

071454965 [2007] RRTA 195 (29 August 2007)

DECISION RECORD

RRT CASE NUMBER: 071454965

DIAC REFERENCE(S): CLF2007/46146

COUNTRY OF REFERENCE: India

TRIBUNAL MEMBER: Robert Wilson

DATE DECISION SIGNED: 29 August 2007

PLACE OF DECISION: Sydney

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

**STATEMENT OF DECISION AND REASONS
APPLICATION FOR REVIEW**

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of India, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention. The applicant applied to the Tribunal for review of the delegate's decision.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for

the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

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.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* [1989] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (2004) 217 CLR 387.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

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.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

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.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

The Tribunal has before it the Department’s file, CLF007/46146, 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, including its file 071454965.

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil and English languages.

Application for a Protection visa

The applicant is a single Muslim man born in India. He has received 13 years of education and can speak, read and write Tamil, and he can read and write English. His mother, who is separated, lives in India.

The applicant provided the following typed statement, which he referred to in the Application for a Protection visa.

I, [name] of [address], was born on [date] in the small village of [village A], [district], Tamil Nadu, India.

I have finished my higher Secondary School in [high school]. A girl by [name] hailing from the adjacent village, [village B] used to go to [school] through my street. We used to meet everyday and that had turned into love. We belong to different castes. I am a Muslim boy and [name] is a Hindu girl belonging to the [name] community. When our love was known to both of our family members they vehemently opposed to it. My mother strongly pleaded me to stop loving her. [Girlfriend's] [father] is strong member of anti- Muslim Organization called Rashtriya Swayam Shewak sang (RSS). He asked me to forget his daughter otherwise he threatened me of dire consequence. We both loved each other deeply and we prepared to sacrifice anything for our love. Knowing that [father] may kill me, my mother arranged to send me [country X] on [date] and joined a company. After one year I returned back to India on vacation on [date]. I met [girlfriend] without the knowledge of our family members. Our love continued through telephone.

In the mean time there erupted a communal clash between the residents of [village B] and [village A]. The police interfered and compromise temporarily. [Girlfriend's] father one of the leaders of Hindu group trying to make use of the temple issue to end my life.

Without knowing all these issues, I applied for visit visa to Australia on [date]. [Name] informed me over the phone that her father has planned to kill me if I return to India. Unfortunately my mother fell ill seriously and she was admitted in a hospital in [district]. Therefore I visited India on [date] to see my mother. Knowing that I returned back to India the RSS leaders and [father] planned to assassinate me when I return back from Hospital to my home. Luckily I escaped that attempted and rushed back to [country X] on [date] asking my relatives to look after my mother. In the mean time the tension of [name] father appeared to reduced. I was very eager to see my mother. Therefore I went back to India on [date].

I secretly met [name] and she expressed her eager to meet my mother. I planned to take her to [district] to see my mother. Knowing my plane resident of [village B] under the leadership of [name] father surrounded my home with lethal weapons and attempted to attack me. Fortunately police rush to the scene and avoided major casualties. I escaped from the attack and came to Australia on [date].

I understand from the reliable sources that [girlfriend] kept inside the home and was not allowed to go out of the home. I also came to understand that her father vowed to assassinate me when I return to India. The residents of my village advised my mother and other family member that no guarantee of my life if I return to India. I tried to go

back to [country X], but as I did not join duty after one month they have appointed another persons in my post.

At this moment I do not have any alternatives but to stay here to save my life. If I dare to return to India it may fire a communal clash leading to casualties and my life will be also at serious risk. Therefore I humbly plead and appeal to your highness to grant me asylum and save my life.

Application for Review

No further claims were made and an authorised recipient was not appointed.

Section 424 letter dated and sent to the applicant by registered mail

The Tribunal requests that you provide the following additional information.

A. Please provide any further documents with you in Australia or overseas which you wish to submit in support of your case.

This information is to be provided in writing and must be received at the Tribunal by [date]

Section 424 letter dated and sent to the applicant by registered mail

The Tribunal requests that you provide the following additional information.

- a. Please advise whether you or [girlfriend] were prepared to change your religion if you were to marry, and who you had discussed this with.
- b. Please provide your passport.
- c. Please provide a list of places you have lived in India, for more than three months, the reason you were there and the address at which you stayed.
- d. Please provide details of all trips you have made to countries other than India.
- e. Please provide details of visa you have held in Australia, and your current status.
- f. Please provide the address at which your mother is staying in India, and who she is staying with (if that is the case).
- g. Regarding your typed statement provided to the Department, please advise what you mean when you state:

* 'strongly pleased me to stop'

* '[name]'

* 'In the mean time their erupted a communal clash between the resident of village B and village A. The police interfered and compromise temporally. [Name] father one of the members of Hindu group trying to make use of the clash to end my life.'

* 'Knowing my plane resident of [village B]...'

* 'that no grantee of my life...'

* 'but I did not joint duty after one month they have appointed another persons in my post.'

h. Please advise whether you have reported any incidents to which you have referred to in your statement, to the police.

i. Please advise whether the police have taken any action against [girlfriend's] father, and what that action is.

This information is to be provided in writing and must be received at the Tribunal by [date]

Section 424A letter dated and sent to the applicant by registered mail

The Tribunal has information that would, subject to any comments you make, be the reason, or part of the reason, for deciding that you are not entitled to a protection visa.

The information is as follows:

1.) You were born in [date], and arrived in Australia on [date]. You have had 12 years of education in India. You can speak, read and write Tamil and you can read and write English. You have worked overseas for more than two years in [country X]. You have travelled internationally on a number of occasions. You have been taking care of yourself in Australia since [date]. The Indian Constitution guarantees Indian citizens the right to move freely throughout the territory of India. There are Muslim communities all over India, with India having the second largest Muslim population in the world. Low-profile people could move elsewhere in India without being traced. Well-educated and readily employable persons could relocate to another part of India.

2.) Country information indicates that India is a secular state and all faiths generally enjoy freedom of worship. India has a democratically elected government, is governed essentially by the rule of law, and has a tradition of secular governance that dates back to the country's independence.

India has a judiciary that is independent. Although the 28 state governments have primary responsibility for maintaining law and order, the central Government provides guidance and support. The Ministry for Home Affairs controls most paramilitary forces, the internal intelligence bureaus, and the nationwide police service, and provides training for senior police officers of the state-organized police forces. The civilian authorities maintained effective control of the security forces. Where communal violence occurred the Indian authorities sought to end it at the earliest opportunity. Persons considered to be inciting communal violence could be prosecuted under Indian law.

This information is relevant because

1.) This information indicates that you could reasonably be expected to relocate to another part of India. That would mean that it is not necessary for Australia to provide you with protection. This may mean that your claims for a protection visa may be rejected.

2.) This information indicates that you could safely return to and reside in Tamil Nadu, with the protection of the Indian authorities and judiciary. This would mean that there is no need for you to seek protection in Australia and your claims in this regard may be rejected.

You are invited to comment on this information. Your comments are to be in writing and in English. They are to be received at the Tribunal [date].

First response from the applicant

Further to your letter to me dated [date] on the above subject, the follow consists of the relevant information in the alphabetical order, as set out in the letter:

a. We both discussed this when we met and [name] agreed to convert to the Islam religion after we married each other.

b. Pl. see the Certified copy of my Passport.

c. Only in one place, that is my village at [street]in [village A].

d. Trips made to Countries other than India - country X - Between [date] to [date]

country X - Between [date] to [date]

country X - Between [date] to [date]

Australia - Left India on [date]and

Arrived on [date].

e. Details of Visa held in Australia - [type]to enter Australia

Class Bridging WA 010 currently as a Refugee Applicant

f. My Mother's address is: [Address]

g. Correct versions are:- * strongly convinced me to stop

* [name]

* At that time a communal trouble between the residents of [village B] and village A] erupted due to an issue. The Police intervened and settled the matter temporarily. [Name] father was one of the leaders of the Hindu Group in the issue and he was trying make use of that troubled situation to kill me.

h. No. As this related to my love affair with [name], I wanted to be discreet.

i. No. As no complaint was made, Police did not take any action.

Second response from the applicant

RESPONSE TO COMMENT ON INFORMATION LETTER

A. Further to your letter to me dated [date] on the above subject, my reply is as follows:

1. In relation to the information that the Tribunal has given in this paragraph 1, my contention is that the Tribunal was attempting to indicate to me that I am a '*Low profile person and well educated and a readily employable person who could relocate to another part in India*'.

2. In relation to the detailed information the Tribunal has highlighted in paragraph 2, it is very apparent that the Tribunal is relying on matters which are typically reflecting a superficial, academic and an illusory situation in India, which is not the real and dominant situation that is existing in India in real life today.

B. In short, by virtue of the information provided in the said paragraphs 1 and 2, there is no doubt that the Tribunal has already come to the conclusion of his Application namely that - "*that would mean that it is not necessary for Australia to provide you with protection. This may mean that your claims for a protection visa may be rejected*".

C. The Applicant submits that the Tribunal has been overly prejudicial towards the Applicant's claims, because, the Tribunal is yet to conduct the hearing of the Applicant's claims which is fixed for [date] so that the Tribunal could receive the Applicant's Oral evidence and further information, if any, to be provided by the Applicant at the hearing. Then the Tribunal has the opportunity to to 'test' such evidence and further verification, if necessary. Hence the type of action already taken by the Tribunal is quite irregular and procedurally unfair.

D. At paragraph 02 of page 02 of the Tribunal's letter. The following has been indicated to me:

"This information indicates that you could safely return to and reside in Tamil Nadu, with the protection of Indian Authorities and Judiciary. This would mean that there is no need for you to seek protection in Australia and your claims in this regard may be rejected".

E. The Applicant submits that by virtue of the aforesaid quotations highlighted by the Tribunal in the said paragraphs 1 and 2 and relied upon prematurely, there is no doubt that the Tribunal has pre-empted its judgement even before the '*merit review*' has started. Therefore the Tribunal has acted in a manner that was highly prejudicial and detrimental towards the Applicant's refugee claims. In short the Tribunal has acted in an "*apprehended bias*" basis which is contrary to the '*rule of law*' and the "*Principles Procedural Fairness*" (Natural Justice).

F. The Applicant submits that the relevant circumstances highlighted by the Tribunal in the aforesaid paragraphs 1 and 2 are such that a '*reasonable, fair minded and informed person*' would definitely apprehend that the Tribunal might not bring an impartial mind to bear on the decision to be made in the future which would take place after concluding the hearing to be held on the [date].

G. The Applicant further submits that the aforesaid conclusions and information given by the Tribunal in the said paragraphs 1 and 2 gives the indication that they are '*arbitrary conclusions*' and may lay a foundation that the Tribunal is definitely going to mould its final decision to reach a particular or intended result, namely dismissal of the Applicants refugee claims. The Applicant submit that such an out-come or situation would be capricious and considered as made according to the Tribunal's own opinion rather than reason or justice.

Further section 424A letter sent to the applicant by registered mail

You are invited to comment on information that the Tribunal considers would, subject to any comments you make, be the reason, or a part of the reason, for affirming the decision that is under review.

The particulars of the information are:

1) According to several sources, inter-religious marriages are legal in India and are governed by the Special Marriage Act 1954.

Marriage between couples across caste and religious lines may be sanctified under the Special Marriage Act 1954 if the following conditions are fulfilled at the time of the marriage:

Neither party has a spouse living;

neither party is incapable of giving a valid consent to it in consequence of unsoundness of mind, or though capable of giving a valid consent, has been suffering from [a] mental disorder of such a kind or to such an extent to be unfit for marriage and the procreation of children; or

has been subject to recurrent attacks of insanity or epilepsy;

the male has [reached] the age of twenty-one years and the female [has reached] the age of eighteen years;

the parties are not within the degrees of prohibited relationship [by blood or adoption];

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship: and

where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends (India 1954, Art. 4).

2) On the information provided by you to the Tribunal, no information on the clash was found amongst the sources consulted. No information on a communal clash between residents of [village B] and [village A] was found amongst the sources consulted. No information on a communal clash in the district of [district] was found amongst the sources consulted. .

3)(a) In your undated typed statement attached to your Application for a Protection visa declared by you to be correct and up-to-date on [date], you stated you are a Muslim born in [year] in [village A] in Tamil Nadu India. You courted a Hindu woman, [name], belonging to the [name] community, from [village B]. You claimed that [name] father (also referred to by you as [different spelling name]), is a member of the RSS and that he threatened to kill you as a consequence of the relationship with his daughter. As a result, your mother arranged for you to go to [country X] on [date] where you gained employment. You also referred to an undated communal clash between residents of [village B] and [village A] villages, and [father], as one of the members of the Hindu group, was trying to make use of the issue to end your life.

You returned to India from [country X] from [date] to [date], when you met secretly with [name]. You returned again to India from [country X] from [date] to [date], because your mother was sick, even though [name] told you that her father had planned to kill you if you returned. In fact there was an attempt to kill you, but you escaped back to [country X]. The tension with [father] appeared to reduce so you returned to India again from [date] to [date] to see your mother. [Name] father and others surrounded your home with 'lethal weapons' and attempted to attack you. You escaped and came to Australia on [date]. [Father] has vowed to assassinate you if you return to India. You could not return to [country X] as you 'did not joint duty after one month they have appointed another persons in my post.' You state that you do not dare return to India as your life is in danger. Your return might also fire communal clashes leading to casualties and your life would be at serious risk.

(b) However, in your Application to visit Australia dated [date], signed by you and declared to be the truth, you stated that you wanted to visit Australia from [date] to [date]. The reason you gave was 'just want to visit various places in Aus. because it is my dream.' You were issued with the visa to travel to Australia on [date], but did not arrive in Australia until [approx 9 weeks later].

Furthermore, in your airport interview upon arrival in Australia, you apparently made the following statements. You reiterated that you were travelling for tourism and had always wanted to holiday in Australia. You referred to your intention to re-apply for another visa in [country X] so as to continue your employment there. You stated that you planned to stay in [country X] for many more years as the money is very good. You stated that your intention was to remain in Australia for 10 days and to then return to India for four days for your brother's wedding, before returning to [country X] for work. You stated that you had been to India since your work in [country X] had started. You returned to India to oversee the building of your house. You stated that your parents had picked a woman for you to marry and you are having a house built as

an offering to your wife. You said you are to marry at the end of the year and take your wife to [country X] until your employment ends.

This information is relevant to the review because:

(Numbers below correspond to the numbers above)

1) This information means that there is apparently no civil restriction on you and your fiancée marrying in India.

2) In the absence of any other information which you may provide, such as where the temple is located, when the clash occurred and independent information about the clash and the reasons for it; this lack of information may lead the Tribunal to consider that there was no clash between residents of [village B] and [village A] in connection to the [Temple]. This may lead the Tribunal to question your credibility, which may in turn, lead to rejection of your claims.

3) The information referred to in 3(a) and 3(b) is apparently inconsistent. In 3(a) - your Application for a Protection visa and Statement you state for various reasons you fear persecution in India. Yet, contrary information suggests that you have returned to India on several occasions and were going back for your brother's wedding; there was no urgency in commencing your travel to Australia, which was solely for tourism; your parents arranged your bride and there was no mention of her religion being different to yours or any tension; in fact you were building a house for her and you to live in; and you were to marry at the end of the year. These inconsistencies may indicate that the information that you have provided in one or more of the statement/application/interview is incorrect and that as a consequence your credibility is in issue. Further, your actions and words may be construed as suggesting that you do not have a real fear of persecution in India. Either or both may lead the Tribunal to reject your claims and affirm the Department's decision.

You are invited to give comments, in writing, on the above information.

Your comments should be received at the Tribunal by [date]. Comments in a language other than English must be accompanied by an English translation from an accredited translator.

If you cannot provide written comments by [date], you may ask the Tribunal in writing for an extension of time in which to provide the comments. If you make such a request, it must be received by the Tribunal before [date] and the request must state the reason why the extension of time is required. The Tribunal will carefully consider any request for an extension of time and will advise whether or not the extension has been granted.

If the Tribunal does not receive any comments within the period allowed or as extended, it may make a decision on the review without taking any further action to obtain your views on the information. You will also lose any entitlement you might otherwise have had under the *Migration Act 1958* to appear before the Tribunal to give evidence and present arguments.

If you have any questions, please call me on the number listed below or call our national enquiry line – 1300 361 969. For assistance in another language, please call the Translating and Interpreting Service (TIS) on 131 450.

Hearing held before the Tribunal

The applicant stated his friends helped him complete the Application for a Protection visa, parts B and C, and his typed statement. The friends explained what had been written at the completion of the exercise. He stated he was able to say that the information in those documents was correct, and remain his claims. He had nothing else to add.

The applicant corrected some typographical mistakes in his statement. In paragraph 5: 'plane' should read 'plan'. In paragraph 6: 'grantee' should read 'guarantee', and 'joint' should read 'join'.

The applicant and the Tribunal went through the dates he travelled, with the applicant referring to the stamps in his passport. They corresponded with his chronology in his typed statement.

The applicant stated that he would verbally respond to the Tribunal's letter. The Tribunal read paragraphs 3(a) and 3(b) of its letter to the interpreter who interpreted for the applicant. The applicant stated that there was an attempt to kill him when he was walking alone and two people were following him. He realised what was going on and a friend came along on a bike and they escaped. Thereafter his mother sent him to country X. The Tribunal stated that this incident had not been referred to previously. The applicant stated that it was the first incident, it was not a big issue, but later the problems became aggravated. The Tribunal indicated that it was having trouble accepting that this had not been told to the Tribunal previously. The applicant stated the Tribunal could believe it if it wanted to.

The applicant stated that his girlfriend's father had not only threatened to kill him, but was preparing his stooges to kill him.

When the applicant returned to India because his mother's health condition was very bad he only stayed two days and then he stayed elsewhere. The reference to the attempt to kill him referred to in his statement as occurring during this period was that 5-6 people came to his home. A friend told him not to return to his home. He stayed away but he retrieved his passport through other people who went to his house. He then returned to country X.

The applicant stated he had to state in his Application to visit Australia for Tourism that it was his dream to visit places in Australia, because if he did not say so, he would not have been allowed into Australia.

The applicant admitted at the hearing that he had made the statements at the airport interview upon arrival in Sydney (referred to at 3(b) in the Tribunal's letter). He stated that if he had not said all these things he would not have been let into the country. He apologised. He stated that he had told small lies at the airport. However, the house had been built by him for his girlfriend. He then agreed that everything read as to what he

had said at the airport interview was not true. The Tribunal asked if he had any evidence to show that those statements were not true. He stated that he did not.

The applicant stated that if he had told the interviewers at the airport that he came as a refugee, he would not have been allowed entry. He said he knew this, as this was the case all over the world. The Tribunal disagreed and stated that if he had claimed that he was seeking refugee status he would have been brought into the system, and into Australia. The applicant stated that he did not know this.

The Tribunal stated that the applicant's credibility was in question having regard to his statements at the airport and in his Tourism application; as opposed to his statements in his Application for a Protection visa and typed statement. He stated he made the former statements as otherwise 'they would not have let me in.' The Tribunal showed the applicant his Tourism application where he had signed a declaration. He stated that he was not aware of all that. He stated that when he signed the Tourism application he had not lied as when he applied he had really wanted to tour Australia. Later, when he returned to India and was informed that his country X visa had been cancelled, he came to Australia seeking refugee status.

The Tribunal asked why he had taken so long to come to Australia when the visa was issued quite some time earlier. He stated it was because his girlfriend told him not to return to his home village, so he made the visa application to travel to Australia in country X. However, he later travelled to India to see his sick mother. The Tribunal stated this indicated that he was not in fear of returning to India. He stated that he is the only son (and child) of his mother and when she fell sick she was desperate to see him. His father had left his mother 20 years ago. He stated that he saw her in hospital for half an hour, and then hid in a friend's house and then left for country X. The Tribunal asked why he did not telephone his mother? He stated that talking over the phone is one thing and seeing a person is another. The Tribunal stated that it may depend on how much one values their life. The applicant agreed.

The Tribunal asked when he applied for his Tourist visa whether his principal desire was to visit. He stated that it was, when he was in country X. Later, when all the problems occurred, he decided to come to Australia to seek refugee status and the country X visa had been cancelled, which meant that he could not enter there again for a year. If he had returned to India and stayed for a year, he would definitely be killed by now. He stated that when he came back to India (the second time) he should only have stayed up to 30 days, but he stayed longer, so the country X visa was cancelled straight away.

The applicant stated that when he first returned to India he saw his mother on two occasions in hospital, for 30 minutes each time. He later spent two days each at friends' houses, without the knowledge of his girlfriend's father.

The Tribunal asked why the applicant returned to India later when he had already seen his mother. He stated that her condition had worsened. She was thinking a lot about him.

The Tribunal stated it was having trouble with the applicant's credibility, and as he had admitted lying at the airport interview, how did the Tribunal know that he was not

lying to it now? He stated that he had already taken an affirmation on God that he is telling the truth at the Tribunal. The Tribunal stated that he had not provided any evidence that his mother had been sick. He stated that he did not have any evidence in Australia, only in India. He stated that he could not even go home to get his passport when he was in India. He asked how could he prepare and get evidence? The Tribunal indicated that he had said at the hearing that he had friends who he stayed with every two days, for a long period, and friends who had retrieved his passport from his house. The Tribunal asked why he could not request those friends to assist in evidence gathering. He stated that if the Tribunal wanted evidence, he could get it and submit it. The Tribunal indicated that it had already given him the opportunity, but he had not taken it up. He stated that he was unaware that this particular evidence was required.

The Tribunal indicated that the statements in the Tourist application and the interview at the airport were consistent. The applicant stated that at the airport he thought if he did not give the information he did, he would have been deported. The Tribunal asked if the determinant of whether he told the truth is what may happen to him, why wouldn't he lie to the Tribunal now. He stated that he had taken an oath on God. The Tribunal asked whether it was an oath or affirmation. He stated that it was a religious oath. The Tribunal stated that it heard it as an affirmation earlier in the evidence. The applicant stated that he took a religious oath.

The Tribunal indicated that it was finding it difficult to accept that the applicant went to India to see his mother twice, and in doing so, he returned when in fear of persecution. He stated that he had previously stated that he was in fear and he lived in his friend's houses.

The Tribunal asked why he had not travelled to Australia rather than return to country X when he left India after his visit. He stated that his mother's health condition worsened. After some repeated questioning the applicant agreed that when he left India his mother was well. He stated that later her health problem worsened. The applicant could not name what medicines his mother was taking for the stated condition, other than to say that she has controlled her condition and is taking Western medicine. The Tribunal asked how she medicated. He stated that she goes to the hospital and the doctors give her tablets as well as injections. She first developed the condition three months after he first went to country X. The doctors also told her that she had blood pressure. He did not know her blood pressure, saying that he had not understood it clearly.

The Tribunal asked again why the applicant did not travel to Australia when he left India. He repeated that when he returned to country X his mother was well, and later he was advised that she had been admitted to hospital for 20 days.

The applicant agreed that when he returned to country X he was in fear of his life. The Tribunal asked if he were in fear, why did he return there rather than travel to Australia. He stated that he had said previously that his mother was seriously ill. The Tribunal reminded the applicant that his mother was not seriously ill at this time so whether or not she later relapsed, when he had returned to country X was not part of this equation. He agreed. He stated that five days later she became seriously ill and that was why he travelled back to India.

The Tribunal again asked why when he had a visa to travel to Australia, and his mother was not seriously ill, he did not travel to Australia. He stated that it was New Year time and he could not purchase a ticket, as none were available as it is said that people travel to other countries to celebrate New Year.

The applicant stated that his mother is now well and stated a medical term describing the state of the condition. The Tribunal indicated that is what he had advised when she was sick. He stated previously yes, but now they had improved. .

The Tribunal had a 20-25 minute break.

The Tribunal stated that it found it hard to accept that the applicant left India to go back to country X and not travel to Australia, because tickets were scarce.

He stated that he went back to country X and as his mother fell sick again he had to return to India. Had his mother's condition improved further he would have travelled to Australia from country X.

The Tribunal indicated that it was finding it hard to accept that he did not know his mother's medication, her blood pressure, or other important details relating to her condition. He stated that was her condition. He did not know her blood pressure levels, but if he could ring her he would know. He stated that he simply did not have the time to know all the details as he was at his mother's bedside for only 10 minutes.

The Tribunal stated that this did not exclude that he could have telephoned his mother from country X or Australia to discuss her health and medical issues. He stated that telephoning is one thing and seeing her face to face is another.

The Tribunal had point 1 of its letter read to the applicant through the interpreter. The applicant stated that the reference to the Special Marriage Act 1954 was correct, but it was replaced by another enacted law stating that persons of different religions cannot marry. However, that was changed by a subsequent Act saying persons in this situation could marry.

The Tribunal referred to point 2 of its letter. The applicant provided a 3 page document in Tamil script downloaded from a website. He read from the document in Tamil and the interpreter interpreted it into English for the Tribunal. Relevantly, the article referred to the incident between the villageshe previously referred to in an area where Muslims were living. The authorities ordered a major change to one of the villages. However people decided to conduct a festival there. Animals were brought for sacrifice. Another group heard of this and decided not to let the Festival go ahead. Both parties got into a scuffle and police were mobilized. This incident took place a few months previously, but the issue has been going on for several years.

The applicant's girlfriend's father said that the applicant had been behind the issue, and that he had given money to persons to instigate the problem. The father had assigned his stooges to take the applicant away, or kidnap him whilst he was asleep.

The applicant stated that the authorities will not protect him. He agreed, however, that he had never reported any of the incidents, referred to in his typed statement, to the

police. The Tribunal stated that he cannot expect the authorities to help him if he does not utilize their protection. He stated that they will only listen to what the father says, not what he says. They might even take money from the father and kill the applicant.

The applicant stated that in country X he worked as a clerk, and prior to that in India, he worked in the capacity of an information manager role. He stated that he can speak English to 50% proficiency.

The Tribunal asked why the applicant could not relocate to another part of India in order to avoid the father. He stated that the RSS is present in every part of India, and living in hiding is not real living.

The Tribunal stated that Tamil was spoken in states other than Tamil Nadu, such as Andhra Pradesh and Kerala. He stated that only a small part of the population in those states spoke Tamil and the RSS is present there.

The Tribunal discussed independent country information with the applicant that Hindu extremist groups had been weakened over the last few years. The applicant disagreed, stating they were still powerful.

The Tribunal discussed independent country information with the applicant that there was a large Muslim population in Kerala. The applicant stated that there is also a large RSS population, and the RSS headquarters, Nagar Kovil is on the border with Kerala.

The Tribunal discussed independent country information with the applicant that Muslims constitute some 13.4% of the Indian population, and its total is greater than that of Pakistan. He stated that Pakistan is a very small country. The Tribunal indicated that the Muslim population in India was the second most populous in the world.

The Tribunal indicated that several communist parties were in power in Kerala. He stated that they did not pose a threat to him.

The applicant agreed that the BJP Party was a traditional supporter of the RSS. The Tribunal discussed independent country information with the applicant that the BJP failed to win one seat at the last elections in Kerala. The applicant responded that the RSS is present there.

The Tribunal asked if the applicant was saying that the father's power extended to Kerala and Andhra Pradesh. He stated he was not. However, in each state they have a branch. They would provide these branches a copy of his photograph, and a form, in order to track him down. The Tribunal asked why. He stated that the father will instruct them. The Tribunal asked how he would know that he has returned to India. He stated that he would find out later. He stated that he still intended to marry his girlfriend. He stated that he was 100% sure that her father would track him down if he were to relocate to Andhra Pradesh. The Tribunal asked if the father knew where he was now. He stated that he did not.

The Tribunal discussed independent country information with the applicant that Indian authorities, including the police, were able to protect its citizens. The applicant

stated that they were not able to protect the Congress leader who was shot dead. The Tribunal indicated that the level of protection required was not that of a guarantee of protection at all times. The applicant stated that he could report once or twice, but the police would kill him. They would listen to what the father and his followers said to them. The Tribunal asked why the police would kill him when his girlfriend would confirm that he is married to her. He stated that the police might go back without making any comments, but her father's stooges would come and kill them both. The Tribunal found that was difficult to believe. The applicant stated that he had taken an oath on the Holy Book. The Tribunal referred to the 'RRT Hearing Record' sheet completed by the attendant which stated that the applicant took an affirmation, not an oath (whereas the interpreter took an oath). The applicant stated that he did not properly understand the oath. The Tribunal stated that the applicant had previously stated that he had taken an oath on the Holy Book, yet it appeared that he had not. He stated that he could take an oath now. The Tribunal noted that but indicated that the point was that he had stated twice during the hearing that he had taken an oath, but he had not. He stated that he did not understand and that was what he thought he was doing.

INDEPENDENT COUNTRY INFORMATION

The RSS

The RSS including Hindu militants from the *Sangh Parivar* – a community comprising of various Hindu groups with specific Hindu nationalist organisational arms such as the militant *Rashtriya Swamsewak Sangh* (RSS), militant Hindu youths *Bajrang Dal* (BD), World Hindu Council *Vishwa Hindu Parishad* (VHP), Hindu Student's Association *Akhil Bharatiya Vidyarthi Parishad* (ABVP) and the Hindu enlightenment movement *Hindu Jagaran Manch* (HJM) – have been engaged in a campaign of violence against Muslims in Tamil Nadu and other Indian states. In the Indian state of Tamil Nadu, the RSS does not have a significant presence because of the domination of Dravidian based political parties, which promote ethnic tolerance. Nevertheless, there was a recent report on an incident involving RSS militant in May 2007. According to *The Hindu* of 1 May 2007, an RSS activist, accused of murdering John Basha on 9 August 1993 and attacking a Muslim Usman Ali in Tirpur, was acquitted because “ the prosecution failed to properly conduct the identification parade” ('RSS activist acquitted' 2007, *The Hindu*, 1 May <http://www.hindu.com/2007/05/01/stories/2007050114940500.htm> – Accessed 29 May 2007).

Inter-religious marriages

According to several sources, inter-religious marriages are legal in India and are governed by the Special Marriage Act 1954.

Marriage between couples across caste and religious lines may be sanctified under the Special Marriage Act 1954 if the following conditions are fulfilled at the time of the marriage:

Neither party has a spouse living;

neither party is incapable of giving a valid consent to it in consequence of unsoundness of mind, or though capable of giving a valid consent, has been suffering from [a] mental disorder of such a kind or to such an extent to be unfit for marriage and the procreation of children; or

has been subject to recurrent attacks of insanity or epilepsy;

the male has [reached] the age of twenty-one years and the female [has reached] the age of eighteen years;

the parties are not within the degrees of prohibited relationship [by blood or adoption];

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship: and where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends (India 1954, Art. 4).

Relocation in India

The US Department of State International Religious Freedom Report of 2006 provided information on the demography of the Muslim population in India. According to the report, “large Muslim populations are found in the states of Uttar Pradesh, Bihar, Maharashtra, West Bengal, Andhra Pradesh, Karnataka, and Kerala, and Muslims were the majority in Jammu and Kashmir”. The report stated that:

According to the 2001 Government census, Hindus constituted 80.5 percent of the population, Muslims 13.4 percent, Christians 2.3 percent, Sikhs 1.8 percent, and others, including Buddhists, Jains, Parsis (Zoroastrians), Jews, and Baha'is, 1.1 percent. Slightly more than 90 percent of Muslims were Sunni; the rest were Shi'a. Buddhists included followers of the Mahayana and Hinayana schools, and there were both Roman Catholic and Protestant Christians. Tribal groups (members of indigenous groups historically outside the caste system), which in government statistics generally were included among Hindus, often practiced traditional indigenous religions (animism). Hindus and Muslims were spread throughout the country, although large Muslim populations were found in the states of Uttar Pradesh, Bihar, Maharashtra, West Bengal, Andhra Pradesh, Karnataka, and Kerala, and Muslims were the majority in Jammu and Kashmir (US Department of State 2006, *International Religious Freedom Report for 2006 – India*, 19 September).

According to the US Department of State Country Reports on Human Rights Practices for 2006, “the law provides for freedom of movement, and the government generally respected this in practice; however, in certain border areas the government required special permits”.

The UK Home Office Report of 2007 stated that “the law provides for secular government and the protection of religious freedom. However, during 2005, whilst the central Government generally respected these provisions in practice; it sometimes did

not act effectively to counter societal attacks against religious minorities and attempts by state and local governments to limit religious freedom”. The report highlighted that Indian law provided for freedom of movement and the government generally respected this in practice.

A DFAT report of 13 October 2003 on freedom of movement within India states that:

Indian citizens have the freedom to relocate from one area of India to another, with two exceptions: in the state of Jammu and Kashmir, Indian citizens from other states are not allowed to buy property, but can stay in any part of the state without seeking official permission. Indian citizens who are not residents of the particular area are required to obtain a permit to visit some border areas of Jammu and Kashmir, and border areas in the north-eastern states of India. The permits are valid for six months. Indian citizens who have been arrested and released on bail are required to report regularly to local police authorities. In these instances judicial permission is required to relocate to another part of the country (Department of Foreign Affairs and Trade, 2003, DFAT 254 *India RRT Information Request IND16042*, 13 October).

Tamil Language

86.7 per cent of the population speaks Tamil in the state of Tamil Nadu, 2.3 per cent in Kerala and 1.1 per cent in Andhra Pradesh.

The political situation in Indian states – Recent Developments

Indian elections website (<http://www.indian-elections.com/>) provides information on recent state election results. The Tribunal notes that the Congress Party is presently in power in the state of Andhra Pradesh. Various communist parties are in power in coalition in Kerala and the Congress Party is in opposition.

The political situation in Kerala

Muslims swing to CPI-M in Kerala, Cong worried

7 Apr 2006, 1001 hrs IST, IANS

NEW DELHI: Kerala's ruling Congress party is bracing for a shock in assembly elections, with at least half a dozen influential Muslim groups throwing their weight behind the Left Democratic Front (LDF).

Apart from the Indian National League, which is contesting three seats in alliance with the Left in northern Kerala, the People's Democratic Party (PDP), Jamat-e-Islami and the CH Secular Forum of dissidents in the Indian Union Muslim League (IUML) have publicly announced their support to the LDF.

A Sunni group led by Kanthapuram AP Aboobakar Musaliar that has considerable support in the Lok Sabha constituency of Manjeri is also expected to support LDF candidates.

And sections of radical Islamic groups may also back the LDF led by the Communist Party of India-Marxist (CPI-M) in the staggered elections to be held April 22 and 27 and May 8.

The INL, formed by former IUML president Ebrahim Sulaiman Seth who parted ways with the Congress after the Babri mosque was razed in Ayodhya in 1992, enjoys the sympathy of Muslims across the state.

Muslims in Kerala form 25 per cent of Kerala's 32 million people and are concentrated mainly in the northern districts of Malappuram, Kannur, Kasaragod, Wayanad and Kozhikode.

If the INL's support to the LDF was expected, the real shock to the Congress was the announcement of the PDP, whose founder leader Abdul Nasser Madani has been in a Tamil Nadu jail on charges of masterminding the 1998 bomb blasts in Coimbatore.

The PDP had backed the Congress-led United Democratic Front (UDF) in the 2001 elections but it is miffed by Kerala Chief Minister Oommen Chandy's failure to get Madani released.

Knowing the growing Muslim anger over the Madani issue, the UDF-dominated Kerala assembly unanimously passed a resolution last month demanding the release of Madani on humanitarian grounds but Muslims say this is too little and too late.

In a surprising move last week, Madani sent a letter to his workers from his prison cell asking them to work for LDF's victory.

If most Muslims go by the directives of these groups, it is bound to add to the confidence level of the LDF, which is already hopeful of returning to power in a state where voters are known to change governments every five years.

Ironically, the CPI-M had ruled out an alliance with IUML, which is considered a party of moderate Muslims, saying it was a "communal party".

CPI-M politburo member S. Ramachandra Pillai, who hails from Kerala, argued that there was a difference between accepting support from and forming an alliance with a religion-based party.

"The CPI-M has succeeded in creating trust and confidence among the people that it is more secular than the Congress and people feel more secure under the Left leadership," Pillai said.

A worried Congress, which was routed in the 2004 Lok Sabha elections in Kerala, admits that any en masse voting by Muslims in favour of the LDF would be a blow.

A small swing in voting can make a huge difference. In 1996, the LDF took power with 45.88 percent votes and 80 of the assembly's 140 seats. The UDF got a close 44.84 per cent but only 59 seats.

Although the LDF's vote percent went down slightly to 43.58 in 2001, its seat tally plummeted to 40. In contrast, the UDF swept to power with 49.17 per cent of votes and 99 seats.... (<http://timesofindia.indiatimes.com/articleshow/1480998.cms>)

The following February 2007 report suggests the extent to which the CPI sees itself as competing with Muslim political movements for the support of Muslim voters:

Muslims, communists coming closer: Pinarayi

The growing cooperation between Muslim community and communist parties in many places across the world was stressed by CPI(M) State secretary Pinarayi Vijayan while inaugurating a seminar on history at the ongoing 29th anniversary celebrations of Markaz Ssaquafathi Ssunniyya at Karanthur near here on Saturday.

Underscoring the significant role Muslim community of Kerala could play in the new movements led by communists and Muslim organisations, he said communist movements in West Asia and Islamic organisations were coming closer to fight imperialist forces represented by the United States of America which was their common enemy.

...Mr. Vijayan also remarked that those who portrayed communists as anti-Muslims were those who did not want the welfare of the community. He claimed that the victory of CPI(M) candidate in the recent byelection from Thiruvambadi was a testimony to the support being extended to leftist parties by minority communities.

Referring to the Sachar Committee report on condition of Muslims, the CPI(M) leader said his party took very seriously the committee's recommendations regarding the measures needed for the uplift of the community.

The party had also placed before the Union Government its suggestions for improving the lot of Muslims.

CPI(M) leadership had also asked its Government in West Government to respond in a responsible way to observations about the backwardness of Muslim community in its region.

Underlining the lead role the communist movement had played for social uplift of Muslims in Kerala, Mr. Vijayan said it was the first communist ministry that gave permission for Muslims to build their places of worship and later formed the Malappuram district in which Muslims constituted the major community (<http://www.hindu.com/2007/02/11/stories/2007021107990300.htm>).

Is there an Anti-Hindi movement in the state of Tamil Nadu?

Tamil Nadu has a history of anti-Hindi agitations by pro-Tamil language groups. According to a report in 2003 on the *Sify News* website “the State, which has witnessed the bloodiest anti-Hindi protests in the whole of the country, is still touchy when it comes to linguistic issues”. The report continues that “while questions such as these could only lead to more debates, it could be safely assumed that matters that

concern language, in India at least, continues to be a sensitive issue 56 years after independence” (<http://sify.com/news/fullstory.php?id=13248076>).

Hindu Nationalism in Kerala

DFAT advice dated 20 September 2006 quotes a human rights activist from Kerala who states that “Bharatiya Janata Party (BJP) and other Hindu extremist groups have been weakened over the past few years and hence are no serious threat to the religious freedom of Christian and other non-Hindu communities.” (Department of Foreign Affairs and Trade 2006, DFAT Report No. 538 – India: RRT Information Request: IND30502, 20 September).

The BJP failed to win a single seat in the most recent Kerala state elections (<http://www.tribuneindia.com/2006/20060329/edit.htm#4>).

"Nagar Kovil" was found in Sri Lanka.

There is another town called "Nagercoil" in Tamil Nadu which has had an RSS presence and seems to be not far from the border of Kerala.

A paper by Douglas Spitz called 'The RSS and Hindu Militancy in the 1980's' mentions that "The RSS took a leading role in organizing massive Hindu unity conferences in the Tamilnadu city of Nagercoil in 1982 and 1983". http://department.monm.edu/classics/Speel_Festschrift/spitz.htm

Institutions of India

US Department of State, India, Country Reports on Human Rights Practices - 2006 stated:

India is a longstanding and stable multiparty, federal, parliamentary democracy with a bicameral parliament and a population of approximately 1.1 billion. Manmohan Singh was named prime minister following his Congress Party-led coalition's victory in the 2004 general elections, which were considered free and fair, despite scattered episodes of violence. While the civilian authorities generally maintained effective control of the security forces, there were frequent instances in which some elements acted independently of government authority.

The government generally respected the rights of its citizens...

The law provides for secular government and the protection of religious freedom, and the central government generally respected these provisions in practice; ...

The constitution provides for freedom of speech and expression; however, freedom of the press is not explicitly mentioned. The government generally respected these rights in practice. An independent press, a somewhat effective judiciary, and a functioning democratic political system combined to ensure freedom of speech and of the press.

The law provides for freedom of movement, and the government generally respected this in practice; however, in certain border areas the government required special

permits

(US Department of State, India, Country Reports on Human Rights Practices - 2006).

US Department of State 2002, Country Reports on Human Rights Practices - India 2001, February, stated:

India is a longstanding parliamentary democracy with a bicameral parliament. ... The judiciary is independent; ...

Although the 28 state governments have primary responsibility for maintaining law and order, the central Government provides guidance and support.

The Criminal Procedure Code provides that trials be conducted publicly, except in proceedings involving official secrets, trials in which statements prejudicial to the safety of the State might be made, or under provisions of special security legislation.

The Constitution provides for freedom of speech and of the press, and the Government generally respected these rights in practice;...

The Constitution provides for the right of peaceful assembly, and the Government generally respected this right in practice (US State Report 2004 India).

A National Human Rights Commission (NHRC) was established in India in 1993 with powers to investigate and recommend policy changes, punishment, and compensation in cases of police abuse, and State Human Rights Commissions have since been established in some States (US Department of State 2002, Country Reports on Human Rights Practices - India 2001, February).

US Department of State Report for 2004 - India

India is a longstanding parliamentary democracy with a bicameral parliament. ...The judiciary is independent; however, it faced a serious backlog, and nongovernmental organizations (NGOs) alleged that corruption influenced some court decisions.

Although the 28 state governments have primary responsibility for maintaining law and order, the central Government provides guidance and support. The Ministry for Home Affairs controls most paramilitary forces, the internal intelligence bureaus, and the nationwide police service, and provides training for senior police officers of the state-organized police forces. The civilian authorities maintained effective control of the security forces. ...

The Constitution provides for secular government and the protection of religious freedom, and the central Government generally respected these provisions in practice; ...(India- Country Reports on Human rights Practices – 2004 Released by the Bureau of Democracy, Human rights, and Labor. February 28, 2005)

INDIA: Annual report of the United States Commission on international religious freedom (May 2005)

Unlike many of the other countries that draw Commission attention, India has a democratically elected government, is governed essentially by the rule of law, and has a tradition of secular governance that dates back to the country's independence.

India has a judiciary that is independent, albeit slow-moving and frequently unresponsive, that can work to hold the perpetrators of religious violence responsible; contains a vibrant civil society with many vigorous, independent non-governmental human rights organizations that have investigated and published extensive reports on the rise of religiously-motivated violence; and is home to a free press that has widely reported on and strongly criticized the situation on the ground in India and the growing threats under the BJP government to a religiously plural society (U S Commission on International Religious Freedom May 2005).

US Department of State, India, International Religious Freedom Report, 2003 Released by the Bureau of Democracy, Human Rights, and Labor, stated: The Constitution provides for secular government and the protection of religious freedom, and the central Government generally respects these provisions in practice;

...

According to the latest government estimates, Hindus constitute an estimated 81 percent of the population, Muslims 12 percent, Christians 2.3 percent Sikhs 2.0 percent...Slightly more than 90 percent of Muslims are Sunni, the rest are Shi'a. ...

Hindus and Muslims are spread throughout the country, although large Muslim populations are found in the states of Uttar Pradesh, Bihar, Maharashtra, West Bengal, Andhra Pradesh, and Kerala, and Muslims are a majority in Jammu and Kashmir. Christian concentrations are found in the northeastern states, as well as in the southern states of Kerala, Tamil Nadu, and Goa. ...

US Department of State, India, International Religious Freedom Report, 2001 Released by the Bureau of Democracy, Human Rights, and Labor, stated:

The degree to which the BJP's nationalist Hindu agenda has affected the country with respect to religious minorities varies depending on the region. State governments continue to attach a high priority to maintaining law and order and monitoring intercommunity relations at the district level. Thus, the central Government often is not the most important player in determining the character of relationships of various religious communities between each other and with the state.

An advice from the Australian Department of Foreign Affairs and Trade stated that the BJP Government could not be said to be orchestrating outbreaks of communal violence. It stated that, throughout India, where communal violence occurred the Indian authorities sought to end it at the earliest opportunity. It said that persons considered to be inciting communal violence could be prosecuted under Indian law (DFAT cable ND9681, dated 8 July 1998, CX30520).

The U. K. Home Office Report, India, April 2003, stated:

FREEDOM OF RELIGION

Introduction

6.25 The preamble to the Indian Constitution proclaims India's commitment to democracy and secularism and guarantees all citizens freedom of religion and belief as well as the right to practise religion freely. [6b]

6.26 The Penal Code prohibits and punishes any violation of tolerance and non-discrimination based on religion or belief: promoting enmity between different groups on grounds of religion (Section 135A); injuring or defiling a place of worship with intent to insult the religion of any class (Section 295); deliberate and malicious acts intended to outrage the religious feeling of any class by insulting its religion (Section 295A); disturbing religious assembly (Section 296); and uttering words with deliberate intent to wound religious feelings (Section 298) [6b] ...

6.29 The United Nations Special Rapporteur on Religious Intolerance concluded that the situation in India relating to tolerance and non-discrimination based on religion is generally satisfactory. The country's commitment to democracy, sound democratic institutions, legislative and Government measures, and the secular nature of the State all contributed to religious tolerance in India. [6b] In their Annual Report on International Religious Freedom, published 7 October 2002, the U.S. Department of State concluded that despite some incidents of violence and discrimination during the period covered by the report, relations between various religious groups are generally amicable among the substantial majority of citizens. [2b] The Indian Government has stated that 80% of attacks on minorities were motivated by local incidents, economic arguments, or intra-denominational feuds. [2c]

6.30 The Government has taken steps to promote interfaith understanding. The National Integration Council is a non-statutory body with an objective of maintaining social tranquillity and communal harmony. The National Commission for Minorities and the NHRC have appointed members and are tasked respectively with protecting the rights of minorities and protecting human rights. These governmental bodies investigate allegations of discrimination and bias, and can make recommendations to the relevant local or central Government authorities. These recommendations are generally followed, although they do not have the force of law. [2a]

...

(India Assessment, April 2003. Country Information and Policy Unit, Immigration and Nationality Directorate, U.K. Home Office at <http://ntssyd2:81/ISYSquery/IRL10C2.tmp/2/doc>)

Freedom of Movement

The US Department of State's *Country Reports on Human Rights Practices 2003* confirms that:

The Constitution provides for freedom of movement, and the Government generally respected this in practice. Movement generally was unhindered for citizens outside certain border areas where, for security reasons, special permits were required (US Department of State 2004, *Country Reports on Human Rights Practices 2004*, 25 February) (\\NTSSYD\REFER\Research\usdos\2003us_rep\India2003.htm)

The Danish Immigration Service stated in 2000:

Under Article 19 of the Indian constitution, there is freedom of movement in India. All the sources we asked ... confirmed that there is indeed freedom of movement there, with no restrictions on movement from one State to another. (Danish Immigration Service 2000, *Report on fact-finding mission to Punjab (India)*, 21 March to 5 April)(\\NTSSYD\REFER\Research\INTERNET\Global\Danish-IS-Reports\IND-Danish2000.web.doc)

FINDINGS AND REASONS

Having regard to the applicant's passport and other evidence, the Tribunal finds that the applicant is a national of India and it has assessed his claims accordingly.

The applicant's claims may be summarised as follows. The applicant is an unmarried Muslim man from Tamil Nadu, India, who speaks, reads and writes Tamil and speaks, reads and writes English to 50% proficiency. He was born in India. His mother, who is separated, lives in India.

He fell in love with a Hindu girl from a neighbouring area. Their family members vehemently opposed the relationship. Her father is a strong member of the anti-Muslim Organization called Rashtriya Swayam Sewak Sangh (RSS). He threatened the applicant if he did not forget his daughter. The applicant felt an attempt on his life was about to take place when he was saved by a friend. The applicant's mother arranged to send him to country X where he joined a company. After a year he returned back to India on vacation. He met his girlfriend without the knowledge of their families. Thereafter whilst back in country X, their love continued through telephone, during which time a communal clash between the Hindu residents of her village and the Muslims of his arose. The police intervened, bringing a temporary compromise. The girlfriend's father, a member of the RSS, tried to make use of the above clash to end the applicant's life.

The applicant applied for a tourist visa to Australia from country X. The applicant's girlfriend informed him over the phone that her father had planned to kill him if he returned to India. His mother fell seriously ill and was admitted to hospital . He returned to India to see his mother. Knowing that he had returned, the RSS leaders and the father planned to assassinate him upon his return from hospital to his home. He escaped that attempt and rushed back to country X. In the mean time the tension of the father appeared to reduce, his mother's medical condition worsened and he was very eager to see his mother, so he returned to India week later.

He secretly met his girlfriend and they were going to see his mother in hospital when residents under the leadership of the father surrounded his home with lethal weapons and attempted to attack him. Fortunately the police rushed to the scene and major casualties were avoided. He escaped and came to Australia approximately 6 weeks later.

The father vowed to assassinate the applicant if he returned to India. The applicant's visa to country X has been cancelled. If he returned to India it may fire a communal clash leading to casualties and his life will be also at serious risk.

There were some inconsistencies in the applicant's evidence, new matters raised and some reluctance to come to the point. The Tribunal will discuss them below.

For example, his application for a visa and his airport interview were at odds with the details in his Application for a Protection visa. He agreed that he had provided incorrect information at the airport interview. However, the Tribunal accepts that he may have held the view that he had to lie to gain entry into Australia.

The applicant raised for the first time at the hearing that there was an attempt to kill him when he was walking alone and two people were following him. He realised what was going on and a friend came along on a bike and they escaped. This matter was raised despite him stating at the start of the hearing that he had no further claims. However, the Tribunal accepts that it was a minor claim and not one which is completely new.

The applicant returned to India on two occasions when he was in fear of his life which indicates that he did not have a personal fear of India. However, he did so to see his sick mother.

The applicant did not provide evidence of his mother's hospitalization in India, but he correctly stated that the Tribunal did not request it in particular.

The applicant did not travel to Australia, rather he returned to country X when he left India after his visit. It appeared that the applicant obfuscated in answering the Tribunal's questions in relation to this point and he did not come to the point quickly. However, he did state finally that it was around New Year and he could not purchase a ticket, as none were available as it is said that people travel to other countries to celebrate New Year. The Tribunal accepts this as a reasonable explanation. He also stated that he went back to country X, and as his mother fell sick again he had to return to India. Had his mother's condition improved further he would have travelled to Australia from country X. This is also a reasonable explanation.

The applicant appeared to have very little understanding of his mother's health condition, but the reality is that it may not have been explained to him in any detail.

The Tribunal also accepts that the applicant was confused at the hearing as to whether he had taken an oath or an affirmation, and it puts no weight on it.

So, although the applicant's credibility came under scrutiny at the hearing, the Tribunal accepts his claims.

However, the focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country. The international community is not under an obligation to provide protection outside the borders of the country of nationality if real protection can be found within those borders. Therefore, even if an applicant has a well-founded fear of persecution in their home region, the Convention does not provide protection if they could nevertheless avail themselves of the real protection of their country of nationality elsewhere within that country: *Randhawa v Minister for Immigration Local Government & Ethnic Affairs* (1994) 52 FCR 437 per

Black CJ at 440-1. However, this principle only applies to people who can genuinely access domestic protection, and for whom the reality of protection is meaningful. If relocation is not a reasonable option in the particular circumstances, it may be said that, in the relevant sense, the person's fear of persecution in relation to that country as a whole is well-founded: *Randhawa* per Black CJ at 442-3, *Beaumont J* at 450-1. In this case, the Tribunal has very carefully considered whether relocation is a reasonable option. India is a very populous and vast country, with states that differ markedly in many respects, including religious background, language and culture.

The applicant is an 'engaged' man, who has a mother in India. He has had at least 12 years of education in India. He arrived in Australia lawfully. He has lived and worked as a clerk in country X, and as an information manager in India. He can speak, read and write Tamil and says he has 50% proficiency in English. This background indicates that the applicant is reasonably well educated; has some aptitude for languages and is articulate; has office skills, aptitude and work experience; is versatile; and is self-reliant. The Tribunal also finds that because of these skills, the applicant is readily employable. The Tribunal also finds that the applicant has a relatively low profile. The Tribunal finds that the applicant will have no difficulty communicating in those parts of India where Tamil and/or English are spoken. 2.3 per cent of the population in Kerala and 1.1 per cent in Andhra Pradesh speak Tamil. The Tribunal is satisfied that language proficiency, education, and profile would not be barriers to him relocating to either of these states in these circumstances.

The Tribunal accepts the following independent country information. The Indian Constitution guarantees Indian citizens the right to move freely throughout the territory of India. There are Muslim communities all over India, and Muslims are able to relocate to other parts of India. Muslims constitute 13.4% of the Indian population. Large Muslim populations are found in the states of Uttar Pradesh, Bihar, Maharashtra, West Bengal, Andhra Pradesh, Karnataka, and Kerala. BJP and other Hindu extremist groups such as the RSS have been weakened over the past few years in Kerala, and there is no serious threat to the religious freedom of non-Hindu communities. The applicant referred to a town named "Nagar Kovil" which he stated was a headquarters for the RSS and it is located near the border with Kerala and Tamil Nadu. The Tribunal found that town located in Sri Lanka, but accepts that the Tribunal was referring to another town called "Nagercoil" in Tamil Nadu which has had an RSS presence and seems to be not far from the border of Kerala. A paper by Douglas Spitz called 'The RSS and Hindu Militancy in the 1980's' mentions that "The RSS took a leading role in organizing massive Hindu unity conferences in the Tamilnadu city of Nagercoil in 1982 and 1983" (http://department.monm.edu/classics/Speel_Festschrift/spitz.htm). However, the Tribunal prefers the currency and extent of the independent country information that BJP and other Hindu extremist groups, such as the RSS, have been weakened over the past few years in Kerala. This finding, together with the country information that there is no law against inter-religious marriages in India; and that his girlfriend is going to convert to Islam; the applicant's evidence that her father's reach does not extend to Kerala without the assistance of the RSS; Muslims in Kerala form 25 per cent of Kerala's 32 million people and are concentrated mainly in the northern districts; the existence of the National Integration Council, the National Commission for Minorities and the NHRC leads the Tribunal to find that the applicant would not experience

discrimination amounting to persecution as a result of his marrying his girlfriend in Kerala.

The Tribunal finds that if the applicant were to marry his girlfriend, who would then convert to Islam, and if they relocated to Kerala; that her father and the RSS do not represent a real chance of persecution. The Tribunal makes this finding on the basis of the following independent country information and evidence. There is a large (25%) Muslim population in Kerala; several communist parties are in power in Kerala, and the applicant's evidence that they do not pose a threat to him; the BJP Party, which is a traditional supporter of the RSS, failed to win one seat at the last elections in Kerala; the applicant's evidence that the applicant's father's power did not extend to Kerala without the RSS connection; Hindu extremist groups in Kerala (such as RSS) have been weakened over the past few years and hence are no serious threat to the religious freedom of Christian and other non-Hindu communities (DFAT 2006); the authorities are willing to step in to stop any communal violence, and to protect its citizens and the country is essentially governed by the Rule of Law; the lack of supporting evidence that the police would listen to his girlfriend's father and would try to kill the applicant and her; and that the father is unaware of the applicant's present whereabouts. The Tribunal is satisfied that Islam and the political situation are not barriers to the applicant relocating to Kerala which has a 25% Muslim population which are politically active. Independent country information indicates that various communist parties are in power in coalition in Kerala. Further, the independent country information is that the Muslims in Kerala have swung to the CPI-M Party (Communist Party) in Kerala with at least half a dozen influential Muslim groups throwing their weight behind the Left Democratic Front (LDF) (<http://timesofindia...>). The BJP, a supporter of the RSS, failed to win a single seat in the most recent Kerala state elections (<http://www.tribuneindia.com/2006/2006/20060329/edit.htm#40>). Hindu extremist groups in Kerala (such as RSS) have been weakened over the past few years. Accordingly, the Tribunal finds that there is no religious or political barrier to the applicant relocating in Kerala.

Further, regarding relocation in India, India is a secular state and all faiths generally enjoy freedom of worship. India has a democratically elected government, is governed essentially by the rule of law, and has a tradition of secular governance that dates back to the country's independence. Further, India has a judiciary that is independent. Although the 28 state governments have primary responsibility for maintaining law and order, the central Government provides guidance and support. The civilian authorities maintained effective control of the security forces. Where communal violence has occurred the Indian authorities sought to end it at the earliest opportunity. Persons considered to be inciting communal violence can be prosecuted under Indian law. The Indian Constitution guarantees Indian citizens the right to move freely throughout the territory of India. The Tribunal accepts this independent country information.

The Tribunal finds that the applicant would not attract the adverse attention of the RSS or the father in Kerala.

Furthermore, based on the country information, the Tribunal finds that there are the normal checks and balances associated with a fully functioning democracy in India, including Kerala.

As such, the Tribunal finds that the applicant will enjoy the meaningful protection of the Indian Police and other security institutions in Kerala. It is satisfied that the protection within India meets basic norms of civil, political, and socio-economic human rights and that the internal safety is not illusory or unpredictable and state accountability for harm is established.

The Tribunal is not satisfied that the applicant will encounter any difficulty in the reasonably foreseeable future for any convention-based reason if he moves to Kerala. There is no reason he could not start a new life in Kerala and develop new social circles there. The Tribunal is satisfied that the practical realities are such that he is able to relocate without difficulty. The Tribunal is satisfied that relocation is both a reasonable and practical option for the applicant (and his girlfriend).

In this case the Tribunal is satisfied relocation is a real option and the applicant has genuine access to meaningful protection in Kerala. Therefore in the light of all the evidence before it the Tribunal is satisfied that it is reasonable for the applicant to live in Kerala and avoid the harm he fears. Accordingly, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution for Convention purposes.

Whilst preparing this decision record the Tribunal has considered the applicant's concerns expressed in his response to the Tribunal's s.424A letter that the country information relied upon is 'superficial, academic and an illusory situation in India...'

The Tribunal is satisfied that the applicant is not a refugee.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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