

0903571 [2009] RRTA 970 (7 October 2009)

DECISION RECORD

RRT CASE NUMBER: 0903571

DIAC REFERENCE(S): CLF2009/24364

COUNTRY OF REFERENCE: India

TRIBUNAL MEMBER: Denis O'Brien

DATE: 7 October 2009

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants claim to be citizens of India They first arrived in Australia on visitor visas [in] July 2008 and departed [in] September 2008. The first named applicant arrived again in Australia on his visitor visa [in] September 2008. The second named applicant arrived again in Australia on her visitor visa [in] January 2009. The applicants applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] February 2009. The delegate decided to refuse to grant the visas [in] April 2009 and notified the applicants of the decision and their review rights by letter of the same date.
3. The delegate refused the visa application on the basis that the first named applicant is not a person to whom Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
4. The applicants applied to the Tribunal [in] May 2009 for review of the delegate's decision.
5. 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 applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. 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.
7. 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 the Convention.
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person.
9. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

10. Australia is a party to the Refugees Convention and, generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
 - owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
11. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
12. 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.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. Secondly, 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, if 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 unable to be controlled 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 (see *Chan* per McHugh J at 430; *Applicant A* per Brennan CJ at 233, McHugh J at 258).
15. Persecution also 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.
16. Thirdly, the persecution which the applicant fears must be for one or more of the reasons specified 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.

17. Fourthly, 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 he or she has a genuine fear founded upon a 'real chance' of persecution for a Convention stipulated reason. A fear is well-founded when 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.
18. 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.
19. 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.
20. 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: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of 'practicable', to expect him or her to seek refuge in another part of the same country. What is 'reasonable' in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.

CLAIMS AND EVIDENCE

21. The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
22. The applicants appeared before the Tribunal [in] June 2009 to give evidence and present arguments. The first named applicant also appeared before the Tribunal on a resumption of that hearing [in] July 2009. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages. The applicants were residing in the Griffith area and the hearing was conducted by videolink to Griffith.
23. The first named applicant said at the outset of the hearing that, because of the mental condition he was suffering from at the time his protection visa application was prepared, he had asked someone to help him prepare his claims but he really did not

know what was written in the documents before the Tribunal. He said that the statement dated [in] May 2009 which he had supplied to the Tribunal represented the correct statement of his claims.

Statement of applicants' claims

24. The applicant's statement of [date] May 2009 is as follows:

I [applicant name] and my wife [name], together came to Australia on [date] July 2008. We both go back to India on [date] September 2008. On [date] September 2008 I was arrested in police station. I was released on [date] September 2008. [Person 1] (Former Minister) was responsible for police custody.

[Person 1] so many times threaded and harassed me. Once again myself came to Australia on [date] September 2008. After that I am still here. Due to all circumstances once again my wife also came to Australia on [date] January 2009.

When my wife was came to Australia in January 2009. I changed my accommodation, during this shifting period I lost my all documents.

On [date] February 2009 I submitted my Protection Application to Department of Immigration and Citizenship in Sydney. When I was preparing my application on that time mentally I was very much upset and taking medicine to improve my mental problem. On that time I haven't proper documents, which I gave evidence of my birth and name spellings etc, that was not according to original documents. So now I got my all documents. I am sending you our passport's photocopies.

I request you that please consider my documents and give me opportunity, whenever I will have my interview with RRT, I will speak out more about my circumstances.

Interview by departmental officer

25. The first named applicant had been interviewed by an officer of the Department in connection with his protection visa claim. In that interview he said that his present visit to Australia was his only visit and that he had arrived [in] January 2009. He denied having a passport and said he had never applied for one and had never had one. When confronted by the officer with his visitor visa application signed [in] July 2008 (Department file, f.117), the first named applicant denied that the photograph on the application form was his and denied that the photograph on his wife's separate visitor visa application form was hers. He said that a person in Griffith who hailed from Gujarat had helped him prepare his protection visa application.

26. In the interview the officer put his concerns as follows about the first named applicant's claims – that he had not told the truth about his identity, that because of that the officer had difficulty believing his protection visa claims, that Mann Akali Dal supporters, such as the first named applicant claimed to be, did not face a real chance of persecution in India, that India had a police system which protected its citizens and that it would be reasonable for the first named applicant to relocate elsewhere in India. The first named applicant responded that he had told the truth about his identity, that Mann Akali Dal supporters were persecuted, that the police in India did what they wanted and that it would be an insult to the first named applicant if he were to leave his home and land and relocate elsewhere.

Evidence of second named applicant in Tribunal hearing [in] June 2009

27. At the Tribunal hearing [in] June 2009 the second named applicant said that, immediately before she and her husband came to Australia in September 2008, they had been in hiding in India because the police were giving them a hard time. They had, however, returned to India because they could not get a job in Australia. On their return to India it was difficult because they were living with relatives and so her husband again came to Australia. When he came to Australia on this occasion, the second named applicant went to live with her sister in India but, in maintaining contact with her husband through telephone calls, she became increasingly concerned about his mental condition. She herself returned to Australia [in] January 2009, bringing with her some herbal medicine for her husband's mental condition. The Tribunal asked her what the condition was. She said that her husband was always scared and fearful.
28. The second named applicant said that the former Minister, [Person 1], had contrived to have the daughter of the applicants dismissed from her position as a lecturer in [faculty and educational institution deleted: s.431(2)] She had fled to Canada and had applied for refugee status there. The applicants' son had also left home. The second named applicant believed that he was still in India but she did not know where.

Evidence of first named applicant in Tribunal hearing [in] June 2009

29. The Tribunal asked the first named applicant why it was that, having arrived in Australia in July 2008, he did not make his protection visa claim until [in] February 2009. He responded that his mental condition was not good but, on his return to India in September 2008, the family was given a terrible time. His brother-in-law lost his job because of his connection with the first named applicant, as did his daughter. The whole family was harassed by the police, including his son and daughter.
30. The Tribunal asked the first named applicant why he had given the Department an Indian drivers licence (Department file, f.142) showing his date of birth as [date deleted: s.431(2)] 1962 when in fact his date of birth was [date deleted: s.431(2)] 1961. He responded that the Gujarati who helped him with preparation of the protection visa claim arranged this document at the time of the departmental interview. The first named applicant did not know how the Gujarati had prepared the document.
31. The first named applicant said that he joined the police force in 1979. In 1984, when the Temple was attacked, the applicant was a supporter of Mann Akali Dal. Another Akali Dal group wanted the first named applicant to support it but he refused. Then in 1991 while he was on police duty a false case was registered against him involving an allegation that he was involved with others in planning a robbery and that he and one of the others had fired shots at the police. He was held unlawfully on this false charge for 12 months initially in [location deleted: s.431(2)] jail and then [location deleted: s.431(2)] jail before ultimately being released on the orders of a session judge, [name deleted: s.431(2)].
32. The first named applicant said that it was a member of [Person 1]'s party who brought this false case against him. The Tribunal asked the first named applicant what [Person 1] had to do with this. He said that his uncle was a witness to illegal confiscation of land by [Person 1] and that [Person 1] had been a Government Minister as a member of Badal Akali Dal party which opposed Mann Akali Dal.

33. The first named applicant said that he fought for 8 years to be reinstated in the police force after the charges against him were dismissed. He was eventually reinstated and won compensation. After about one and a half years, he was involuntarily retired from the police force because of pressure that [Person 1] put on the first named applicant's superiors. The first named applicant was a constable at that time.
34. Then in 2006 the first named applicant leased some land in partnership with another person, [Person 2]. At the time the first named applicant did not realise [Person 2] was a member of [Person 1]'s group. They grew a sugar cane crop on the land. However, when the crop was ready, [Person 2] together with family members took the lot and when the first named applicant went to claim his money, they chased him away with a rifle, shooting shots in the air. The first named applicant filed a First Incident Report with the police in relation to this incident. [Person 2] was arrested and held for 10-12 days but then released. No further police action was taken on the first named applicant's complaint.
35. In April 2008 the police arrested the first named applicant again. The Tribunal asked him if he was charged. He said he was not. It was merely harassment. He was held in prison for 10-15 days. The first named applicant said that he fears for his life because [Person 1]'s supporters killed a friend of his, [name deleted: s.431(2)]. [Person 1] also had the first named applicant's daughter dismissed from her teaching position. The police further arrested the first named applicant's son twice and held him in prison for a time where he was made to clean the toilets. He felt so insulted at this treatment that he ran away from home.

Translations of documents supplied by first named applicant relating to 1991 and 2006 incidents

36. At the interview with the officer of the Department the first named applicant supplied copies of documents relating to the 1991 and 2006 incidents referred to above. Further copies of those documents were supplied to the Tribunal. As they were largely in Punjabi and the first named applicant indicated that he did not have the money to get them translated, the Tribunal arranged for them to be translated. The translations are not complete because the copies from which the translations are made are indistinct in parts.
37. The 1991 document purports to be a First Incident Report (FIR) in the records of Police Station [location deleted: s.431(2)]. It contains a report of information given to the police 'that three males were planning a robbery in the corridor of a veterinary hospital...and they also possess weapons'. The report goes on to say that police went in a vehicle to investigate and, when they neared the place concerned, the vehicle was fired upon. The police returned fire, then after 10 minutes the suspects surrendered. One of the men was the first named applicant. A loaded revolver was taken from him. He could not show that he had a licence for it. A hand grenade was taken from one of the other men. The report concludes that, since the first named applicant and the other man 'had fired at the police party to kill them and they were having the possession of a grenade and a revolver without having any licence for it, they have committed a crime' under various specified Acts.
38. The 2006 document purports to be a FIR relating to a criminal complaint made by the first named applicant against [Person 2] and others. The complaint alleges that the first

named applicant and [Person 2] had planted a 7-acre cotton crop, that a dispute had arisen between them and that [Person 2] had agreed to pay the first named applicant 20,000 rupees. When the first named applicant called on [Person 2] for payment [in] September 2006, [Person 2] and others of his family members chased the first named applicant away with a rifle, shooting shots in the air. The first named applicant says in the complaint that he fears the persons against whom the complaint is made will kill him.

Resumption of hearing [in] July 2009

39. At the resumed hearing [in] July 2009, the first named applicant confirmed that the second named applicant had left Australia because their son had been contacted in India and was suffering from a serious mental condition and was unable to speak. The first named applicant said that he would supply the Tribunal with a medical certificate as to the son's condition.
40. The Tribunal informed the first named applicant that it had had the FIR relating to the 1991 incident translated. The Tribunal referred to the substance of what was in the FIR and asked the first named applicant why he asserted that the case against him in that document was false and what the relevance of it was to his protection visa claim. He replied that the case was an entire lie and had eventually been thrown out as he mentioned earlier. He said it was a ridiculous case because he himself was a policeman at the time so could not have been involved in firing at the police. The Tribunal asked who was responsible for making the story up. The first named applicant said that [Person 1] was responsible. He had done this because of the case the first named applicant's family had brought against him for illegally occupying government land and because of the refusal of the family to support him in the elections. The Tribunal asked the first named applicant how [Person 1] was able to bring such a false case. The first named applicant replied that it was done through corruption. [Person 1] is a powerful person as an ex Minister and is able to use his influence to bring false charges against many people who refuse to support him.
41. The first named applicant said that [Person 1] like his father before him had been a member of Badal Akali Dal. After Mann split from Badal Akali Dal to form Mann Akali Dal, the Badal Akali Dal party had brought many charges against members of Mann Akali Dal.
42. The Tribunal referred the first named applicant to the translation it had obtained of the FIR relating to the 2006 incident. The Tribunal put to him that he had said last time before the Tribunal that the dispute concerned the proceeds of a sugar cane crop but the translated FIR said that the crop was cotton. The first named applicant insisted that the dispute concerned the proceeds of a sugar cane crop.
43. The Tribunal asked the first named applicant what this incident had to do with his protection visa claim. He said that [Person 1] had told the first named applicant that, if he did not support [Person 1], these things would happen to him and, when the first named applicant filed this complaint, nothing happened to [Person 2] because [Person 1] gave him protection. The first named applicant said that Mann Akali Dal people would not support [Person 1] because he had been opposed to the first named applicant for a long time and had damaged the first named applicant.

44. The Tribunal asked the first named applicant for details of his claimed arrest in April 2008 and the dates during which he said he was detained. He said that he was arrested at home and had been arrested many times. He was held for 7 or 8 days without charge. He said that [Person 1]'s people had made his life hell. He would rather die in Australia than return to India.
45. The Tribunal asked the first named applicant questions about Mann Akali Dal. In response to the Tribunal's questions as to who founded the party and when it was founded, the first named applicant said that it was founded by S. S. Mann prior to 1984. S. S. Mann was now president of the party. The Tribunal put to the first named applicant that the information before it was that Mann Akali Dal was not formed until the mid-1990s when S.S. Mann broke away from the Akali Dal group. The first named applicant said that S. S. Mann had been with Akali Dal but broke away because of the corruption of the Akali Dal leader, Badal.
46. The Tribunal asked the first named applicant about information before it that Mann Akali Dal merged in 2006 with Shiromani Khalsa Dal. The first named applicant said that there was no such group as Shiromani Khalsa Dal but there was a group called Shiromani Akali Dal. When the Mann Akali Dal party realised that it was not going to win the elections, it urged supporters to support the Congress Party against Badal Akali Dal.
47. The first named applicant said that the Badal group was now in power in the Punjab State Assembly and the Chief Minister was Parkash Singh Badal.
48. The first named applicant further said that he had not held office in Mann Akali Dal but, when he was President of the Temple, he had urged the people to give their vote to Mann Akali Dal. He was a party member but did not have his party membership card with him.
49. The Tribunal put to the first named applicant that country information before it indicated that Punjabi Sikhs could readily relocate within India and that this was an option for him to avoid persecution in his home State. He responded that he was known in the district and, if he relocated anywhere else, it would bring dishonour on him. He could manage living in another country but not the dishonour of living elsewhere in India.
50. The Tribunal put to the applicant the information on the Department file that he had not told the truth to the delegate about his arrival in Australia and said that this information was relevant to the review because it may suggest that his refugee claims were also untrue. He responded that he had told the Tribunal the truth about his arrival in Australia and that what he had told the Tribunal about his claims was also true.
51. The first named applicant also stated that the untruths he had told the delegate about his not having a passport were untruths that he had been advised to tell by the Gujarati in Griffith who had assisted him. However, what he had since told the Tribunal was the truth.
52. After the hearing the first named applicant supplied to the Tribunal a medical certificate dated [in] July 2009 on the letterhead of [medical clinic deleted: s.431(2)], in which it is stated that, on information provided by the second named applicant, [name deleted:

s.431(2)], son of the first named applicant, 'is probably suffering from acute mental illness, ie schizophrenia'.

Country of origin information

Shiromani (or Badal) Akali Dal and Mann Akali Dal

53. *A Nationalism and Ethnic Politics* paper gives early background on Akali Dal:

Shiromani Akali Dal (henceforth the Akali Dal) has been the most prominent Sikh political organization. It was formed (albeit under a different name) on 14 December 1920 at the Akal Takht, within the Golden Temple complex at Amritsar. The leader of the Akali Dal is called a "Jathedar." Since its inception, it has controlled the Shiromani Gurdwara Parbandhak Committee (Central Gurdwara Management Committee, or SGPC). Between 1930 and 1940, the Akali Dal struggled for communal Sikh rights. In 1946 it launched agitation for an independent, sovereign Sikh State but obviously failed to achieve this goal. In subsequent decades, some of the voting block of the Akali Dal was ceded to the Congress party. The Akali Dal launched two agitations for the formation of a Punjabi-speaking province, Punjabi Subah, in 1955 and 1960. The Akali Dal also supported the movement for Khalistan between 1980 and 1992. By the early 1990s, the Akali Dal had fragmented into a number of groups that argued for varying degrees of sovereignty and/or integration within federal India (Fair, C. 2005, 'Diaspora involvement in insurgencies: Insights from the Khalistan and Tamil Eelam movements', *Nationalism and Ethnic Politics*, vol. 11, p. 151 http://home.comcast.net/~christine_fair/pubs/Diasporas.pdf – Accessed 21 April 2009).

54. *The Political Handbook of the World* (2007) gives some background on Akali Dal, stating:

Prior to the June 1984 storming of Amritsar's Golden Temple, leadership of the Sikh agitation had effectively passed from the *Akali Dal* to the more extremist followers of Jarnail Singh Bhindranwale. In July 1985, a year after Bhindranwale's death, the moderate *Akali Dal* leader, Harchand Singh Longowal, concluded a peace agreement with Prime Minister Rajiv Gandhi, but he was assassinated in August.

In May 1986 a number of *Akali Dal* leaders, including Parkash Singh Badal, a former chief minister, withdrew to form a separate party that was recognized as a distinct formation within the state assembly. In February 1987 the two breakaway factions agreed to reunification under the leadership of **Simranjit Singh Mann**, a former police official. Factionalism nevertheless persisted. In 1994-1995 the Sikh religious leadership, under Manjit Singh, attempted to unify the party, with half a dozen of the more distinctly nonsecular factions – the most notable exception being the Badal group – adopting an "Amritsar declaration" and briefly appending "Amritsar" to their collective identity. However, Mann, asserting that other party leaders were not abiding by the declaration, subsequently formed a separate party (Banks, A.S. & Muller, T.C. & Overstreet, N.R. (eds) 2007, 'India', in *Political Handbook of the World* (2007), CQ Press, Washington D.C., p. 539).

55. The same publication further states:

Shiromani Akali Dal (Mann) – SAD(M). The SAD(M) was formed by radical *Akali Dal* faction leader S.S. Mann in the mid-1990s because, he claimed, other leaders had failed to adhere to the 1994 Amritsar declaration... At the time, the party was also known as the SAD (Amritsar). Mann successfully competed for a *Lok Sabha* seat in 1999. In 2004 the party ran six candidates, all unsuccessful. In June 2005 Mann was arrested for sedition for advocating establishment of Khalistan, a Sikh homeland.
Leaders: Simranjit Singh Mann, Jagmohan Singh (General Secretary) (Banks, A.S. & Muller,

T.C. & Overstreet, N.R. (eds) 2007, 'India', in *Political Handbook of the World (2007)*, CQ Press, Washington D.C., p. 543).

56. When Mann was arrested on charges of sedition in 2005, *Rediff News* reported the following:

Mann, now in his sixties, resigned from the Indian Police Service in protest against Operation Blue Star in June 1984.

He was named in the assassination of former prime minister Indira Gandhi, but investigations could not substantiate the charges and hence he was not prosecuted in that case.

Mann contested on an Akali Dal ticket from Tarn Taran constituency in 1989 from jail and he won his seat with the highest margin. He refused to enter the parliament on the ground that he was not allowed to carry his Kirpan inside the house.

Mann's latest words give a new twist to the now non-existent Khalistan movement. He is talking of forming the state by merging areas of Punjab from both Pakistan and India.

"Whenever he is short of money, he resorts to these gimmicks, but he knows that nobody would take him seriously except those in power," said a senior journalist of a leading newspaper of Punjab.

When Chandershekhar was the prime minister, he invited Mann to hold talks. But before anything concrete could take shape, the Chandershekhar government fell and Mann was found struggling to keep his party alive. Now his SAD is known as SAD-Amritsar (Singh, O. 2005, 'Simranjit Singh Mann held for Sedition', *Rediff News* website, 14 June <http://www.rediff.com/news/2005/jun/14onk.htm> – Accessed 5 July 2006).

57. *Punjab Newslines* provides a brief history of Akali Dal factions and splinter groups:

Akali Dal's history is also full of divisions and factionalism. Each faction claims to be the real Akali Dal. As of 2003, the SAD headed by Parkash Singh Badal was the largest faction and the one recognized as having the name SAD by the Election Commission of India. Other factions have included Sarb Hind Shiromani Akali Dal led by Gurcharan Singh Tohra, Shiromani Akali Dal (Simranjit Singh Mann) (also called SAD (Amritsar)), and Shiromani Akali Dal (Panthik) led by Amarinder Singh (which later merged with Congress), Shiromani Akali Dal Delhi, Shiromani Akali Dal (Democratic), Haryana State Akali Dal and the Shiromani Akali Dal (Longowal) and Shiromani Akali Dal Amritsar (Punjab Pardhani).

The basic philosophy of Akali Dal is to give political voice to Sikh issues (Panthic cause) and it believes that religion and politics go hand in hand. Its major vote bank is majority of 65 percent Sikh population in the state (Bains, S. 2008, 'Sukhbir Badal becomes youngest president of Shiromani Akali Dal', *Punjab Newslines*, 31 January <http://www.punjabnewslines.com/content/view/8203/38/> – Accessed 21 April 2009).

58. *Refworld* refers to an Immigration and Refugee Board of Canada report, dated 15 April 2008, on the treatment of Akali Dal members as follows:

Various sources including three oral sources contacted by the Research Directorate indicated that the Akali Dal (Mann) party is the informal name for the Shiromani Akali Dal (Amritsar) party and both names refer to the same party (Human Rights Lawyer 31 Aug. 2007; Professor Emeritus 7 Aug. 2007; Professor of Anthropology 14 Mar. 2008; Oneindia 8 Sept. 2007; Punjab Newslines 31 Jan. 2008) ...

According to news sources, the leader of the Akali Dal (Amritsar), Simranjit Singh Mann, was arrested in Punjab in June 2005 on charges of sedition for demanding independence for Khalistan, a separate homeland for Sikhs (AP 14 June 2005; PTI 14 June 2005; *The Tribune* 1 July 2005; see also US 8 Mar. 2006, Sec. 1.d). *The Panthic Weekly*, a non-profit Sikh news publication based in California (n.d.), also reports in 2006 that Indian authorities confiscated Simranjit Singh Mann's passport (*The Panthic Weekly* 6 Dec. 2006). The Khalistan Affairs Center (KAC), a Washington-based organization promoting a sovereign Sikh state (n.d.), adds that Mann's passport was seized following his visit to the United States (US) in April 2005 as his visit had generated a lot of attention to the pro-Khalistan movement (KAC 27 June 2007). However, Mann alleges that his passport has been held since 2004 to prevent him from participating in the Air India commission of inquiry in Canada (*The Panthic Weekly* 11 July 2007).

In May 2007, Mann and 20 other party members were charged under the penal code and detained for protesting in Jalandhar around the statue of the late Beant Singh, former Punjab Chief Minister (KAC 27 June 2007; *Express India* 15 June 2007; *The Panthic Weekly* 11 July 2007). Media sources indicate that the court rejected Mann's bail application in June 2007 (15 June 2007) and his judicial remand was extended for another two weeks (*Express India* 15 June 2007; *The Tribune* 2 June 2007) and once again until August 2007 (ibid. 11 Aug. 2007).

The Panthic Weekly suggests bias within the police force as members of the Akali Dal (Amritsar) were charged under the penal code during a clash between the Akali Dal (Amritsar) and another political party, the Shiv Sena, in December 2007, while members of the Shiv Sena were allegedly not arrested (*The Panthic Weekly* 19 Dec. 2007).

According to an article in *The Tribune*, several persons participating in a Sikh march were charged under the Indian penal code for "anti-national activities" which included slogans in favour of Khalistan (26 June 2007).

Regarding whether the police regard Akali Dal (Amritsar) party members with suspicion, two academics are of the opinion that members of the Akali Dal (Amritsar) are not, in general, ill-treated (Professor of Anthropology 13 Mar. 2008; Professor Emeritus (Missouri) 27 Mar. 2008). More specifically, a professor of Anthropology at the University of Texas whose area of research includes India stated that, to his knowledge, members of the Akali Dal (Mann) are no longer subject to ill-treatment unless the individual is suspected of terrorism or violent activities by police (13 Mar. 2008). Similarly, a professor emeritus of Political Science at the University of Missouri with extensive knowledge on India stated that outspoken members of the Akali Dal (Amritsar) are not harassed or arrested for participating in party gatherings, publicly complaining about the treatment of Sikhs by authorities or calling for the creation of Khalistan (27 Mar. 2008) (<http://www.unhcr.org/refworld/docid/4829b559c.html> – Accessed 9 September 2009).

59. On the other hand, there have been reports of arrests of Mann Alkali Dal leaders and members in Punjab since the Shiromani Akali Dal party gained power, in coalition with the BJP in 2007 ('Government oppressing minorities, says SAD (A)' 2007, *Ludhiana*

Tribune, 20 August <http://www.tribuneindia.com/2007/20070820/ldh1.htm#9> – Accessed 6 September 2007).

[Person 1]

60. [Information about Person 1's political office deleted: s.431(2)]
61. A July 2009 report [publication and allegations of electoral malpractice deleted: s.431(2)].
62. In December 2002, [publication deleted: s.431(2)] reported on the arrest of [Person 1] 'for allegedly misappropriating Government funds and land [information deleted: s.431(2)]. A report from the [publication deleted: s.431(2)] states that [Person 1] was acquitted of all corruption charges in May 2009.

Relocation

63. A recent UK Home Office Country of Origin Information Report on India addressed the issue of Sikh communities outside Punjab, and of internal relocation for Sikhs as follows:

Internal Relocation for Sikhs

20.59 As noted in an Immigration and Refugee Board (IRB) of Canada Response to Information Request, dated 18 January 2006, the Indian Constitution allows for freedom of movement of citizens. A human right activist stated that "theoretically, Sikhs can, like others, move and relocate themselves in any part of India that does not come under excluded or restricted zones like some parts in the northeast of India."

20.60 After consulting various sources, the same source recorded that:

"Although the majority of Sikhs in India reside in Punjab state...there are many Sikh communities in India located outside of Punjab state... In correspondence to the Research Directorate, a specialist in Indian affairs reported that Sikhs are located in every state in India, and in 579 districts out of a total of 593 districts (23 Nov. 2005). After Punjab state, the next greatest numbers of Sikhs reside in northern Haryana state (1,170,662 persons), northern Rajasthan state (818,420 persons), north central Uttar Pradesh state (678,059 persons), northern Delhi union territory (555,602 persons), northern Jammu and Kashmir state (207,154), central Maharashtra state (215,837 persons), north central Uttaranchal state (212,025 persons) and central Madhya Pradesh state (150,772 persons). Statistics on the Sikh population in India received by the Research Directorate from the World Sikh Organization (WSO), which are drawn from the results of the 2001 Indian census, corroborate the information that most Sikhs live in the states cited above by the specialist in Indian affairs, though the numbers of Sikhs reported by WSO are slightly lower in each state, except for Jammu and Kashmir state, in which the number of Sikhs is considerably higher at 500,000 people... Minorities at Risk, a University of Maryland research project that monitors and analyzes ethnic conflict worldwide, also indicates the presence of Sikhs in the capital Delhi, as do news articles... A professor of Asian studies, with extensive experience in India, commented in a telephone interview with the Research Directorate that Sikh communities are 'doing quite well' in various states in India and that they consider these places their home (14 Nov. 2005)."

- 20.61 The IRB response continued “Citizens are not required to register their faith in India. Several oral sources consulted for this response commented that Sikhs are able to practise their religion without restriction in every state of India. The central Indian government recognizes Sikhs as one of five religious minority groups and, as such, Sikhs are provided access to ‘various Constitutional guarantees’ for the protection of the rights of religious minorities.” Sikhs hold prominent positions in India, Manmohan Singh is India’s first non-Hindu Prime Minister. (Immigration and Refugee Board of Canada, 18 January 2006)
- 20.62 There were no checks on a newcomer to any part of India arriving from another part of India, even if the person is a Punjabi Sikh. Local police forces have neither the resources nor the language abilities to perform background checks on people arriving from other parts of India. There is no system of registration of citizens, and often people have no identity cards, which in any event can be easily forged. “Sikhs relocating from Punjab state to other parts of India do not have to register with the police in their area of relocation, unless they are on parole...” (Immigration and Refugee Board of Canada, 18 January 2006)
- 20.63 The Danish Immigration Service fact-finding mission to Punjab, dated March to April 2000, noted “The Director of the South Asia Human Rights Documentation Centre believed that a high-profile person would not be able to move elsewhere in India without being traced, but that this would be possible for low-profile people.” Sources from foreign diplomatic missions in India considered that there was no reason to believe that someone who has or has had problems in Punjab would not be able to reside elsewhere in India. Reference was made to the fact that the authorities in Delhi are not informed about those wanted in Punjab.
- 20.64 The US Citizenship and Immigration Services, in a response to a query (updated on 22 September 2003), noted that:
- “Observers generally agree that Punjab police will try to catch a wanted suspect no matter where he has relocated in India. Several say, however, that the list of wanted militants has been winnowed [whittled] down to ‘high-profile’ individuals. By contrast, other Punjab experts have said in recent years that any Sikh who has been implicated in political militancy would be at risk anywhere in India. Beyond this dispute over who is actually at risk, there is little doubt that Punjab police will pursue a wanted suspect. ‘Punjab police and other police and intelligence agencies in India do pursue those militants, wherever they are located, who figure in their lists of those who were engaged in separatist political activities and belonged to armed opposition groups in the past,’ a prominent Indian human rights lawyer said in an e-mail message to the Resource Information Center (RIC) (Indian human rights lawyer 4 May 2003).”
- ...
- 20.67 Sikhs would have unlimited access to housing in localities outside Punjab state to whatever extent they could afford it, as the main factor limiting access to housing is financial rather than religion, according to two sources consulted by the Canadian IRB in their response dated 18 January 2006. The report continues to state that Muslims experience the greatest discrimination in housing, not Sikhs, and although there may be isolated instances of discrimination against Sikhs in terms of housing, it is by no means a common occurrence. Citizens may buy agricultural land only in their state of residence except for Punjab state, where agricultural land may be purchased by Indian citizens living in any Indian state. It was thought by one source

that the application of this law was mainly used against Sikhs and other religious minorities. (Immigration and Refugee Board of Canada, 18 January 2006)

20.68 Upon relocation Sikhs would have indiscriminate access to employment dependent on their skill level. There may be isolated instances where an individual feels discriminated against because of a tendency by some firms to employ locally born and educated people. Sikhs would also have indiscriminate access to health care in states outside of Punjab although access depends largely on their financial situation and their proximity to an urban location. It was also agreed by two sources that Sikhs would have access to education outside of Punjab and again poverty is the main obstacle to education and proximity to an urban area affects the availability of education. (Immigration and Refugee Board of Canada, 18 January 2006) (UK Home Office 2008, Country of Origin Information Report: India, 12 August, pp. 74-76 <http://www.homeoffice.gov.uk/rds/pdfs08/india-210808.doc> – Accessed 22 August 2008).

64. DFAT advice from 2003 also comments on relocation within India:

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 Report 254 – India RRT Information Request IND16042*, 13 October).

Second named applicant leaves Australia

65. The Department's movement records indicate that the second named applicant is now no longer in Australia. She left Australia [in] July 2009. [In] September 2009 the Tribunal wrote to the first named applicant advising that its records showed that the second named applicant is not in Australia and therefore could not be granted a Protection (Class XA) visa. The letter invited the first named applicant to comment on the information and advise the Tribunal if the information before it was incorrect. The first named applicant was advised that if he did not contact the Tribunal by [a date in] October 2009 the Tribunal may finalise the matter without contacting him again.
66. The first named applicant responded in a letter sent by facsimile to the Tribunal [in] October 2009. In that letter the first named applicant explained that the second named applicant had returned to India following news that their son had been located in Amritsar and that he was suffering a mental illness.

FINDINGS AND REASONS

67. On the basis of the evidence of his passport and his evidence at the hearing before the Tribunal, the Tribunal accepts that the first named applicant is a citizen of India. The Tribunal also accepts that he was born in [Town A] in the state of Punjab. The Tribunal further accepts that he is a Sikh and that he is a supporter of the Mann Akali Dal political party.

68. The Tribunal does not, however, accept that the 1991 and 2006 incidents he has related to the Tribunal provide a basis for a finding that he faces a real chance of persecution for a Convention reason if he returns to India. His claim before the Tribunal is that he fears [Person 1] and the things that [Person 1] is able to do to him, either through [Person 1]'s own hands or through the agency of others, because the first named applicant is a political opponent of [Person 1]. The Tribunal accepts the first named applicant's evidence that he was falsely arrested in 1991 and that, after 12 months, he was released on the orders of a session judge. The first named applicant is not a Mann Akali Dal leader but merely a member or supporter of the party but it seems from the country of origin information referred to above that the arrests of persons on false charges is not unknown in Punjab. An arrest on a false charge is a matter which falls within the ambit of the Convention. However, the Tribunal does not accept that [Person 1] was responsible for the false charge being brought against the first named applicant as the first named applicant alleges. He said that [Person 1] brought this charge because of the case the first named applicant's family brought against [Person 1] for illegally occupying government land and because they refused to support [person 1] in the elections. However, this explanation is not consistent with the country of origin information referred to above which indicates that the case brought against [Person 1] was brought some 9 years after the date on which the first named applicant was arrested on the false charges.
69. As for the 2006 incident concerning the dispute over the proceeds of a crop, the Tribunal does not accept the first named applicant's account. The Tribunal put to him at the resumed hearing that the translated FIR said that the crop was not a sugar cane crop but a cotton crop. He was unable to offer any explanation about this inconsistency, merely insisting that the dispute concerned the proceeds of a sugar cane crop. In this respect the FIR fails to corroborate in a material detail the first named applicant's account.
70. Because the Tribunal is unable to accept the first named applicant's story concerning the 1991 and 2006 incidents he related to the Tribunal, the Tribunal does not consider that he faces a real chance of persecution for reasons of political opinion should he return to Punjab. The Tribunal gives little weight to the medical certificate supplied by the first named applicant relating to his son's medical condition. The Tribunal notes that the first named applicant was very emotional when describing his son's condition and asserts that the condition is caused by the persecution his son suffered. However, the terms of the certificate indicate that it has not been given on the basis of an examination of him by the doctor giving the certificate and, as such, the diagnosis of schizophrenia is at best speculative. The certificate furthermore says nothing about the aetiology of the condition.
71. The applicant gave no details to support the brief oral allegations he made that he was arrested in April 2008 and that he had been arrested many times. The allegations were vague and lacking in detail and for this reason the Tribunal is unable to accept them.
72. Even if the Tribunal is wrong about the harm the first named applicant will face if he returns to Punjab, the threat to him does not, in the Tribunal's view, extend to India as a whole. The case the first named applicant has put to the Tribunal is that the persecution he fears is due to the influence and power of [Person 1] As the country of origin information indicates, [Person 1] is now again a Member of the Legislative Assembly in Punjab and, as such, may be able to wield influence in that state. However, any such

influence would be limited to Punjab. The country of origin information indicates that the first named applicant and his family are able to access real and effective protection from harm by living in another area of India. The country of origin information indicates that there are many Sikh communities in India located outside Punjab state and that there are no restrictions on the relocation of Sikhs to other states (except Jammu and Kashmir). That information indicates furthermore that, upon relocation, Sikhs would have indiscriminate access to employment dependent on their skill level. Given that [Person 1] is a Punjab politician, the Tribunal believes that, if the first named applicant and his family were to move to a new area of India, the risk of harm coming to them arising from their political opinion would become remote.

73. The first named applicant has said that for him and his family to live elsewhere in India would bring dishonour on him. However, the Tribunal does not regard this as a sufficient reason for him not to relocate to avoid persecution. There is no doubt that it is difficult for the first named applicant to contemplate living outside Punjab. However, in the Tribunal's view, the first and second named applicants possess the attributes, resources and capacity to settle elsewhere in India. The first named applicant is 48 years old and is mobile, he has been a police officer, his English writing skills as evidenced by his correspondence with the Tribunal are sound and both he and his wife had the resources to travel to Australia as visitors prior to the making of the first named applicant's protection visa claim. He indicated to the Tribunal that he had a 'mental problem' at the time his original protection visa claims were formulated but he presented no evidence of any continuing mental condition at the time of the Tribunal hearing.
74. In the Tribunal's view, while the first named applicant and his family may have initial difficulties in settling in a new region of India on return, those difficulties are not of a magnitude that could be said to make their relocation within that country not reasonably possible.
75. The first named applicant's son may have medical problems. However, there is no suggestion that any problems he may have would be rendered worse by the family's relocation to another place in India. Nor would relocation affect the first named applicant's daughter who now appears to be living in Canada.
76. For these reasons, the Tribunal is of the view that the first named applicant cannot be said to hold a well-founded fear of being persecuted for any Convention reason should he return to a region of India different from where he formerly lived. The likelihood that those seeking to harm him in his former region of residence would have an interest in locating him in another region of India is remote. On this basis the Tribunal does not consider that the first named applicant is a person owed protection obligations by Australia.
77. As the second named applicant made application only as a member of the family unit of the first named applicant and as the Tribunal has decided that the first named applicant should not be granted a protection visa, the second named applicant's claim is also unsuccessful. The Tribunal is also satisfied from the circumstances set out above that the second named applicant is not in Australia. Therefore, she does not satisfy the requirements of s.36(2)(b) of the Act.

DECISION

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*

Sealing Officer: PRMHSE