is available at: Singh, D & Goli, S 2011, ‘Exploring the Concept of Mixed Marriages in Indian and selected states: First Time Evidences from Large Scale Survey’, *Population Association of America 2011 Annual Meeting Program*, Princeton University website, p.11 <http://paa2011.princeton.edu/download.aspx?submissionId=111966> – Accessed 19 March 2012

⁸ Rathor, A 2003, *Slum Dwellers: Curse on Development*, Sarup and Sons, New Delhi, Google Books, p.106 <http://books.google.com.au/books?id=BpdzgOTyifUC&pg=PA106&dq=inter->

relationship is taken to mean relationships between people of different religions, castes, or nationalities.

77. In 2006, the IRBC quoted a professor of Asian Studies¹⁰ as stating that inter-religious marriages were more common between students and among professionals in urban areas, while they were less likely in rural areas.¹¹ Some authors have also stated that inter-caste marriage is slowly increasing among certain socioeconomic groups, such as urban youth.¹² Urban women are arguably more likely to marry outside of their caste, particularly if they are Christian, and if they have a high educational and economic status.¹³ However, the marriages which have been increasing are not those between major castes, but those between sub-castes from the same major caste group.¹⁴
78. Sources highlight the tension between young people who wish to pursue mixed unions and their families. Most women are not responsible for choosing their partner. In the north of India, parents are often solely responsible for making a decision about who their daughter should marry.¹⁵ Parents may consider arranging a marriage for their children a duty, and may not accept modern marriage patterns such as a son or daughter choosing their own spouse.¹⁶ Hostile reactions to unconventional marriages are less likely amongst urban, educated families.¹⁷
79. A study based on 2005 Indian Human Development Survey data suggests that incidences of inter-caste marriage are highest in Punjab (12.2 per cent of inter-caste marriages), West

[religious+marriage+attitudes+India&hl=en&sa=X&ei=Ia1qT4nkHZCeiQePppmOBg&ved=0CFUQ6AEwBjgK#v=onepage&q=inter-religious%20marriage%20attitudes%20India&f=false](#) – Accessed 21 March 2012

⁹ Naqvi, M 2012, *India's Divorce Rate Rising*, Huffington Post, source: Associated Press, 15 April

http://www.huffingtonpost.com/2011/04/12/india-divorce-rate-rise_n_848201.html – Accessed 16 April 2012

¹⁰ The IRB source does not identify the professor by name or institution.

¹¹ Immigration and Refugee Board of Canada 2006, *India: The situation of couples in inter-caste and inter-religious marriages, including societal attitudes, treatment by government authorities and the situation of children resulting from such marriages (2000 – 2005)*, IND100661.EX, 9 January

¹² Rathor, A 2003, *Slum Dwellers: Curse on Development*, Sarup and Sons, New Delhi, Google Books, p.106

<http://books.google.com.au/books?id=BpdzgOTyifUC&pg=PA106&dq=inter-religious+marriage+attitudes+India&hl=en&sa=X&ei=Ia1qT4nkHZCeiQePppmOBg&ved=0CFUQ6AEwBjgK#v=onepage&q=inter-religious%20marriage%20attitudes%20India&f=false> – Accessed 21 March 2012

¹³ A state-by state comparison is available at: Singh, D & Goli, S 2011, 'Exploring the Concept of Mixed Marriages in Indian and selected states: First Time Evidences from Large Scale Survey', *Population Association of America 2011 Annual Meeting Program*, Princeton University website, p.6

<http://paa2011.princeton.edu/download.aspx?submissionId=111966> – Accessed 19 March 2012

¹⁴ James, L 2010 *Marriage in India*, in G Thomas (ed), *Introduction to Family Life Education Vol. II*, Indira Gandhi National Open University, New Delhi, eGyanKosh website, pp.44-45

<http://egyankosh.ac.in/bitstream/123456789/39129/1/BSWE-004%20Volume-II%20Introduction%20to%20Family%20Education.pdf#page=39> – Accessed 19 March 2012

¹⁵ A state-by state comparison is available at: Singh, D & Goli, S 2011, 'Exploring the Concept of Mixed Marriages in Indian and selected states: First Time Evidences from Large Scale Survey', *Population Association of America 2011 Annual Meeting Program*, Princeton University website, pp.11-16

<http://paa2011.princeton.edu/download.aspx?submissionId=111966> – Accessed 19 March 2012

¹⁶ Rathor, A 2003, *Slum Dwellers: Curse on Development*, Sarup and Sons, New Delhi, Google Books, pp.104-

107 <http://books.google.com.au/books?id=BpdzgOTyifUC&pg=PA106&dq=inter-religious+marriage+attitudes+India&hl=en&sa=X&ei=Ia1qT4nkHZCeiQePppmOBg&ved=0CFUQ6AEwBjgK#v=onepage&q=inter-religious%20marriage%20attitudes%20India&f=false> – Accessed 21 March 2012

¹⁷ Jayaram, V n.d., *Hinduism and Marriage*, Hinduwebsite.com

http://www.hinduwebsite.com/hinduism/h_marriage.asp – Accessed 19 March 2012

Bengal (9.3 per cent) and Gujarat states (8.2 per cent), and lowest in Rajasthan (1.7 per cent).¹⁸

Social Attitudes

80. Intermarriage between Hindus, Sikhs and Jains appears to be more generally accepted than intermarriage between members of these religions and Christians, Jews or Muslims.^{19 20 21} A page on the Indiana University Bloomington website states that intermarriage is often allowed between Sikhs and Hindus in particular, and that Jain communities have sometimes been willing to accept intermarriage with Hindus.²²
81. The following comment from a United Nations Development Programme discussion forum is attributed to a professor from Allahabad, Uttar Pradesh, and relates to India generally:
- “By and large, inter-caste and inter-religious marriages are discouraged, and those who have asserted their free choice along these lines recount their experiences of severe friction in and disruption of intra-family relations on account of it.”*²³
82. Dr Lizy James is a social scientist who has studied and worked as a senior lecturer in Kerala. James’ work has focused on family structures.²⁴ Writing on Indian family structures, James states that society “seldom approves” of interreligious marriage.²⁵ A professor of Asian Studies quoted by the Immigration and Refugee Board of Canada in 2006 stated that societal attitudes towards interreligious couples are generally “not favourable” and that “social attitudes often [cause people to] ostracize and discriminate against such unions”.²⁶ A July 2011 article from *The Tribune* contained the observation that “there still exists social anxiety and ill-reception of such alliances”. This quote was made in relation to Hindu-Sikh, Syrian Christian-Hindu and Sikh-Protestant marriages in particular. The article cites parental

¹⁸ A state-by state comparison is available at: Singh, D & Goli, S 2011, ‘Exploring the Concept of Mixed Marriages in Indian and selected states: First Time Evidences from Large Scale Survey’, *Population Association of America 2011 Annual Meeting Program*, Princeton University website, p.11
<http://paa2011.princeton.edu/download.aspx?submissionId=111966> – Accessed 19 March 2012

¹⁹ Sajid, T 2010, *Faith And Marriage*, SA Global Affairs website, February
<http://www.saglobalaffairs.com/features/423-faith-and-marriage.html> – Accessed 20 March 2012

²⁰ Mehrotra, M 2004, “*Triple Outsiders*”, *Gender and Ethnic Identity Among Asian Indian Immigrants*, PhD dissertation, Virginia Polytechnic Institute and State University, Blacksburg, p.26
<http://vtechworks.lib.vt.edu/bitstream/handle/10919/11117/Dissertation.pdf?sequence=1> – Accessed 15 March 2012

²¹ 38% of Hindus Marry Outside Dharmic Faiths in America 2009, Interfaith Shaadi website, 5 November
<http://www.interfaithshaadi.org/blog/?p=213> – Accessed 19 March 2012

²² Indiana University n.d., *Module 2: Present-Day India(2)*
http://www.indiana.edu/~isp/cd_rom/mod_02/rel_text.htm – Accessed 19 March 2012

²³ United Nations Development Programme Regional Centre for Asia Pacific, Colombo Office 2009, *E-Discussion: Gender – Overcoming Power, Unequal Voice*, p.13 http://hdru.aprc.undp.org/ext/HDRU/pdf/e-Discussion_-_24-02-2010.pdf#page=19 – Accessed 21 March 2012

²⁴ *Doctorate Degree Holders 2012*, Rajagiri College of Social Sciences website, 7 March
<http://rcss.rajagiri.edu/doctorate-degree-holders> – Accessed 13 June 2012

²⁵ James, L 2010, *Marriage in India*, in G. Thomas (ed), *Introduction to Family Life Education Vol II*, Indira Gandhi National Open University, New Delhi, October, pp.87-88
<http://egyankosh.ac.in/bitstream/123456789/39129/1/BSWE-004%20Volume-II%20Introduction%20to%20Family%20Education.pdf#page=39> – Accessed 19 March 2012

²⁶ Immigration and Refugee Board of Canada 2006, *IND100661.EX – India: The situation of couples in inter-caste and inter-religious marriages, including societal attitudes, treatment by government authorities and the situation of children resulting from such marriages (2000-2005)*, 9 January http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=449788&l=e – Accessed 15 December 2011

rejection as one consequence of interreligious marriage.²⁷ According to Lizy James, parents selecting potential spouses for their children tend to insist on caste and religious hegemony. However, when the selection of spouse is made by young people themselves, there is a higher incidence of inter-caste and interreligious marriage.²⁸

83. Dr Gopika Solanki from the Department of Political Science, Carleton University,²⁹ author of *Adjudication in Religious Family Laws*, writes that the notion of marriage as an individual choice conflicts with traditional practices of parental approval, caste endogamy, retention of wealth within the family or caste, and prohibition of interreligious marriage.³⁰ Some parents may consider the marriage of their children as a duty, and have difficulty in accepting modern marriage patterns such as a child's wish to choose their own spouse.³¹ According to Hinduwebsite.com, couples engaging in unconventional marriage, including interreligious marriage, are less likely to experience acute social pressure in metropolitan and urban areas, and if their parents are educated.³²
84. A 2003 book entitled *Slum Dwellers: Curse on Development*, which focuses on slums in Lucknow city, Uttar Pradesh, also states that parental views regarding the marriage of daughters are generally more rigid than for sons. However, a majority of parents still disagree with the notion of their sons having an interreligious marriage. Most educated parents surveyed, who had planned for their children to study abroad, do not approve of interreligious marriage. Illiterate parents, on the other hand, may approve of an unconventional marriage if the union is likely to increase their social standing.³³
85. In 2007, the *Hindustan Times*, a major English language Indian daily, reported that a Muslim peak body in Madhya Pradesh had publicly urged community members to “stay away from religious marriages that cause embarrassment”, and refused to allow a Sindhi (Hindu) girl to convert to Islam for the purpose of marriage.

²⁷ *Ties of faith* 2011, The Tribune, 30 July <http://www.tribuneindia.com/2011/20110730/saturday/main1.htm> – Accessed 15 December 2011

²⁸ James, L 2010, *Marriage in India*, in G Thomas (ed), *Introduction to Family Life Education Vol II*, Indira Gandhi National Open University, New Delhi, October, p.25
<http://egyankosh.ac.in/bitstream/123456789/39129/1/BSWE-004%20Volume-II%20Introduction%20to%20Family%20Education.pdf#page=39> – Accessed 19 March 2012

²⁹ ‘Gopika Solanki n.d., Carleton University website <http://www1.carleton.ca/polisci/people/solanki-gopika> – Accessed 13 June 2012

³⁰ Solanki, G 2011, *Adjudication in Religious Family Laws*, Cambridge University Press, New York, Google Books, pp.112–113 http://books.google.com.au/books?id=tE-_peMsgrQC&pg=PA111&dq=marriage+accept+India+inter-religious&hl=en&sa=X&ei=M7dqT4TbEqWkiAeAypGFBg&ved=0CDoQ6AEwAA#v=onepage&q=marriage%20accept%20India%20inter-religious&f=false – Accessed 21 March 2012

³¹ Rathor, A 2003, *Slum Dwellers: Curse on Development*, Sarup and Sons, New Delhi, Google Books, pp.104-107 <http://books.google.com.au/books?id=BpdzgOTyifUC&pg=PA106&dq=inter-religious+marriage+attitudes+India&hl=en&sa=X&ei=Ia1qT4nkHZCeIQePppmOBg&ved=0CFUQ6AEwBjgK#v=onepage&q=inter-religious%20marriage%20attitudes%20India&f=false> – Accessed 21 March 2012

³² Jayaram, V n.d., *Hinduism and Marriage*, Hinduwebsite.com
http://www.hinduwebsite.com/hinduism/h_marriage.asp – Accessed 19 March 2012

³³ Rathor, A 2003, *Slum Dwellers: Curse on Development*, Sarup and Sons, New Delhi, Google Books, pp .104-107 <http://books.google.com.au/books?id=BpdzgOTyifUC&pg=PA106&dq=inter-religious+marriage+attitudes+India&hl=en&sa=X&ei=Ia1qT4nkHZCeIQePppmOBg&ved=0CFUQ6AEwBjgK#v=onepage&q=inter-religious%20marriage%20attitudes%20India&f=false> – Accessed 21 March 2012

Treatment by non-state actors

86. Treatment of inter-religious couples may range from passive discrimination or social exclusion to violent attacks. The degree of mistreatment may depend on a couple's location and social levels, and either family members or broader communities may be responsible for such treatment^{34 35} In May 2011, the Department of Foreign Affairs and Trade (DFAT) advised:
- "Treatment depends on many factors including the respective religions to which the parties belong and geographic and socio-economic factors. In certain castes, especially in the case of Hindu-Muslim marriages, respective communities and in some rare cases even local politicians become involved."*³⁶
87. Additionally, Freedom House reports that informal caste councils and Muslim religious leaders often issue edicts concerning social matters including marriage and divorce. Whilst on the one hand, "these bodies play a role in relieving the overburdened official courts", on the other hand such edicts may result in violence towards couples who transgress social norms. Freedom House suggests that women and members of lower castes are more susceptible to such incidences of violence.³⁷
88. Reports note various forms of mistreatment by family members, including imprisonment in the home, forcing one party to seek an annulment – regardless of the legal status of the marriage,³⁸ and killings.³⁹ A Human Rights Watch report of July 2010 stated that the 30 day waiting period for marriage under the *Special Marriage Act*, which applies to inter-religious marriage, is often misused by families to "track down and kill or forcibly separate couples"⁴⁰
89. A public interest petition filed with the Supreme Court by a non-government organisation (NGO) stated that young couples who were seen to have dishonoured their family were sometimes driven to suicide as a result of harassment and threats. Such couples, according to the NGO, were often subjected to prolonged low-level physical abuse and bullying, including "battery, torture, mutilation, rape, forced marriage and imprisonment within the home" Women may be particularly targeted if their sexual behavior is seen as dishonourable.⁴¹
90. It is noted that the aforementioned petition did not relate exclusively to inter-religious couples. Indeed some reports regarding the mistreatment of couples by non-state actors

³⁴ Immigration and Refugee Board of Canada 2006, *'India: The situation of couples in inter-caste and inter-religious marriages, including societal attitudes, treatment by government authorities and the situation of children resulting from such marriages (2000 – 2005)'*, 9 January, UNHCR Refworld

<http://www.unhcr.org/refworld/country,,IRB,,IND,,45f147e319,0.html> – Accessed 12 July 2010

³⁵ Department of Foreign Affairs and Trade 2011, *DFAT Report No. 1285 – India: RRT Information Request: IND38682*, 30 May

³⁶ Department of Foreign Affairs and Trade 2011, *DFAT Report No. 1285 – India: RRT Information Request: IND38682*, 30 May

³⁷ Freedom House 2011, *Freedom in the World 2011 – India*, 5 July

³⁸ Solanki, G 2011, *Adjudication in Religious Family Laws*, Cambridge University Press, New York, Google Books, pp.112–113 http://books.google.com.au/books?id=tE-_peMsrQC&pg=PA111&dq=marriage+accept+India+inter-religious&hl=en&sa=X&ei=M7dqT4TbEqWkiAeAypGFBg&ved=0CDoQ6AEwAA#v=onepage&q=marriage%20accept%20India%20inter-religious&f=false – Accessed 21 March 2012

³⁹ *Call in India for stronger stand against honour killings* 2011, Australian Broadcasting Corporation (ABC): Asia Pacific, 20 May

⁴⁰ Human Rights Watch 2010, *Prosecute rampant 'Honor' killings*, 18 July <http://www.hrw.org/en/news/2010/07/16/india-prosecute-rampant-honor-killings> – Accessed 19 July 2010

⁴¹ Rajalakshmi, T K 2010, *Death for love*, Frontline, 17-30 July http://www.frontlineonnet.com/fl2715/stories/2010073_0271503700.htm – Accessed 26 August 2011

comment on both caste and religion.^{42 43} There are a number of reports which describe mistreatment of young people because they wish to marry outside of their community, or simply because their family does not approve of the relationship, without specifying whether religion or caste in particular is an issue.^{44 45 46 47 48} This information suggests that family approval is an important factor in determining whether or not a couple engaging in inter-religious or other sorts of mixed marriage are likely to face problems at home, regardless of the legal status of their marriage.

91. According to DFAT, most reported cases of violence against interreligious couples occur in “villages and small towns” in northern and western India. Overall, DFAT did not observe significant media reporting on violence against Hindu-Christian, Muslim-Christian or Sikh-Muslim couples, but also noted that the incidence of such marriages was probably low.
92. An April 2011 BBC News report states that honour killings relating to inter-religious marriage have occurred in the “deeply conservative and patriarchal” Punjab, Haryana and Uttar Pradesh states.⁴⁹ In May 2011, India’s Supreme Court reportedly held that honour killings in general had become common in Haryana, western Uttar Pradesh and Rajasthan,⁵⁰ and a 2012 article in the United Kingdom news publication *The Observer*⁵¹ suggests that these same three states are the sites for the “vast majority” of honour killings; however, no figures are provided in the article to support this statement.⁵²
93. A report dated 14 July 2011, published by the Indo-Asian News Service, states that Punjab state has seen a ‘surge’ in the number of honour killings of couples who have married against the will of their families. The report quotes an unnamed senior faculty member in the department of sociology, Punjab University, as stating that the trend is more pronounced in rural areas: “[h]ere we are still living by the preferences of caste, colour, linguistics and religion”.⁵³

⁴²United Nations Development Programme Regional Centre for Asia Pacific, Colombo Office 2009, *E-Discussion: Gender – Overcoming Power, Unequal Voice*, p.13 http://hdru.aprc.undp.org/ext/HDRU/pdf/e-Discussion_-_24-02-2010.pdf#page=19 – Accessed 21 March 2012

⁴³ *Spate of honour killings shakes up Punjab* 2011, Indo-Asian News Service, 14 July

⁴⁴ *Two more Indian tribal women ‘forced to walk naked’* 2010, BBC News, 19 August

<http://www.bbc.co.uk/news/world-south-asia-11024303?print=true> – Accessed 20 August 2010

⁴⁵ *Tribal girl stripped over ‘affair’, molested by hundreds in Bengal* 2010, *The Times of India*, 9 August

<http://timesofindia.indiatimes.com/india/Tribal-girl-stripped-over-affair-molested-by-hundreds-in-Bengal/articleshow/6278006.cms> – Accessed 17 August 2010

⁴⁶ *Couple shot dead in honour killing in Punjab* 2010, *The Hindu*, 1 April

<http://www.thehindu.com/news/states/other-states/article347134.ece> – Accessed 28 November 2011

⁴⁷ *Father said electrocute couple, mother helped* 2010, *The Times of India*, 19 June

http://articles.timesofindia.indiatimes.com/2010-06-19/delhi/28307150_1_alert-neighbours-girl-asha-saini – Accessed 27 March 2012

⁴⁸ Yadav, S. 2011, *‘Runaway’ couple sent to shelter home*, *The Times of India*, 9 December

http://articles.timesofindia.indiatimes.com/2011-12-09/gurgaon/30497364_1_shelter-home-runaway-couple-police-protection – Accessed 3 January 2012

⁴⁹ *India court calls for ‘stamping out honour killing* 2011, BBC News, 20 April <http://www.bbc.co.uk/news/world-south-asia-13139482>

– Accessed 7 September 2011

⁵⁰ Rajalakshmi, T K 2011, *Law and honour*, *Frontline*, 4-17 June

<http://www.frontlineonnet.com/fl2812/stories/20110617281210500.htm> – Accessed 25 August 2011

⁵¹ The Observer is owned by a trust and claims that its central objective is editorial independence. See *About Us* n.d., *The Guardian* <http://www.guardian.co.uk/help/about-us> – Accessed 13 June 2012

⁵² Chamberlain, G 2010, *Honour killings: Saved from India’s caste system by the Love Commandos*, *The Observer*, 10 October <http://www.guardian.co.uk/world/2010/oct/10/honour-killings-caste-love-commandos> – Accessed 1 December 2011

⁵³ *Spate of honour killings shakes up Punjab* 2011, Indo-Asian News Service, 14 July

FINDINGS AND REASONS

94. The applicant is a [age deleted: s.431(2)] man from India. He arrived in Australia as a student in August 2006. The applicant has also previously applied for skilled visa in 2009 but this was refused on the basis of his failing to achieve a sufficient level in his IELTS test.

Country of reference

95. Based on the applicant's passport, the Tribunal finds that he is a national of India. There is no evidence before the Tribunal that he is a national of any other country and the Tribunal finds that he is not. For the purposes of assessing his refugee claims, the Tribunal finds that India is his country of reference. The Tribunal finds that for the purposes of assessing his claims against s.36(2)(aa), if he were removed from Australia, the receiving country to where he would be removed to is India.
96. There is no evidence before the Tribunal that the applicant has a right to enter and reside in any other country other than India and the Tribunal finds that he does not.

Consideration of the applicant's claims

97. 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 in administrative enquiries and decision-making, the relevant facts of an 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 accept uncritically any and all of 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).
98. The applicant's claims can be summarised as follows. The applicant is a Sikh who had fallen in love with a Muslim girl. Her parents did not approve of the relationship. He claims that he will be killed or attacked by members of her family as a result of this relationship. He claims that he does not believe that the authorities or the system in India will protect him.
99. Country information indicates clearly that people from different castes or different religions in India who enter into relationships often face problems from their families and or from the general community. In this case the Tribunal notes that the applicant has not claimed to face discrimination, harm or threat from the broader community.
100. The Tribunal accepts that the applicant is a Sikh and that the woman in question is a Muslim. His claims are consistent with evidence that Punjab is a fairly traditional state with strong patriarchal values and that Sikh/Muslim relationships are not common. Having regard to the country information and the applicant's evidence, the Tribunal accepts that so called "honour killings" do occur in Punjab.
101. The Tribunal accepts that the applicant met this young woman who is a Muslim while he was completing his last year of secondary school in [year deleted: s.431(2)]. The Tribunal also accepts that he formed an attachment to her. The Tribunal also accepts his evidence that he asked his parents to speak to her parents when each set of respective parents learned about the

relationship. The Tribunal accepts that the young woman's parents did not approve of the relationship and removed the young woman from school in about 2000 and the applicant did not see her for at least four years. The Tribunal gives the applicant the benefit of the doubt and accepts that he was threatened by the young woman's family at the time in 2000. However the applicant's evidence during the hearing was that he was beaten by members of her family in 2002. The Tribunal notes that in 2002, the applicant had said during the hearing that he had not seen her since she was taken out of school in 2000 and he did not provide any explanation in relation to a precipitating factor for this claimed attack.

102. The applicant's evidence during the hearing on being asked when he was last approached or attacked by members of the young woman's family was in 2004, before he saw her again at a wedding. The claimed attack appears to have again been unprovoked. He also said that he later saw her at a wedding and then they met briefly after a few months, however again the relationship did not develop as her parents continued to disapprove. He claims to have been afraid as there were threats and so changed his appearance and went to stay with his [sibling] in [State 1] for three months. He told the Tribunal that they knew where he was despite these measures. He did not provide details of any threats received despite being given the opportunity to do so.
103. The Tribunal also notes that in the applicant's written claims he refers to one attack but does not specify in which year this occurred. The Tribunal notes that the sequence of events is inconsistent and although some time has passed since these claimed events and allowing for memory lapses, the Tribunal does not accept that the applicant has forgotten how many times he was physically attacked. A physical attack is not something that, in the Tribunal's view is easily overlooked. In the interview with the Department the applicant has stated that six months ago a friend, who is a neighbour told him that the young woman's parents are still trying to find him. However during the hearing, the applicant told the Tribunal that there have been no threats to either himself or his family from the young woman's family. Overall in considering the applicant's claimed version of events as well as the sequence of events the Tribunal does not accept that the applicant was attacked by the young woman's family.
104. The Tribunal also had some concern about the applicant's written statements that his parents also disapproved as his evidence at the hearing was that they did approve. He told the Tribunal that they did indeed disapprove at first but he managed to persuade them about his feelings and they reluctantly agreed to try to intercede on his behalf. During the hearing, there was also inconsistent evidence given by the applicant. He told the Tribunal twice that he did not know what had happened to the young woman. He said he did not know if she had married or had children or moved away. Later during the hearing the applicant said that a friend had told him last year that she was about to get married.
105. The Tribunal did not accept that with the passage of some nine years since the applicant last saw the young woman, his presence in Australia, his absence from his home since 2006 (with only two relatively brief visits to India to see his sick father and later attend his funeral), the change in his appearance and the news that she is about to be or has married, that applicant continues to face a real chance of being harmed by her family. Further, the Tribunal was concerned that the applicant delayed lodging an application for protection until 2011 He was asked about this during the hearing and was also asked the same question by the delegate. He said that was pursuing other options such as studies and then a skilled graduate visa. The applicant told the Tribunal he had been unsuccessful in obtaining permanent residency. The Tribunal considers that the applicant has lodged the application for protection as he has run out of other options for remaining in Australia.

106. The Tribunal also considers that the chance that the family of the young woman could still be looking for him and would intend to threaten him is remote particularly as so much time has elapsed. The applicant did not claim that he intended to resume any relationship with the woman and in his evidence he told the Tribunal that had not in fact spoken to her since at least 2005.
107. The Tribunal has also considered the affidavit from the applicant's mother provided after the hearing. The applicant's mother refers to her son being executed or killed if he returns to India on the basis of "interreligious marriage" She also referred to his being threatened and attacked very badly when he was last in India. The applicant did not refer to having been attacked when he returned to India in 2007 or 2010. The only reference to having been attacked was in 2002 and in 2005. The Tribunal specifically asked the applicant about the attacks and his injuries and he said that he was not badly hurt. The applicant's mother does not provide any details about the history of the relationship, any details of her direct knowledge of the relationship or in any intervention made by her or her husband as claimed by the applicant. The information is brief and essentially corroborates the general claims by the applicant in that there was a relationship with someone of a different religion; however it does not add anything further to the applicant's claims. In the Tribunal's view no significant weight can be attached to this affidavit.
108. The Tribunal finds on the available evidence and in light of the applicant's circumstances that he does not have a well-founded fear of persecution.
109. For the above reasons the Tribunal finds that the applicant has no subjective or objective fear of any form of harm and therefore does not face a real chance of being persecuted for a Convention reason or indeed for any other reason in India.

Complementary protection

110. At the outset of the hearing, the Tribunal also outlined the complementary criterion to the applicant and his representative.
111. The applicant's representative submitted in relation to complementary protection that the Tribunal take into consideration the period the applicant has been in Australia and his strong connections to the Australian way of life and system.
112. The Tribunal must consider whether the applicant meets the complementary protection criterion under s.36(2)(aa). The Tribunal has considered whether it 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 the applicant will suffer significant harm.

The receiving country

113. 'Receiving country' is defined in s.5(1) of the Act as:
- (a) a country of which the non-citizen is a national; or
 - (b) if the non-citizen has no country of nationality – the country of which the non-citizen is a habitual resident;
- to be determined solely by reference to the law of the relevant country.

114. In this case, the Tribunal has found that the applicant is a national of India and the Tribunal therefore finds that India is the ‘receiving country’.

Assessment of risk

115. To satisfy the criterion in s.36(2)(aa), the Tribunal must have ‘substantial grounds for believing’ that there is a ‘real risk’ that the applicant will suffer significant harm. Given the recent proclamation of the *Migration Amendment (Complementary Protection) Act 2011*, there is as yet no guidance from the Australian courts as to the meaning of the terms ‘substantial grounds’ and ‘real risk’. The Explanatory Memorandum to the *Migration Amendment (Complementary Protection) Act 2011* relevantly states as follows:

67. Australia’s non-refoulement obligations under the Covenant and the CAT require a high threshold for these obligations to be engaged. In each case . . . the Minister must have substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm.

...

A real risk of significant harm is one where the harm is a necessary and foreseeable consequence of removal. The risk must be assessed on grounds that go beyond mere theory or suspicion but does not have to meet the test of being highly probable. The danger of harm must be personal and present.

116. Having regard to the Tribunal’s findings above, and all of the applicant's circumstances the Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to India, there is a real risk that the applicant will suffer significant harm. Accordingly, the Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to India, there is a real risk of him being arbitrarily deprived of his life; having the death penalty carried out on him; or being subjected to torture; or to cruel or inhuman treatment or punishment or to degrading treatment or punishment.
117. The Tribunal concludes that there are no substantial grounds for believing that, as a necessary and foreseeable consequence of that the applicant being removed from Australia to India, there is a real risk that he will suffer significant harm. He does not therefore satisfy the complementary protection criterion for the grant of a protection visa.

CONCLUSIONS

118. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
119. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
120. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

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