

1113286 [2012] RRTA 267 (27 April 2012)

DECISION RECORD

RRT CASE NUMBER:	1113286
DIAC REFERENCE(S):	CLF2011/165757
COUNTRY OF REFERENCE:	India
TRIBUNAL MEMBER:	Sean Baker
DATE:	27 April 2012
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of India, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] September 2011.
3. The delegate refused to grant the visa [in] November 2011, and the applicant applied to the Tribunal for review of that decision [in] December 2011.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations 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.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person 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.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Protection visa application

20. According to his protection visa application, the applicant arrived in Australia [in] October 2009 as a student dependent. He applied for his protection visa [in] September 2011. He was represented by his registered migration agent.
21. In his protection visa he claims that:
 - He was born on [date deleted: s.431(2)] [in] Kapurthala, India. He states that he speaks Hindi and English, and that he was married in November 2007 in Jalandhar, Punjab, India.
 - He claims his religion is Dera Sacha Sauda (DSS);
 - The applicant came to Australia as the secondary visa holder of his wife who had come to Australia to study;

- In February 2011, the applicant had a quarrel with his wife and she subsequently obtained a restraining order against him;
- His wife also informed the Department about them "living separately" and therefore the Department subsequently issued a notice of intent to cancel his visa [in] March 2011;
- As the applicant had moved house, he did not receive the notification and his visa, which was originally due to expire [in] December 2011, was subsequently cancelled [in] August 2011;
- The applicant only found out about his visa being cancelled when he sought assistance from his migration agent in relation to staying on further in Australia after his student visa expires in December 2011;
- The applicant claims that he has followed the DSS religion for the past several years. He claims that he practiced this religion discreetly whilst in India as people from other religions threaten and harm followers of DSS;
- Just before the applicant left India, some people came to know about his beliefs and threatened him with "dire consequences" if he did not stop following DSS;
- When the applicant left India [in] September 2009, he was happy since he knew he could follow and practice his religion in Australia without problems;
- The applicant claims he has information that he will be harmed and may be killed due to his religion;
- His father died some years ago and his mother is too weak and old to support and protect him. So if he returns to India, he will be excommunicated and will not be allowed to earn his livelihood. His life and livelihood will therefore be in danger;
- He claims people with an orthodox mentality and with a very fundamentalist approach towards religion who think religion is above the law will harm him. They believe killing a human is justified if it keeps the honour of the religion;
- The applicant believes such people are everywhere and even more active in the rural northern part of India where he is from;
- The applicant's mother has told him that he is still being talked about in the community and that they hate him and talk about teaching him a lesson because of his religion;
- In the past, the applicant claims that many people who follow DSS have been threatened, harmed and even killed. Because of this fear, the applicant claims he has not returned to India since arriving in October 2009;
- The authorities can't help him because India is a vast country and the response time of authorities is often very long especially in remote areas. His village is also far away from any major town and there is no police station in his town. The applicant claims

that in the past, it has taken authorities more than half a day for them to arrive when a crime has occurred; and

- From his experience, the applicant also claims that authorities in India do not take crimes committed in the name of religion very seriously.

22. With the application was included a certified copy of the applicant's passport (Df. 10 – 9).
23. The applicant was invited, but did not attend an interview with the delegate.
24. The delegate decided to refuse to grant the visa [in] November 2011 and notified the applicant of the decision.

Review application

25. The applicant applied for review [in] December 2011.

The hearing

26. The applicant appeared before the Tribunal [in] April 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Hindi and English languages.
27. The applicant was represented in relation to the review by his registered migration agent.
28. The Tribunal asked if anyone had helped the applicant fill in his application form and whether he was happy with the claims therein. The applicant said that his lawyer had helped him and that he had no issues he wished to amend in his application.
29. That applicant confirmed that he was born [in] Kapurthala, in Punjab. He said that his mother, brother and sister lived here, and that his father had passed away in 2002. He said that he did not have any uncles or aunties. The Tribunal then discussed with the applicant his relationship. The applicant said he had been married but was now separated – he said he was not divorced but would be soon. He said he did not know his wife's whereabouts or whether she was in Australia, as she had made a restraining order against him. The Tribunal asked if he had heard from his family or hers where she was and he said no, since they were separated he had no connection with her. When asked then how he knew that he would soon be divorced he said that the [court] had made them separated so hopefully the court would do something about a divorce.
30. The applicant was then asked about his work history in Australia. At first he said he did not work as he had no permission to do so. When it was pointed out that he had said in his application that he was working he conceded that he had [worked] from 2009 until February 2010 when he quit the work. He said he was working as an entertainer; when they called him he would come and work with the small kids. When it was pointed out that it said in his protection form that he had been a driver he said that he was a driver carrying the entertainment equipment. He then said that he had stopped this work when his visa had been cancelled, as his agent had advised him to stop working when they realised he was unlawful.
31. The Tribunal then asked the applicant to describe his [life] before coming to Australia. The applicant said that after finishing year 12 he was farming and part of the Sikh community. When the Tribunal said that his protection visa application said that he had been a truck

driver, he then said that his brother had a truck and sometimes he used to drive that truck and hang around with his brother. The Tribunal asked then why he had not put farmer in his applications. The applicant said that there was their land and they were doing farming on their land, but that the main business was truck driving and farming was the family business. The Tribunal asked when and in what kind of ceremony the applicant had been married. He said that he had been married about four or five years ago in a traditional way, at a Gurdwara. He confirmed it was a Sikh ceremony and that all his and his wife's family had been there. He said that after they were married they lived in his family home.

32. The applicant was then asked when he started following DSS. He said that he was with the Sikh community first, and after that he followed DSS for more than a year before coming to Australia. The Tribunal confirmed that this meant he began following DSS in 2008 and he agreed. The Tribunal asked him what attracted him to DSS and he said one must always follow the true path, do not fight and love each other, and help the people. He said that they were taught to help other peoples. When asked he said that DSS was based in Sirsa, Haryana and that it is led at the present time by Baba Gunneet Ram Rahim Singh. The Tribunal asked if his family followed DSS and he said that his parents said they were born Sikh, and will die Sikh. The applicant said that he liked DSS and embraced this religion, as it teaches us not to commit violence against another person.
33. The applicant was asked how he practised DSS in India, and he responded that the people of DSS usually come to places and put up camps and they teach the people about DSS. The applicant said that he used to hang around with them and assist on the blood donation camps. He said that he worked canvassing people to donate blood. When asked what he did specifically he said that they visit villages and teach people to stop the violence and love each other. When asked again what he did specifically he said that they used to have camps, that they spoke and that 'we had the chance to speak as well.' The Tribunal clarified that this meant the applicant would speak to people of the villages about DSS and asked what he would tell them. The applicant said that he would teach them to leave the pathway of violence and help poor people. The Tribunal asked for further details and the applicant said that they put camps at the villages and about 15 – 20 people go to the villages and help people; for example they give medicine for eyes. The Tribunal then asked again what specifically he did and he said that he helped the people to leave the violence and follow the path of love. The Tribunal pointed out that this was general information and asked how he did this, he said that he assisted them. The Tribunal asked how and he said that he gave that medicine to the poor people. The Tribunal sought further clarification of what he did and he said that he assisted in distribution, in all kinds of assistance. The applicant then said that the main thing he did was preaching the people to leave violence and embrace DSS.
34. The Tribunal confirmed with the applicant that he had spoken to people in the villages. The Tribunal asked when he had done this and what he had said. The applicant said that he had done this whenever there was the place they put the tent, he had taught the people to embrace the path of the truth, to help poor peoples and obey the way of the truth. The Tribunal again tried to clarify what he had said to people in more detail and the applicant responded that the main thing was that the guru-ji had said to follow the right path. The Tribunal asked what was the right path and the applicant said the right path was don't harm no one. Asked to elaborate he said that in India they are fighting in the name of religion. The truth is god is the creator and helps poor people and we must follow the right path.
35. The Tribunal then asked the applicant if he had practiced DSS in Australia and the applicant said he had not, that there was no DSS here or mandir, he had looked, and there are less

people here and on the internet they see less people. The applicant then said that the DSS name is in my heart, he doesn't get it if he goes to a temple or mandir, and it is in his soul and heart.

36. The Tribunal discussed its concerns with what the applicant had told him about his practice of DSS in India, that he had spoken in generalities that might suggest he had not had these experiences or believed these things. The applicant said that he had been attached to DSS for more than a year, and he then said that 'if you go to the mandir and have a bad heart or bad intentions, no point to go to the mandir, god is inside our heart or soul.
37. The Tribunal then asked the applicant what the beliefs of DSS, which followers called *insaana* means to him. He could not define what this meant to him or to the religion. The Tribunal suggested that *insaana* meant a combination of the beliefs of all religions. The applicant said yes, when anyone comes you treat them as all religions, he then said that all the religious peoples can come to DSS and it is made of all religions, that nobody is treated unfairly.
38. The Tribunal then asked the applicant if he had come to harm for his practice of DSS. The applicant said that he was with the Sikh community and then left them and followed DSS. He said that Sikhs have a federation called the Akali Dal party, and he was a member of this party and left that to join DSS. The Tribunal then asked the applicant when he had joined Akali Dal. The applicant was vague and did not give an answer. When the Tribunal asked him what he did with the Akali Dal he said that he was doing the same things as he did with DSS, but that there had been violence in Akali Dal and Sikhism so he had turned to DSS. The Tribunal asked the applicant what the aims of the Akali Dal had been and he answered that they wanted to get Khalistan and he then said that guru-ji had said to follow the right path and help the poor.
39. The Tribunal asked the applicant if he had been harmed in any way whilst he was in India. The applicant said that he was getting harmed by people as every person that changes religion does. The Tribunal asked him to be more specific and he then said that they bash and kill people, which had been seen on 28 March 2008 when the guru-ji was trying to say he was better than Guru Gobind Singh. He said that on this day Sikh people had gathered and been violent and tried to kill that baba. They had said that whoever comes from the door they will kill them. The Tribunal asked where the applicant had been on that day and the applicant said he had not been with them but he knew that these people were making violence.
40. The Tribunal asked the applicant what his wife thought of his practice of DSS. He said that she is a Sikh and belongs to the Sikh religion. The Tribunal asked what she thought when she found out he had embraced DSS, and the applicant said that he had told her he had embraced DSS but she didn't seem interested and she told him 'do what you have to do.' The Tribunal asked about his claim in his protection visa application that he had practised DSS discreetly in India. The applicant said that people there didn't know the camp was there and they went there to follow the religion. The Tribunal noted that the applicant had said that he preached, and asked how he could do this and be discreet. The applicant said that when they used to do the camps over there they told certain people to come there but for security reasons they didn't tell a lot of people and then they taught those people the religions of DSS. The applicant said that if they had tried to do it openly the Sikhs wouldn't allow them to make camp there, as the Sikh people think that they copied their religion. The applicant said that his family knew he was going to these camps, and they knew the reason why he was going there. The Tribunal asked the applicant if people in his village knew he was going, and the applicant said yes, the village people knew he was going there as well. The Tribunal asked

the applicant what the villagers had said or done to him because they knew this. The applicant said that the village told him 'you are Sikh and you should be Sikh.' He then said that the villagers were trying to bash him and they would have killed him if they had full knowledge of what he was doing. He said that they had bashed him a couple of times but he survived to run away.

41. The Tribunal asked when this had happened and the applicant said it had happened in 2008 when they used to go to the camps. He said that the Sikhs got upset when they went to the camps and asked why they went to DSS and the applicant told them that there is nothing in the Sikh religion that says that you cannot go to another religion but they were always trying to make trouble. The tribunal asked why these people had bashed him and the applicant said that he was embracing the religion and was secretly going to the camps – he then said that they didn't tell people where the camps were but they found out. The Tribunal asked if he could remember about when it happened in 2008 and the applicant said about the 9th or 10th month of 2008. The Tribunal raised with the applicant that he did not appear to have mentioned this in his protection visa application statement. The applicant said that he had not put this in his protection visa statement, but he had been bashed in 2008, as these people had known that he followed DSS but were not 100% sure. He said that in 2008 when they bashed him he had tried to make sure that those people thought he was not a follower but he was in fact following DSS continuously.
42. The Tribunal asked what had happened before and after him getting bashed, the applicant was unclear and said that in India if anyone leaves their religion they can kill that person. The Tribunal asked then if his life had been threatened and the applicant reiterated that the Sikh community told him that if he did not leave his religion they will kill him. The Tribunal asked who had said this to him and the applicant said the people of the village had said whoever gets attached to DSS they will kill that person. The Tribunal asked the applicant if they had threatened him specifically. The applicant said that they had said to him if he does not leave this religion they would kill him. The Tribunal asked who in the village had said this to him and he said that a group of Sikh people told him in their language. He then said that he had been told that he had been threatened by people of Baba Khalida who are attached to this terrorist network organisation. The said that he was threatened by these people in his village. He then said that these people were outside the village but some village people gave information to them. He then said that these people had threatened him through the people of his village. He said that this had happened in 2008. The Tribunal then discussed with the applicant when he had come to Australia – the applicant confirmed this was in October 2009 and he had stayed in India. The Tribunal expressed doubt that he would have been threatened in 2008 but continued to live there until he departed to Australia in October 2009. The applicant said that he had used to go secretly to the camps and nobody knew when the camp was going to be held.
43. The Tribunal then asked about his claims in his protection visa application that his mother had told him that he was still being talked about in the village and that they hate him and talk about teaching him a lesson and that he will be excommunicated. The applicant responded generally, saying that they hate him because they know that he is the follower of DSS and he had cut his hair, and if he goes back there they will kill him. The Tribunal asked about his claim that he would not be able to earn his livelihood and the applicant said if they kill him then how can he earn a living? When asked if they would not stop him earning a living in any other way the applicant said you end up one way or the other.

44. The Tribunal then put to the applicant that independent evidence indicated that there was no evidence that Indian state authorities withheld protection from DSS members or leader, and that they therefore may be able and willing to protect him from the claimed harm. He said that the police could not protect him as the police kill innocent men. He then said that the police cannot protect every person, that it is very dangerous in India. He then said that Sikh people had been making violence in the last ten days. It was unclear when he was referring to but the Tribunal asked if there had been violence against DSS followers and the applicant said no but that nobody is safe. The Tribunal put to him again that country information indicates that there may be clashes between Sikh extremists and DSS followers but that the police protect these groups against each other and attend protests and clashes to protect DSS followers. The applicant said maybe this is so but the police cannot be with every single person.
45. The Tribunal then raised issues it had with what the applicant had claimed in the hearing. The Tribunal indicated that it had trouble believing that the applicant was a DSS follower, as his evidence had been vague and general and he could not specifically describe what he had done as a follower or what the beliefs are. The Tribunal then indicated that even if the Tribunal was convinced that the applicant was a follower of DSS, the independent country information says that there is a level of state protection for followers of DSS.
46. The Tribunal then asked the applicant if he had suffered any other form of harm in India other than the claimed bashing in 2008. The applicant said that the reason was because he had changed his religion. The Tribunal asked again if he was harmed any other times other than being bashed a few times in 2008 as he had claimed at hearing. The applicant said that he was going to the camps and keeping it a secret.
47. The Tribunal then raised an inconsistency in the applicant's claims as he had told the Tribunal that he was bashed a few times in 2008 but he had not stated this in his protection visa application statement. The applicant said that he didn't know that he needed to write down this much information and he thought that when the interview came he would say these things. The Tribunal raised the failure by him to mention such an important thing in his protection visa application might lead the Tribunal to find that he was not bashed in 2008. The applicant said again that when he was applying for protection he thought that when the interview came along he would tell them everything.
48. The Tribunal then raised with the applicant the issue of delay. The Tribunal asked the applicant when he came to Australia and he said [in] October 2009. The Tribunal asked when he applied for protection. The applicant said in 2011, the agent interjected and said that his client had applied for protection [in] September 2011. The Tribunal raised with the applicant that if he really was a follower of DSS, and if he really had been bashed in 2008, and really had been threatened by the terrorist group, why did he not apply for protection in 2009 when he arrived. The applicant said that he had a visa here and he was scared to go back to India. He then said he didn't know when he had to apply for the visa and he thought he had a visa to stay in Australia. The Tribunal raised that a student visa is a temporary visa. The applicant said that he thought when his visa finished he would apply for another one. The Tribunal again questioned why someone scared for their life as the applicant claimed didn't apply for a permanent visa earlier. The applicant again said that he had a visa and he didn't know there was a refugee procedure. The Tribunal indicated that it may lead the Tribunal to consider that the applicant had applied for protection for another reason, not because he was afraid, as the Tribunal would have expected him to apply for protection earlier. The applicant said again that he had a visa.

49. The Tribunal questioned the applicant on whether there was any other form of harm that he feared on return to India, which may engage complementary protection. The applicant repeated his claims as set out above.
50. The Tribunal then reiterated the issues that it had concerns with, indicating that it may not accept that he was a DSS follower or associated with DSS in any way, that he was bashed in 2008 for being a DSS follower, or that he had been threatened by anybody or come to any other harm. The Tribunal asked the applicant if he wished to comment and he said that his life was in danger and he wanted a protection visa.
51. The agent indicated that he considered that his client was a little stressed and distracted during the hearing as it was his first time in a court room situation, and perhaps this was why his responses didn't match what he was being asked. The agent said that whilst it was true that the student visa is temporary, the applicant's wife intended to apply for permanent residence and the applicant considered that he would get permanent residence on this basis. The agent said that he had been involved in criminal law in India, and discussed the case of Staines, a missionary who was killed and burnt alive in Orissa. The agent said that police protection was for leaders not ordinary people. The Tribunal referred to the country information set out above, and the agent agreed that this was what the country information indicated.
52. The Tribunal asked the applicant if he was stressed during the hearing, the applicant said that it was his first time in a court room situation. The Tribunal said that it had told the applicant and his agent what its concerns were, and offered an opportunity to make written submissions on these issues. The applicant and his agent took this up and agreed that they would provide written submissions by [a date in] April 2012.
53. No submissions have been received.

Country information

Dera Sacha Sauda

54. DSS (DSS) is a spiritual and social movement founded in 1948 by Shehenshahji Mastana, a Sikh from Balochistan. According to one source, Mastana believed that Sikhism had strayed from its original path by allowing caste to re-establish itself within the religion. Consequently, Mastana established a dera (temple or ashram) near the town of Sirsa, in what is today the Indian state of Haryana. A report in the *Himal South Asian* states that Mastana founded the dera "with an eye to social reform and spiritual purification – among the Sikhs in particular, but also others in general." The current leader of DSS, Gurmeet Ram Rahim Singh, has reportedly stated that "[o]ur religion is humanity and to help the needy." The beliefs of the movement are apparently based on a "combination of all religions" and are referred to by DSS followers as *insaana*. Despite this, DSS is considered by many Sikhs as a breakaway faction of Sikhism, raising the ire of some in the Sikh religious hierarchy and the larger Sikh community.¹
55. Under the leadership of Gurmeet Ram Rahim Singh, the DSS has expanded its presence and services beyond the Sikh heartland of Punjab and Haryana, building ashrams and providing services in a number of states and cities across India, including Gujarat, Maharashtra,

¹ Alig, A. & Anwar, A. 2007, 'Embers of a Sikh fire', *Himal South Asian*, October.

Himachal Pradesh, Madhya Pradesh, Chhattisgarh, Delhi and Chandigarh.² The DSS website lists some 44 ashrams across India.³

56. *The Economist* reports that the DSS has grown from a single dera into a mass movement, with “some 400,000 followers”, drawing adherents from low caste members of the Sikh community, as well as Hindus.⁴ *BBC News* states that the majority of DSS followers are Dalits (Untouchables/low-caste Hindus); however it has also attracted “Sikh, Muslim and Christian adherents”.⁵ The DSS itself claims to have over forty million followers worldwide.⁶
57. The DSS claims to routinely perform “around 70 social welfare activities”. Some of the programs listed on the DSS website include: the operation of a home for leprosy patients; the provision of wheelchairs to the disabled; the provision of financial aid to poor patients; the operation of a blood bank; the provision of financial assistance to poor students; and the provision of free legal aid. Other ‘welfare activities’ also include encouraging people to shun homosexuality; the ‘emancipation’ of prostitutes; the “promotion of vegetarianism”; and “helping young divorcee women getting (sic) married again”.⁷
58. Violence has been perpetrated against members of the DSS, particularly since 2007. Apart from anti-DSS riots in Mumbai, most of this violence was recorded in the Sikh heartland states of Punjab and Haryana. Such violence rarely results in deaths.
59. Most of the violence perpetrated against the DSS involves mainstream Sikh groups at the behest of Sikh political and religious organisations. However, some more extremist Sikh groups have also been implicated in violence against DSS members, notably Ek Noor Khalsa Fauj. Hitherto, no deaths of DSS members have been attributed to this organisation.

State protection for DSS followers

60. There is no evidence that mainstream political parties, state and federal governments, or state authorities support extremist Sikh groups. There are, however, reputable sources that suggest that the Sikh-dominated Badal faction of the Shiromani Akali Dal (SAD), the senior partner of the Punjab government, encouraged Sikhs to adopt militant tactics against the DSS in May 2007. Sources suggest that SAD did this after DSS leader Gurmeet Ram Rahim Singh backed SAD’s rival Indian Congress party in the 2007 elections.
61. SAD’s coalition partner in government in Punjab, the Bharatiya Janata Dal (BJP), is the governing party in the applicant’s home state of Madhya Pradesh. However, no sources were located that accuse the BJP of encouraging attacks on DSS members or property by either Sikh or Hindu fanatics in that state. Indeed, one source states that the BJP rebuked its

² Garg, B. 2007 ‘DSS and Gurmeet Ram Rahim’, *The Times of India*, 18 May http://timesofindia.indiatimes.com/Cities/Chandigarh/Dera_Sacha_Sauda_and_Gurmeet_Ram_Rahim/articleshow/2060431.cms – Accessed 16 April 2012.

³ ‘DSS Ashrams Across India’ (undated), DSS website <http://derasachasauda.org/en/ashrams-list.html> – Accessed 16 April 2012.

⁴ ‘Dangerous tensions in Punjab’ 2007, *The Economist*, 5 July http://www.economist.com/world/asia/displaystory.cfm?story_id=9444533 – Accessed 16 April 2012.

⁵ ‘PM urges calm over Sikh protests’ 2007, *BBC News*, 18 May http://news.bbc.co.uk/2/mobile/south_asia/6668299.stm – Accessed 16 April 2012.

⁶ ‘About Us’ 2010, DSS website <http://derasachasauda.org/en/about-us.html> – 16 April 2012.

⁷ ‘70 Humanitarian Activities’ (undated), DSS website <http://derasachasauda.org/en/70-humanitarian-activities.html> – 16 April 2012.

coalition partner for its role in the May 2007 violence, and reportedly “threatened to revise their sharing of power with the Akalis”.

62. There is no evidence that Indian authorities withhold state protection from DSS members or the DSS leadership. On the contrary, authorities in Punjab and Haryana routinely intervene in disputes between Sikh organisations and DSS gatherings.⁸ Gurmeet Ram Rahim Singh himself is provided a high level of security by the Haryana authorities.

FINDINGS AND REASONS

63. On the basis of the certified copy of the applicant’s passport held on the Departmental file (Df. 10 - 9), the tribunal finds that the applicant is a citizen of the Republic of India. He is therefore outside his country of nationality.
64. The applicant claims that:
- his religion is DSS;
 - after separating from his wife and moving house he was not aware that his student visa had been cancelled and he applied for protection when he became aware of this;
 - he has followed the DSS religion for the past several years. He claims that he practiced this religion discreetly whilst in India as people from other religions threaten and harm followers of DSS. Prior to this he was a member of Akali Dal;
 - in 2008 he was bashed on account of being a DSS follower;
 - Just before the applicant left India, some people came to know about his beliefs and threatened him with "dire consequences" if he did not stop following DSS. He identified this group as a terrorist group. The applicant claims he has information that he will be harmed and may be killed due to his religion;
 - When the applicant left India [in] September 2009, he was happy since he knew he could follow and practice his religion in Australia without problems;
 - His father died some years ago and his mother is too weak and old to support and protect him. So if he returns to India, he will be excommunicated and will not be allowed to earn his livelihood. His life and livelihood will therefore be in danger;
 - The applicant's mother has told him that he is still being talked about in the community, that they hate him and talk about teaching him a lesson because of his religion;
 - In the past, the applicant claims that many people who follow DSS have been threatened, harmed and even killed. Because of this fear, the applicant claims he has not returned to India since arriving in October 2009;

⁸ ‘Followers hold congregation amid protest’ 2011, *The Times of India*, 7 March
http://articles.timesofindia.indiatimes.com/2011-03-07/india/28665719_1_naam-charcha-dera-followers-sikh-organizations – Accessed 16 April 2012.

- The authorities can't help him because India is a vast country and the response time of authorities is often very long especially in remote areas. His village is far away from any major town and there is no police station in his town. The applicant claims in the past, it has taken authorities more than half a day to arrive when a crime has occurred;
 - From his experience, the applicant also claims that authorities in India do not take crimes committed in the name of religion very seriously.
65. For the reasons that follow the tribunal does not accept that the applicant has a well-founded fear of persecution.
66. The applicant's representative claimed at the end of the hearing that his client was maybe a little bit stressed and distracted during the hearing as it was his first time in a court room situation, and perhaps this was why his responses didn't match what he was being asked. When asked the applicant said that it was his first time in a 'court room situation' The Tribunal is prepared to accept that the applicant may have been a little stressed, but does not accept that this explains his vague and general answers. The Tribunal explained its concerns to the applicant and the representative and gave them further time to make submissions on these concerns after the hearing, which they have not done. The Tribunal has taken the applicant's stress into account in assessing his claims but ultimately finds that this does not explain the concerns the Tribunal holds.
67. The Tribunal discussed the applicant's claimed spiritual/religious association with DSS with him at length. The Tribunal attempted to discern how he became interested in it, what activities he pursued, and what drew him to this religion, as well as how it affected his family and how his family and those in the village had reacted. The applicant claimed to have spoken to gatherings about DSS, its values and characteristics, and yet was only able to explain what he had said in the most vague of ways. He claimed to have assisted with blood donation drives and other activities but again was unable to explain exactly how he had assisted. When asked about the values and characteristics of DSS the applicant was again vague, where the Tribunal could expect him to have some knowledge given he claimed to have spoken to people about these things. The Tribunal attempted to discern how his family and especially his wife had reacted to or been involved with his following of DSS and the applicant was vague in this regard as well. The applicant was only able to demonstrate a basic understanding of the tenets of DSS, despite his claims that he had followed DSS for a few years. The applicant claimed to have followed and practised DSS discreetly in India, especially following the claimed bashings in 2008. When questioned on this the applicant said that only certain people in villages would be made aware of the camps rather than everyone, and that in this way the camps were secret. On the basis of the applicant's evidence at hearing and in his protection visa application the Tribunal does not accept that he is or has at any point been a follower of DSS or associated with DSS in any way, nor that he has behaved in a way to indicate that he is a DSS follower. The Tribunal finds that if the applicant has cut his hair it was not for this reason. The applicant's knowledge was general and not specific and did not indicate that he had attended camps and blood donation drives and other worship, gatherings and activities as he claimed. It follows that the Tribunal does not accept that the applicant practised DSS discreetly, or at all.
68. The applicant claimed that prior to being a member of DSS he was a member of Akali Dal. When the Tribunal tried to explore this claim the applicant was vague about what his activities had been, saying he had done the same as he then did in the DSS. The Tribunal

found his claims to lack substance and therefore credibility. The Tribunal finds that the applicant was not a member of or associated in any way with Akali Dal.

69. The applicant claimed at the hearing to have been bashed in 2008 on several occasions due to his practice of DSS and because he had converted from Sikhism to DSS. The Tribunal tried to determine who had bashed the applicant and how and why this had occurred. The applicant said that he had survived to run away, that the Sikhs got upset when they went to the camps and asked why they went to DSS and because he was embracing DSS and was secretly going to the camps. The applicant gave vague information about religious violence in India generally when questioned further. The Tribunal raised with the applicant that he had not mentioned this in his protection visa application statement. In response the applicant said that these people had not been 100% sure he was DSS. He also said that he had not included it as he had not expected that he needed to supply this level of detail in his claims, but that he could say this at interview. The Tribunal does not accept these explanations. The Tribunal asked the applicant if he wished to make any changes or amendments to his protection visa statement at the beginning of the hearing and the applicant said he did not. The bashing was raised relatively late in the hearing and did not figure at all in his otherwise reasonably detailed protection visa claims. On this basis the tribunal finds that the applicant was not bashed in 2008 on the basis of his being a follower of DSS or for any other reason.
70. The applicant claimed in his protection visa application and at the hearing that his life had been threatened and that his mother had told him on the phone that he is still being talked about in the village, that they hate him and talk about teaching him a lesson on account of his following of DSS. At hearing the applicant said that the Sikh community told him that if he did not leave his religion they will kill him. The Tribunal asked who had said this to him and the applicant said the people of the village had said whoever gets attached to DSS they will kill that person. The Tribunal asked the applicant if they had threatened him specifically. The applicant said that they had said to him if he does not leave this religion they would kill him. The Tribunal asked who in the village had said this to him and he said that a group of Sikh people told him in their language. He then said that he had been told that he had been threatened by people of Baba Khalida who are attached to this terrorist network organisation. He said that he was threatened by these people in his village. He then said that these people were outside the village but some village people gave information to them. He then said that these people had threatened him through the people of his village. He said that this had happened in 2008. The applicant gave different versions of his claim that his life had been threatened and that his mother had told him he is still being talked about and they hate him and talk about teaching him a lesson during the hearing. The tribunal attempted on multiple occasions to discern how these events happened but the applicant spoke in generalities and changed his claims as he was recounting them. On this basis, and on the basis that the Tribunal has found the applicant was not a follower or associated in any way with DSS, the claimed reason for the threats, the Tribunal finds that the applicant has not had his life threatened, or been threatened in any way.
71. The applicant also said that he had been unable to find a dera or mandir in Australia and so had not pursued this, but that the principles of DSS were in his heart and that the leaders of DSS instructed adherents that they could worship by themselves. The Tribunal does accept that it may be hard for a person from India to find such organisations in a foreign country. However, this also indicates that the applicant has not pursued or sought to engage in DSS activities whilst in Australia.

72. On the basis of the above the Tribunal finds that the applicant was not in the past, nor is he currently a follower of DSS or associated with DSS in any way, or that DSS is his religion. The tribunal therefore finds that the applicant has not followed the DSS religion for the past several years, nor that he practiced it discreetly in India as people from other religions threaten and harm followers of DSS. The Tribunal finds that the applicant was not a member of Akali Dal. The Tribunal finds that the applicant was not bashed on account of being a DSS follower or for any other reason. The Tribunal finds that the applicant was not threatened, either before he left India or via his mother who told him over the phone that he had been threatened, either by the villagers or a terrorist group or any other group or persons. The Tribunal finds that if the applicant has indeed cut his hair that he did so for reasons not associated with his claimed religious or spiritual; beliefs, and that he will not be persecuted by the Sikh community or others from his village for cutting his hair. The Tribunal finds that the applicant has not pursued DSS in Australia. The Tribunal finds that the applicant will not be excommunicated or not allowed to earn a living as he is not a follower or associated with DSS, nor that his cutting of his hair would be seen as such, or for any other reason.
73. On this basis the Tribunal finds that there is no real chance, being a prospect that is not remote, that the applicant will be harmed in any way for reason of his religion, being his claimed membership or following of DSS, or for any other reason now or in the reasonably foreseeable future if he returns to India. The applicant is not a refugee.
74. The Tribunal has also considered whether the applicant meets the complementary protection criterion: s. (s.36(2)(aa)). The Tribunal questioned the applicant on whether there was any other form of harm that he feared on return to India, and he reiterated the above claims, which the Tribunal has not accepted. The Tribunal has not accepted that the applicant has experienced harm in the past, nor that he would be harmed now or as a necessary and foreseeable consequence of being removed from Australia to India. There is therefore no real risk that he will suffer significant harm if he returns to India. Accordingly, 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 a receiving country, there is a real risk that he will suffer significant harm.

CONCLUSIONS

75. 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).
76. 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 to whom Australia has protection obligations under s.36(2)(aa).
77. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

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