

1411916 (Refugee) [2016] AATA 4026 (23 June 2016)

### DECISION RECORD

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1411916
<b>COUNTRY OF REFERENCE:</b>	India
<b>MEMBER:</b>	James Jolliffe
<b>DATE:</b>	23 June 2016
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicants Protection visas.

Statement made on 23 June 2016 at 2:04pm

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

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicants Protection visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants who claim to be citizens of India applied for the visas [in] September 2013 and the delegate refused to grant the visas [in] June 2014. The first named applicant (the primary applicant) had previously applied for a protection Visa in August 2008 which was refused and he subsequently sought a review of that decision by the Refugee Review Tribunal which in March 2009 affirmed the decision to not grant the applicant a protection Visa. The applicant subsequently sought reviews of that decision in both the then Federal Magistrates Court and before the full Federal Court of Australia. He was unsuccessful in relation to those appeals. The third named applicant applied for a protection Visa in January 2011 and the first and second named applicants were listed as members of the same family unit in relation to that application. The third named applicant was unsuccessful in obtaining a protection Visa and the Refugee Review Tribunal in October 2011 affirmed the decision to not grant a protection Visa to the third named applicant. The third named applicant subsequently sought a review of that decision in the then Federal Magistrates Court and the full Federal Court and his appeal was dismissed. In October 2012 the third named applicant appealed to the High Court of Australia and in February 2013 the High Court of Australia dismissed his appeal. The applicant in 2009 also sought ministerial intervention under the Act and the Minister declined to intervene.
3. Only the first named applicant has sought a protection Visa in relation to the current proceedings and that application is based on the decision in *SZGIZ v. Minister for immigration and citizenship* [2013] 212 FCR 235. The second and third named applicants have applied for protection as members of the same family unit as the first named applicant and do not raise separate grounds/claims for protection.
4. The applicants were to appear before the Tribunal by video link on 3 November 2015 to give evidence and present arguments. The Tribunal hearing was to be conducted with the assistance of an interpreter in the Punjabi and English languages. The applicants had previously been invited to attend hearings before the Tribunal in June 2015 and in August 2015 but those hearings had been vacated at the request of the first named applicant who claimed to be too unwell in terms of his mental health to attend the Tribunal hearings. The first named applicant sought an adjournment on medical grounds in relation to the hearing on 3 November 2015 but the Tribunal decided, after reviewing the materials provided by the applicant, that the hearing should proceed by video link and the Tribunal indicated that it would form its own assessment as to whether the first named applicant was able to effectively participate in the Tribunal proceedings. On 3 November 2015 the Tribunal was unable to obtain a video link because of technical problems. A telephone connection was established but the second named applicant said the primary applicant was too unwell to speak to the Tribunal. The Tribunal asked to be provided with a specialist medical report into the first named applicant's condition. The Tribunal indicated that the matter would be set down for another hearing. The second named applicant told the Tribunal she would not be giving evidence in the case.
5. A further attempt to conduct a hearing by video link was made on 21 December 2015 but was unable to proceed because of technical problems. A further attempt to conduct a hearing with the applicants by video link was arranged for 14 April 2016. On that occasion the primary applicant would not engage with the Tribunal even though he was physically

present in the video hearing room. The primary applicant did not respond to any Tribunal questions or involve himself in the proceedings on that occasion. The second named applicant and the third named applicant were in attendance by video link on that occasion. The second named applicant told the Tribunal that further medical documentation would be provided to the Tribunal in relation to the primary applicant's medical condition. The second named applicant told the Tribunal that the primary applicant was unable to participate in the Tribunal hearing and could not speak to the Tribunal. The Tribunal has attempted to conduct a hearing with the applicants on five occasions.

6. The Tribunal subsequently wrote to the primary applicant on 18 April 2016 and raised its concerns about the ongoing delay in being able to conduct a hearing in order to determine the primary applicant's protection Visa application. In summary the letter referred to the history of the Tribunal's attempts to conduct a hearing. The letter noted that the Tribunal would consider medical documentation provided on the applicant's behalf and make a decision as to whether the primary applicant would be likely to be fit to participate in a hearing in the foreseeable future. The Tribunal informed the applicant that if the Tribunal decided that he would be unable to participate in a Tribunal hearing in the foreseeable future then the Tribunal would proceed to make a decision without taking oral evidence from him. The Tribunal also indicated in that letter that it wanted to receive any relevant medical documentation in relation to the primary applicant's medical conditions. The Tribunal also indicated that, as discussed with the second named applicant on 14 April 2016 that, if she wished to provide a statement or an outline of a statement in relation to any evidence that she may be able to give in relation to the primary applicant's claims that she should do so by 26 April 2016. In essence the second named applicant on 14 April 2016 did not indicate to the Tribunal that she could provide any relevant evidence in relation to the first named applicant's claims and had previously told the Tribunal (on 3 November 2015) that she would not be giving evidence. The second named applicant had essentially indicated to the Tribunal on 14 April that she would, to the best of her knowledge, answer Tribunal questions on that occasion but it would have been difficult for her to give evidence on that occasion because of a medical situation in relation to her. The Tribunal in the letter of 18 April 2016 also indicated that it wanted to receive by 26 April 2016 any other documents or submissions of information that the primary applicant considered would be relevant to his claims in order that the Tribunal could consider that material if it decided to proceed without taking oral evidence from the primary applicant.
7. The Tribunal received a number of documents in response to that letter.
8. The Tribunal wrote to the primary applicant on 16 May 2016. The Tribunal noted that it had received a number of documents in response to its letter of 18 April 2016. The Tribunal noted that a number of the documents referred to medical assessments of medical practitioners and a mental health social worker in relation to the primary applicant's medical situation. The Tribunal noted the report dated [in] February 2016 from a consultant psychiatrist, [Dr A], which referred to an earlier report, dated [in] January 2016. The Tribunal also noted the report from [Dr B], a consultant psychiatrist, dated [in] February 2016. The Tribunal also noted a report from [Organisation 1] mental health social worker dated [in] April 2016. The Tribunal in the letter said that based on its overall assessment of the documents that had been provided and its assessment of the previous attempts to conduct a hearing the primary applicant was currently unfit to participate in the Tribunal hearing. The Tribunal also told the primary applicant that in its assessment based on the medical reports and its assessment of the history of the matter over the last 12 months that the primary applicant would be unfit in the foreseeable future to participate in a Tribunal hearing. Apart from the medical documentation that had been provided the Tribunal also noted in that letter that it had received a document translated into the English language from a news article published in India [in] April 2015 with the heading "[title]".

9. The Tribunal had previously been provided with a statutory declaration from the second named applicant attaching medical documents which said that the primary applicant was unfit to participate in the Tribunal hearing that had been listed for 3 June 2015. In summary those medical documents referred to the primary applicant as suffering from "low mood" and other conditions and that he needed psychological counselling and referring the applicant for counselling. The Tribunal, in summary, received further medical and counselling documentation that indicated that the primary applicant was suffering from depression and did not have the capacity to attend the Tribunal hearing which had been listed for 18 August 2015. The letter from the medical practitioner indicated the Tribunal could reschedule the hearing for about six weeks' time when it was thought that the primary applicant's condition would have improved. The Tribunal listed the matter for hearing on 3 November 2015. Before the hearing the Tribunal received a further medical report which indicated in summary that he was being treated for some mental health issues and had been treated since 18 May 2015. The documentation indicated that the primary applicant was receiving psychological and pharmacological treatments. The Tribunal also received a letter from [an Organisation 1] counsellor and that letter indicated that in the author's assessment the primary applicant is currently not well enough to participate in counselling and would not be mentally fit to participate in the Tribunal hearing.
10. As indicated elsewhere in these reasons the video hearing on 3 November 2015 could not proceed because of technical problems in the Tribunal was told in a telephone connection by the second named applicant that the primary applicant was too unwell to speak to the Tribunal on that occasion. The Tribunal received a further letter from [Organisation 1] dated [in] November 2015 in which the author expressed the view that the primary applicant was not currently capable of participating in the Tribunal hearing. The Tribunal received a copy of a report dated [in] January 2016 from a consultant psychiatrist, [Dr A]. In summary that letter referred to the primary applicant as presenting with a psychiatric history suggestive of likely major depressive disorder on sitting in the context of stress from Visa problems, the death of his father and ongoing financial difficulties. The letter further indicated that the primary applicant's illness symptoms had reduced since he had commenced on medication treatment but that he continued to be significantly functionally impaired and his condition a source of ongoing distress to his family. The letter/report also indicated that the primary applicant was to have a further psychiatric review within six months or earlier if clinically required or indicated. The Tribunal received an email dated [in] March 2016 from [Organisation 2] on behalf the primary applicant and that email referred to the applicant having a psychiatrists report and seeking to submit that report together with a letter from [Organisation 2] to the Tribunal.
11. The Tribunal was subsequently provided with the consultant psychiatrists report from [Dr B] dated [in] February 2016 which indicated that the primary applicant's mental state might have been "a touch improved over the last month" with the increase in medication. The report indicates that there had been some miscommunication about the amount of medication that the primary applicant should have been taking. The report in part indicates that the primary applicant gave several word answers to questions during the interview with the psychiatrist but for a large part of the interview remained mute with little spontaneous movement. The psychiatrist report indicated that the primary applicant's progress would be reviewed within approximately two months. The Tribunal also received a short report from another medical practitioner which was dated [in] April 2016 and which certified that the primary applicant was suffering from a major depressive disorder and it was unlikely that he would be fit "for court hearing in the next three months". The Tribunal also received a statement of involvement from [Organisation 2] in relation to the primary applicant and that statement indicated that he and other members of his immediate family had been receiving assistance from [Organisation 2].

12. The Tribunal received a letter dated [in] April 2016 from the second named applicant which in summary referred, by implication, to the Tribunal's letter of 18 April 2016. That letter referred to providing further documentation to the Tribunal in support of the protection Visa claims and also referred to medical issues for the second and third named applicants and that the primary applicant was suffering from "high depression". The letter referred to the family being worried about its future and asked that the family be given residency in Australia. The Tribunal received documentation from [a health service] which indicated that the primary applicant was a client of that service. The Tribunal also received medical documentation in relation to the second named applicant and some medical treatments that she had received in March 2016. The Tribunal also received medical documentation in relation to medical treatment provided to the third named applicant in September 2013 and in April 2016. The Tribunal received a further letter from the second named applicant on 25 April 2016 which informed the Tribunal that some further documents would be provided to the Tribunal. The Tribunal received a further report from [Organisation 1] dated [in] April 2016 in relation to the second named applicant and that the second named applicant had been receiving counselling. That report also referred to the primary applicant. The report indicated that the primary applicant had been assessed by the author of the report (a mental health social worker) on the last occasion on which she had seen him as "[condition], almost mute, with very limited capacity to focus on requiring prompting from his wife to stand and sit." The report indicates the primary applicant was discharged from [Organisation 1] as he was not able to benefit from counselling interventions while he was so mentally unwell. That report notes that the primary applicant's condition and presentation had not changed as at one April 2016. The Tribunal received a further letter from the second named applicant provided a further medical document in relation to the third named applicant in terms of a [physical] condition. In 16 May 2016 the Tribunal wrote to the applicant (as indicated earlier) and acknowledge the receipt of a number of documents and also noted that the second named applicant had not provided any statement or an outline of statement to the Tribunal and in those circumstances the Tribunal had decided to complete the review of the primary applicant's protection Visa application without taking any evidence from the primary applicant or from anyone else in relation to the protection Visa application claims.
13. As indicated the Tribunal's overall assessment of the medical documentation provided in relation to the primary applicant is that he is unfit to participate in a Tribunal hearing and is expected to be unfit for the foreseeable future to participate in a Tribunal hearing. The Tribunal has also had regard to the apparent medical difficulties that have been encountered in attempting to conduct a hearing with the applicant. The Tribunal has referred to those issues elsewhere in these reasons.
14. The Tribunal notes that there is a statutory obligation on the Tribunal to complete a review without undue delay, even where an applicant becomes incapacitated from participating in a hearing for the foreseeable future (SZOGP.v. MIAC(2010) 244 FLR 139 at [57]. The Tribunal has referred to communicating with the second named applicant to ascertain whether she would be able to provide any relevant evidence in relation to the primary applicant's protection Visa application. As indicated the Tribunal received no statement or an outline of statement from the second named applicant in relation to this issue. In those circumstances the Tribunal has decided to proceed on the basis that the second named applicant has decided that she cannot provide any relevant evidence to the Tribunal in relation to the applicant's claims. As indicated she had previously informed the Tribunal on 3 November 2015 that she was not intending to give any evidence but had told the Tribunal on 14 April 2016 that she would attempt to answer Tribunal questions to the best of her knowledge. As indicated the Tribunal invited the second named applicant to provide a statement or an outline of a statement to the Tribunal so that it could decide whether she would be able to provide relevant evidence in relation to the applicant's claims. No statement or outline of a statement was provided by the second named applicant. In those circumstances the Tribunal

has decided to proceed without taking any oral evidence from the primary or second named applicant.

#### Relevant Law

15. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
16. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
17. 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.
18. 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').
19. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

#### **CLAIMS AND EVIDENCE**

20. The Tribunal has before it the Tribunal and Departmental files relating to the applicant as well as information available to it from a variety of sources.
21. The applicants, as indicated elsewhere in these reasons, previously applied to the Refugee Review Tribunal in relation to earlier protection visa applications. The Tribunal affirmed the decisions not to grant the applicants a protection visa on those occasions. Section 48A of the Act imposes a bar on a noncitizen making a further application for a protection visa while in the migration zone in circumstances where the noncitizen has made an application for a protection visa which has been refused. The Full Federal Court in SZGIZ v. MIAC (2013)

212 FCR 235 has held at [38] that the operation of s.48A, as it stood at the time of this visa application, is confined to the making of a further application for a protection visa which duplicates an earlier unsuccessful application for a protection visa, in the sense that both applications raised the same essential criterion for the grant of a protection visa. Applying the reasoning in the decision in SZGIZ the Tribunal finds that it does not have power to consider the refugee Convention criterion in s.36(2)(a), and has proceeded on the basis that it can only consider the applicants claims under the complementary protection provisions in s.36(2)(aa) of the Act

22. The issues in this case are the first named applicant claims to fear harm if he returned to India on the basis of his political opinion in terms of his claimed activities on behalf of the Congress party in India and he claims to fear harm if he returned to India from BJP supporters.
23. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
24. In his protection Visa application which was lodged with the Department in September 2013 the first named applicant claimed to have been born in India on [date]. He claims to speak Punjabi and Hindi and that he is of the Sikh faith. He claimed that he married in India in [2002]. The second named applicant is the first named applicant's wife. He claims to have only Indian citizenship and to have no right to enter or reside temporarily or permanently in any other country other than India. He claims that he arrived in Australia in May 2008 on a [temporary] visa and was travelling on an Indian passport which had been issued to him in [2006]. He claimed to have travelled to [two other countries] in August 2007. He claimed to have received [number] years education in India. He claimed that he was [an occupation] in India before he came to Australia.
25. In his protection Visa application he claimed that he and his father were both members of the Congress party in India and that they had been threatened by members of the BJP party in India and that BJP party members had also tried to harm the applicant and his family. He claimed he was told by BJP party members that he and his family should leave the Congress party and he claimed on one occasion he was kidnapped by BJP party members and that he escaped "by chance" on that occasion. The first named applicant claimed that he would suffer significant harm from BJP party members if he returned to India and that he would be subject to physical harm and violence or deprivation of his liberty if he returned to India. He also claimed that the BJP party was trying to take his family's land in India and if successful that would mean the applicant and his family would be forced to live in poverty if they returned to India. The second and third named applicants lodged documents seeking protection in Australia on the basis of being members of the same family unit as the first named applicant and did not make separate claims for protection. The third named applicant is the [child] of the first and second named applicants and was born in [Australia].
26. Written submissions to the Department were received on behalf of the applicants under cover of a letter dated [in] September 2013. Those submissions accompanied the applicants' protection Visa applications. In those submissions, in summary, reference was made to the two previous protection applications which had been refused. The submissions claim that the applications for the applicants are made on the basis of the decision in SZGIZ which has been referred to elsewhere in these reasons and that the applicants claims for protection should be considered under the Complementary protection provisions of the Migration Act. The submissions in summary refer to the first named applicant and second named applicants background in India. The submissions refer to those applicants having [children] one of whom resides in India. The submissions suggest the first named applicant "felt compelled to leave India" because of threats made to him and specifically to his father because of his family's membership of the Congress party. The submissions say that the

applicant's father was a leader within the Congress party and that he has been attacked on several occasions because of his political leadership. The submissions indicate that the applicant joined the Congress party in 2000 and was actively involved with the youth Congress party. The aims of that party (the youth Congress party) are said to be to promote democracy in India and to promote freedom of speech and "is aimed at educating Indians to vote against the main opposition party (the BJP)".

27. The submissions claim that the applicant was questioned and jailed together with his wife before he came to Australia in 2008 and that he was threatened because of his involvement and membership of the youth Congress party. The submissions claim that the applicant cannot return to India as he fears he will be harmed by "vigilant BJP supporters". The submissions claim that the applicant and his wife left their [child] in India in the care of [an organisation] because they feared that the [child] could be harmed if [left] with the applicant's father on the basis that the applicant's father had been the subject of attacks because of the applicants family's political persuasion. The submissions refer to attached documents in relation to claimed attacks on the applicant's father ([father's name]). The documents included a translated document from a Hindi newspaper dated February 2010 which referred to an attack upon the applicant's father in which he sustained [specific] injuries to his leg. There was also a letter that referred to an attack on the applicant's father and his wife in December 2012 and also documents in relation to the applicant's father attending [a health facility] that occasion and a newspaper report dated [in] December 2012 about the attack. The submissions also referred to attached/enclosed documents in relation to the first named applicant's claims and in particular the claimed attacks on his father. The Department file also contains documents in relation to the death of the first named applicant's father in February 2014. The documents also include a register extract in relation to land apparently owned by the first named applicant's father in India.
28. The Department also received a letter dated April 2014 with a translation in the English language from [name] who was described as [an official] of [a state] government. In summary that letter referred to attacks on the applicant's father and to injuries to the applicant's father because of his work on behalf of the Congress party and that attempts had been made to murder the family. The document referred to the applicant and his wife also being in danger. There was also a reference/letter dated [in] April 2014 from a person who knew the applicant and his family since they had come to Australia. There was also a document dated December 2013 in relation to the enrolment of the third named applicant at [a] preschool. There was also some medical documentation in relation to the second named applicant as well as a handwritten letter from the second named applicant in relation to her medical difficulties arising out of a [condition].
29. The Department had received other documents in support of his protection Visa application. These included various newspaper articles with English-language translations from February 2010 regarding an attack on the applicant's father. They also included a further newspaper article from June 2012 regarding an attack on the applicant's father. There was a document in relation to a medical report in relation to the [specific] injuries suffered by the applicant's father and a copy of a statement made to police by the applicant's father dated February 2012 and a further statement made to the police by the applicant's father dated [in] June 2012. In summary those documents refer to claimed attacks upon the applicant's father and his family and the reporting of those attacks to the police. There was a document dated November 2008 translated into the English language from the [official] of [a council] which in summary referred to the applicant having been appointed as village [official] of the Congress party in village [name] by the State Congress committee and referred to there being attacks upon him and attempts to kill him and referring to the applicant having come to Australia to avoid harm.



30. As indicated the Tribunal in response to its letter of 18 April 2016 received a number of medical documents and medically related documents and also received an English language translated document together with the translated document which was said to come from a [newspaper] published in India [in] April 2015 with the heading "[title]". In summary that document referred to [the primary applicant's father] having been murdered and that there had been an attack [in] April at the [house] of the applicant's late father and that the attack had been intending to kill the applicants father's family but that the applicant's mother had not been at home at the time of the attack. The document asserted that the attack was part of an attempt to kill the [applicant's] family. The article referred to the primary applicant and his wife living in Australia and that there was a danger to their lives. The article referred to a police inspector saying that the security for the [applicant's] family had been extended and that the police were tracing the attackers.
31. The first named applicant was interviewed by a Department delegate in relation to the protection Visa application. The delegate declined to grant the first named applicant a protection Visa and was not satisfied that Australia had protection obligations to the first named applicant under the Refugees convention or under the Complementary protection provisions of the Migration Act.

#### Tribunal Hearings

32. The Tribunal's attempts to conduct a hearing with the primary and other applicants have been referred to elsewhere in these reasons.

#### CONSIDERATION OF CLAIMS AND EVIDENCE

33. On the basis of the materials provided to the Department and available to the Tribunal the Tribunal accepts that the primary applicant is an Indian citizen and that his identity is as he claims it to be and that India is the receiving country for complementary protection purposes. The Tribunal accepts without evidence to the contrary that the second and third named applicants are members of the same family unit as the primary applicant.
34. The Tribunal has considered the primary applicant's claim that he fears harm if he returned to India on the basis of his political opinion of supporting the Congress party in India and his claimed activities in support of, and on behalf of, that party. He also claims to fear harm if he returned to India from BJP supporters. His claims in relation to those issues have been referred to elsewhere in these reasons. The Tribunal has considered the applicant's claims and the documentation and information provided to the Department and available to the Tribunal in relation to those issues.
35. The Tribunal is not satisfied on the materials and information before it that there are substantial grounds to believe that, as a necessary and foreseeable consequence of the applicant being removed from Australia to India that there would be a real risk that he would suffer significant harm in terms of s.36(2)(aa) of the Act because of his claimed political opinion of supporting the Congress party and his claimed activities on behalf of that party and on the basis that he claims to fear harm from BJP supporters.
36. The Tribunal has had regard to the primary applicant's claims in support of his protection Visa application and to documentation provided in support of those claims. Those claims are referred to elsewhere in these reasons. The Tribunal has also had regard to the DFAT country report from India dated 15 July 2015 in considering the applicants claims. The Tribunal accepts that report contains credible and relevant information in relation to some aspects of the applicants claims. The country information indicates that the security situation in India can vary significantly over time and from place to place. The report notes that the BJP obtained a parliamentary majority in the 2014 general election in India. The report notes

that notwithstanding a number of incidents mentioned in the country report that in absolute terms the sheer size and diversity of India means most Indians live their lives with a relatively low risk of violence. The report in discussing political opinion notes that with some exceptions elections in India tend to be peaceful, broadly free and fair and reflect the will of the electorate. The report indicates that there have been widespread reports of petty electoral patronage and corruption in India's political system, including abuse of state powers to influence electoral outcomes. The report notes that India has a diverse political landscape which represents different ethnic, religious, secular and political interests. The report also notes that there is a very high rate of internal mobility within India and that in general the Department assessment is that there are a range of viable internal relocation options for individuals seeking protection from discrimination or violence. The report also indicates that document fraud is a significant industry in India.

37. The Tribunal has considered the applicant's claims for seeking protection in Australia. As indicated the Tribunal has assessed the applicant's claims in terms of the Complementary protection provisions of the Act. The applicant's claims are set out in the protection Visa application lodged in September 2013 and supplemented by the written submissions made on his behalf which are dated [in] September 2013. They have been referred to elsewhere in these reasons. The Tribunal's assessment is that his statement in support of his claims is in overall terms very brief and provides very little detail in support of his claims to fear harm if he returned to India. The Tribunal's assessment of the written submissions provided on the applicant's behalf is that those submissions are overall brief and provide little detail in support of the applicant's claims. The Tribunal has also considered the documents provided in support of the primary applicant's claims and those documents have been referred to elsewhere in these reasons. The Tribunal has considered these materials and documents. The Tribunal's overall assessment is that the documents and materials do not satisfy the Tribunal in relation to the applicant's claims. The Tribunal notes in considering the documents that have been provided that the information contained in the DFAT country report which has been referred to indicates that document fraud is a significant industry in India. Examples of fraudulent documents that are referred to in the report include newspaper articles and political party registration and the report provides that the use of fraudulent documents is prevalent in India including for immigration purposes.
38. In the protection Visa application the applicant said that he and his father were both members of the Congress party and that they had been threatened by members of the BJP party who had tried to harm the applicant and his family. He claimed that he had been threatened by members of the BJP party and told to leave the Congress party and claimed that he had been kidnapped by members of the BJP party. He claimed that he would suffer significant harm from members of the BJP party and that the party was also trying to take his family's land and that he feared being in poverty and being destitute and left without food and that he and his immediate family would starve. He claimed that his previous experience made him fearful of what would occur to him if he returned to India. The Tribunal's assessment of the applicant's claims and the written submissions and the documents provided in support are that they do not assist the Tribunal in being satisfied that the applicant faces a real risk of significant harm on the basis of his claims if he returned to India. The Tribunal also notes that the DFAT country report indicates in discussing political opinion that with some exceptions elections in India tend to be peaceful, broadly free and fair and reflect the will of the electorate and that India has a diverse political landscape which represents different ethnic, religious, secular and political interests. The report also considers internal mobility within India and relocation and that the Department assessment is that there is a range of viable internal relocation options for individuals seeking protection from discrimination or violence.
39. The Tribunal is not satisfied on the currently available evidence that has been referred to that the applicant and his father were members and supporters of the Congress party and

carried out activities on behalf of that party and as a result they were threatened by the BJP party and told to leave the Congress party and that attempts were made to harm the applicant and his family and his father and wider family. The Tribunal is also not able to be satisfied as to the applicant's claim on the currently available evidence that the applicant was kidnapped by BJP party members and that he escaped on that occasion. The Tribunal is also not able to be satisfied on the currently available evidence as to the applicant's claim that if he returned to India he would be subject to physical harm and violence or deprivation of his liberty or that the BJP party was trying to take the applicant's family land in India. The Tribunal is also not able to be satisfied on the currently available evidence as to the applicants claim that the applicant and his family would be forced to live in poverty if they returned to India if the BJP was successful in taking the family land. The Tribunal is also not able to be satisfied on the currently available evidence as to the claims that have been made that the applicant was questioned and jailed together with his wife before he came to Australia in 2008 and that he was threatened because of his involvement and membership of the youth Congress party in India.

40. In the absence of any other claims to fear harm the Tribunal is not satisfied on the currently available information that there are substantial grounds to believe that, as a necessary and foreseeable consequence of the applicant being removed from Australia to India that there would be a real risk that he would suffer significant harm in terms of s.36(2)(aa) of the Act.

#### Overall Summary

41. For the reasons given above the Tribunal is not satisfied that any of the applicants is a person in respect of 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

42. The Tribunal affirms the decision not to grant the applicants Protection visas.

James Jolliffe  
Member