

1507870 (Refugee) [2016] AATA 3928 (6 June 2016)

**DECISION RECORD**

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1507870
<b>COUNTRY OF REFERENCE:</b>	India
<b>MEMBER:</b>	Amanda Paxton
<b>DATE:</b>	6 June 2016
<b>PLACE OF DECISION:</b>	Melbourne
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 06 June 2016 at 10:20am

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

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of India, applied for the visa [in] September 2013 and the delegate refused to grant the visa [in] June 2015.
3. On 4 April 2016, the Tribunal wrote to the applicant advising that it had considered all the material before it relating to the application but it was unable to make a favourable decision on that information alone. The Tribunal invited the applicant to give oral evidence and present arguments at a hearing on 13 May 2016. The applicant was advised that if he did not attend the hearing and a postponement was not granted, the Tribunal may make a decision without further notice. On 29 April 2016, the applicant responded to the hearing invitation indicating that he would take part in the hearing.
4. On 12 May 2016, the applicant emailed the Tribunal requesting that the hearing be re-scheduled "due to being unwell".<sup>1</sup> He provided a medical certificate dated 12 May 2016, stating that, "from 12 May 2016 to Thursday 26 May 2016, inclusive, he will be unable to attend his usual duties."<sup>2</sup> On 13 May 2016, the Tribunal wrote to the applicant advising that:

The Presiding Member has received the medical certificate you provided last night, 12 May 2016. The Member advises that the medical certificate provided is inadequate as it gives no indication that you are suffering from any medical condition, or that you would not be able to attend the hearing, and states only that you cannot attend for more than two weeks, i.e. until 26 May 2016.

The Member is prepared to postpone on this occasion until 20 May 2016, subject to the provision of a certificate that indicates what the basis for the certificate is.

Please provide a satisfactory certificate by no later than close of business 16 May 2016.

If you have any questions please contact us at MRDivision@aat.gov.au, or call 1800 228 333.<sup>3</sup>

5. On 16 May 2016, the applicant emailed the Tribunal advising that he obtained the medical certificate because he has been "having a back pain for a few months."<sup>4</sup> He provided a further medical certificate dated 16 May 2016, stating that, in the opinion of the doctor,  
...from Friday, 13 May 2016 to Friday, 27 May inclusive, he will be unable to attend his usual duties. He has been suffering from upper back pain, and currently attending physiotherapy for rehabilitation.<sup>5</sup>
6. On 17 May 2016, the applicant was advised that the Tribunal agreed to re-schedule the hearing to 30 May 2016. A case note of 17 May 2016 indicates that the applicant was advised, and acknowledged his understanding, of the following:

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<sup>1</sup> AAT, f. 30

<sup>2</sup> AAT, f. 29

<sup>3</sup> AAT, f. 31

<sup>4</sup> AAT, f. 32

<sup>5</sup> AAT, f. 33

...in the view of the Member attending a hearing did not require physical activity and is not 'usual duties'. ... if in the future, he finds himself unable to attend the scheduled hearing he needs to ensure that a reasonable and more persuasive explanation is provided.<sup>6</sup>

Consulted with me and it is my opinion that he will be unfit to continue his usual duties on 30 May 2016.<sup>7</sup>

7. The applicant was advised in writing that the Member had agreed to his request for postponement of the hearing, and he was provided with the details of the new hearing date of 31 May 2016.<sup>8</sup> On 30 May 2016, the applicant requested further postponement until the following Monday because he had a throat infection and it was hard to talk. The Tribunal advised the applicant that:

The Presiding Member has received your below additional request for a postponement of the hearing scheduled to commence tomorrow, 31 May 2016.

Please note that the medical certificate you provided to the Tribunal only covers today's date and is extremely vague. The Presiding Member will only consider a further postponement on the basis of a comprehensive medical certificate which indicates that you are unfit to attend a hearing on 31 May 2016.

Without a comprehensive medical certificate to cover tomorrow's date, the Tribunal expects your attendance at the hearing as scheduled. In the event that you do not attend and do not provide satisfactory reason for your non-attendance, the Member may make a decision on the review without taking any further action to allow or enable you to appear.

The Tribunal also notes that you have not provided a contact number. To ensure that the Tribunal is able to contact you for urgent matters please provide your contact number.

If you have any questions please contact us at MRDivision@aat.gov.au, or call 1800 228 333.

8. On 31 May 2016, the applicant provided a medical certificate from a third doctor that stated that:

This is to certify that I have today examined [the applicant] who is suffering from a medical condition and he is unfit for Work. From: Tuesday 31 May 2016 to Thursday, 2 June 2016.<sup>9</sup>

9. Accompanying the medical certificate was further explanation from the applicant that he has a high temperature and a sore throat and had been unwell. The applicant stated that he asked the doctor to specify his condition as requested but was advised that the doctor could not disclose this information unless contacted.<sup>10</sup> The Member agreed to postponement of the hearing and re-scheduled the hearing to 3 June 2016. In the letter invitation of 1 June 2016, the applicant was advised that the Member noted the medical certificates provided indicated that the applicant had been found unfit for 'usual duties' or for 'work' and that the Member considered that that these did not provide sufficient reason for the applicant's inability to attend a Tribunal hearing. The applicant was advised that should he make a further request for postponement of the hearing on medical grounds, the Member would be examining the reasons more closely. The applicant was advised that if a request was made for postponement and the Member did not consider the reasons for the request to be satisfactory, the Tribunal would proceed to make a decision on the papers.<sup>11</sup>

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<sup>6</sup> AAT, f. 36

<sup>7</sup> AAT, f. 45

<sup>8</sup> AAT, f. 51

<sup>9</sup> AAT, f.55

<sup>10</sup> AAT, f. 56

<sup>11</sup> AAT, f. 61

10. The applicant did not appear before the Tribunal on the day and at the time and place of the scheduled hearing. He has since not contacted the Tribunal to explain his non-attendance. The Tribunal notes the communication between the applicant and the Tribunal with respect to attendance of the hearing and considers that the evidence indicates that the applicant is able to contact the Tribunal and understands the process and requirements for the Tribunal to consider postponement of a hearing. Further, the Tribunal is satisfied that the applicant is aware that the Tribunal will make a decision on the review without taking any further action to allow or enable him to appear before the Tribunal in the event he does not attend the hearing and provide explanation for that non-attendance. In these circumstances, and pursuant to s.426A of the Act, the Tribunal has decided to make its decision on the review without taking any further action to enable the applicant to appear before it.
11. A copy of the delegate's decision dated 2 June 2015 refusing the applicant's current application for protection was provided to the Tribunal on 10 June 2015 together with the applicant's application for review (the Delegate's Letter). In addition to setting out the reasons for refusing the applicant's application for protection the Delegate's Letter contains a comprehensive outline of his evidence to the delegate at interview.

### **RELEVANT LAW**

12. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.

### **Refugee criterion**

13. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
14. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
15. 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.
16. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
17. 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)). Examples of 'serious harm' are set out in 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.

18. 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.
19. 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.
20. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A '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.
21. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
22. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **Complementary protection criterion**

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

25. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **Section 499 Ministerial Direction**

26. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal has taken into account policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

### **Credibility**

27. The Tribunal is aware of the importance of adopting a reasonable approach in the finding of credibility. In *Minister for Immigration and Ethnic Affairs and McIlhatton v Guo Wei Rong and Pam Run Juan* (1996) 40 ALD 445 the Full Federal Court made comments on determining credibility. The Tribunal notes in particular the cautionary note sounded by Foster J at 482:

...care must be taken that an over-stringent approach does not result in an unjust exclusion from consideration of the totality of some evidence where a portion of it could reasonably have been accepted.

28. The Tribunal also accepts that "if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt. (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para 196). However, the Handbook also states (at para 203):

The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.

29. When assessing claims made by applicants the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicants. When doing so it is important to bear in mind the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims.
30. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true (see *MIMA v Rajalingam* (1999) 93 FCR 220).
31. However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out (see *Randhawa v MILGEA* (1994) 52 FCR 437 at 451 per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.)

## CONSIDERATION OF CLAIMS AND EVIDENCE

32. The applicant's written claims are on Department of Immigration and Border Protection (department) file [number] from folios 18-21. His written claims can be summarised as follows:

- During his study, he was introduced to the leader of the All India Sikh Student Federation (AISSF). He was actively involved with the organization, and campaigned for the Khalistan movement. However, he was not in favour of using force or any violent means to create Khalistan.
- His fellow members were killed in an encounter with the security force at the time of Khalistan movement. Many fellow members were snatched by the security agency and to date their whereabouts are unknown.
- The security agency interrogated the applicant on one occasion and tortured him.
- His family advised that the intelligence branch had instructed the police to apprehend him if there is any movement by the AISSF in his area.
- His family were worried about the applicant because of his involvement with the AISSF and asked him to leave India immediately. He has not returned to India since arriving in Australia because he fears for his safety.
- In his area, the Hindu Nationalist members, with the help of security agencies, are involved in coordinated political violence to propagate their ideology, and they attack the individual or organisations favouring the Khalistan State. They will kill him as they have done with many of the AISSF members since the Khalistan movement started.
- He is at risk of detention, interrogation and torture.
- Government agencies will not protect him because he is a member of AISSF.

33. The applicant attended an interview before the Department [in] May 2015. As indicated in the Delegate's Letter<sup>12</sup>, the applicant provided the following addition to his claims:

- He came to Australia on a student visa but could not continue his studies due to money problems. He has an older [sibling] in Australia — [name] — who is an Australian permanent resident.
- His protection claims are based on his religion. He is a Sikh and India is a Hindu country.
- During his last year of high school in [year], he met the leader of AISSF - Kamil Singh. Kamil Singh came to his school and gave a presentation about AISSF. After the presentation the applicant decided to join AISSF and completed an application form.
- The applicant's only involvement in the AISSF is being a member of that organisation. When he joined, he was not aware that Kamil Singh was doing 'stupid things'.
- He heard from other members of AISSF that [name], who was also a member of AISSF, was arrested, interrogated and killed by the secret agency. The matter was not reported in any newspaper.
- In or around April 2008, he was approached by members of the secret agency and forced into a car. There was no one on the road at that time because it was early in the morning. He was detained for one day and was asked questions about his involvement with AISSF. He was slapped by members of the secret agency but did not suffer any injuries. He was dropped off by the roadside again the next morning. There was no one on the street and no witness to the incident. He did not have any further encounter with the secret agency.

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<sup>12</sup> AAT, ff. 6 - 10



[In] June 2015, the Department of Immigration and Border Protection refused the visa which is the subject of this review. Having considered the applicant's current Protection application, the lack of details and inconsistencies, and the paucity of substantive documentary evidence to support this claims, the delegate did not find the applicant's claims to be credible. The applicant was refused on the basis that the delegate was not satisfied that the applicant faced a real chance of being persecuted for a Refugee Convention reason. The delegate further found that there were not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will be subject to significant harm.

### Country of reference

34. The applicant claims to be an Indian national. Based on the copy of his passport, the Tribunal finds that India is his country of nationality for the purposes of the Convention and also his receiving country for the purposes of s.5(1) and s.36(2)(aa) of the Act.

### Assessment of claims

35. The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is 'well-founded' or that it is for the reason claimed. Similarly, that an applicant claims to face a real risk of significant harm does not establish that such a risk exists, or that the harm feared amounts to 'significant harm'. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her. Nor, as above, is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70.) The applicant's claims are vague and lack detail. Had he attended a hearing, the Tribunal would have explored his claims with him and sought further information from him on a range of details relevant to his stated claims.
36. On the basis of the material on file, the Tribunal accepts that the applicant was born on [DOB] in the Punjab, India. The Tribunal accepts that the applicant is a person of the Sikh religion. The Tribunal accepts that the applicant came to Australia in 2009 as the holder of a Student visa.
37. The applicant has made the claim that he fears harm because he is Sikh in a Hindu country. However, the applicant's claims in this respect are vague and lack detail, and he has not attended a hearing to elaborate on his claim. Had he attended a hearing, the Tribunal would have explored these claims and sought further information from him about how being a Sikh in India affects him. The applicant's failure to attend the hearing when requested to do so however meant the Tribunal has not been able explore his claims concerning his religion with him. The Tribunal would also have sought comment about independent country information provided by the Department of Foreign Affairs in its most recent report of DFAT Country Information Report, India, 15 July 2015 that:

3.5 Section 15 of India's Constitution prohibits discrimination against any citizen on the grounds of religion. Section 25 guarantees the right to freely profess, practise and propagate religion, and section 26 guarantees every religious denomination or any sect the freedom to manage its own religious affairs. According to the US State Department's 2013 report on International Religious Freedom in India, the Central Government 'generally respected religious freedom'. However, the US Commission on International Religious Freedom's (USCIRF) 2014 and 2015 reports noted that India had struggled to protect minority



communities or provide justice when crimes occurred, due to a lack of political will, corruption, and religious bias by government officials.<sup>13</sup>

3.11 Although the complexity, diversity and sheer size of India makes general observations difficult, DFAT assesses that overall there is a low level of official discrimination on the basis of religion. The extent of this discrimination varies considerably between states.<sup>14</sup>

3.12 ...According to the 2001 census (the latest figures available), the Sikh population of India was approximately 19 million, 1.9 per cent of the total population at that time. 75 per cent of the Sikh population live in Punjab, where they constitute almost 60 per cent of the population. Significant Sikh populations also reside in Haryana, Rajasthan, Uttar Pradesh, Delhi, Chandigarh, Jammu and Kashmir, and Himachal Pradesh.

3.18 Overall, DFAT assesses that Sikhs in contemporary India have no heightened risk of official or societal discrimination beyond that experienced by the broader community.<sup>15</sup>

38. On the evidence before it, the Tribunal does not accept that the applicant faces harm or discrimination that could be described as serious or significant harm as a Sikh in India.
39. The applicant has claimed he fears harm because of his involvement with the AISSF in 2008. He further claims that he was the subject of a secret agency interrogation, and that other members of the AISSF have been arrested, interrogated and killed by the secret agency. He has also claimed that Hindu nationalists are interested in harming the applicant because of his involvement with the AISSF. The applicant's claims in this respect are vague and limited. Had the applicant attended the hearing, the Tribunal would have explored these claims with the applicant. The Tribunal would have enquired about the applicant's claimed involvement and activity with the AISSF and the circumstances of his alleged interrogation by the secret agency. The Tribunal would have enquired about the applicant's claims to fear harm from Hindu nationalists because of his AISSF involvement.
40. The applicant has not attended the hearing with the Tribunal to provide more information about his claims, where he was advised in the hearing notice that the Tribunal had considered all the material before it relating to the application but it was unable to make a favourable decision on that information alone. The applicant's claims are vague and very limited, with no detail regarding the harm the applicant fears due to the political opinion or his Sikh religion. As above, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant, and the failure of the applicant to attend the Tribunal hearing, and vague and limited claims as provided, leads to the Tribunal to have significant credibility concerns about the claims of the applicant. On this basis, the Tribunal considers that his account of his activities with the AISSF and his engagement with the secret agency has no actual factual basis. In addition to their vague nature, the applicant has not taken the opportunity to elaborate his claims at a hearing. The Tribunal considers this strongly indicates that there is no basis for the applicant's claimed fears. For these reasons, on the evidence before it, the Tribunal does not accept that the applicant had any involvement with the AISSF or engagement with the secret agency, or is of any interest to any other group because of his AISSF involvement.
41. In consideration of the applicant's claims to fear harm on return to India, the Tribunal would also have asked the applicant to explain the delay in lodging his protection visa application had the applicant attended the hearing, noting that the applicant arrived in Australia in June 2009 but did not apply for protection until September 2013. This is a significant delay, and the Tribunal is very concerned by it. The Tribunal considers that had the applicant had a fear

<sup>13</sup> DFAT Country Information Report, India, 15 July 2015, p. 9

<sup>14</sup> DFAT Country Information Report, India, 15 July 2015, p. 10

<sup>15</sup> DFAT Country Information Report, India, 15 July 2015, p. 9

of harm of return to India he would have lodged his protection visa far earlier than the eventual date. He has not attended to explain this delay.

42. On the evidence before it, the Tribunal does not accept that the applicant had any involvement with the AISSF and does not accept that he faces harm from security agencies, Hindu Nationalist members or anyone else for this reason. The Tribunal does not accept that the applicant faces a real chance of serious harm or a real risk of significant harm on the basis of his political opinions now or in the foreseeable future.
43. The applicant has claimed that he will not be protected by government agencies because he was a member of the AISSF. The Tribunal has not accepted that the applicant has any profile as a member of the AISSF or any other organisation. Therefore, the Tribunal has not addressed this claim.
44. Considering the applicant's individual circumstances, the Tribunal finds that he does not face a real chance of serious harm in the foreseeable future for any reason. The applicant's fear of persecution is not well-founded.
45. Considering the applicant's individual circumstances, the Tribunal finds that there are not substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to India that there is a real risk that he will suffer significant harm.

## **CONCLUSION**

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

## **DECISION**

49. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Amanda Paxton  
Member