

1314972 [2014] RRTA 204 (20 March 2014)

DECISION RECORD

RRT CASE NUMBER: 1314972
DIBP REFERENCE(S): CLF2013/77963
COUNTRY OF REFERENCE: India
TRIBUNAL MEMBER: Chris Keher
DATE: 20 March 2014
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) 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 (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who the Tribunal accepts is a citizen of India, applied to the Department of Immigration for the visa [in] 2013 and the delegate refused to grant the visa [in] 2013.
3. The applicant appeared before the Tribunal on 19 March 2014 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages.

CLAIMS AND EVIDENCE

4. 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.
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 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).
6. 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').
7. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.
8. The first issue in this case is the credibility of the applicant and second, whether on any accepted claims he meets the above criterion. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
9. The applicant is [name deleted]. He is a citizen of India. He is [a certain number of] years of age. He lists his parents as being [name] aged [number] and his mother as [name] aged [number]. He lists no brothers and sisters.

10. In his application to the Department dated [2013] he claims to be an ethnic Jat and to belong to the "Sach Khand" religion. He claims he is divorced, though does not say when. He has held 2 Indian passports, the most recent issued [2011]. He departed India and arrived in Australia [in] 2009. In Australia he claims to have lived at the one address in [City 1] from [2009] to date. In India he lived [in a] village [in the Punjab]. He was educated for 12 years in India. For qualifications he has said "N/A". He claims to be a "student" and gives no work history also noting "N/A".

11. He claims to fear harm in India as:

"I belongs to the Sach Khand dera. The dera is a social sector, have thousands of followers. They help poor people and teach them to live respectful and dignified life. I joined Sach Khand religion as the age of [number]. I used to visit dera with my grandfather and since I was kids and got impressed as I grow up. Dera followers are from different casts and religions. The dera teach them lesson of equality and help the helpless and poor people. The higher caste wealthy people don't like the dera followers. Even people from my own caste think I'm traitor and forcing mew to leave the dera.

The Dera Guru Baba Rama Nand was murdered in May 2009. There were big clashes in Punjab and other parts of India, thousands of shops, business and vehicles were burned and a number of people were injured. It was a protest and unfortunately, business belongs to higher caste were burned. The higher caste people live in my area think that I was the part of the mob, which burned their business. They threatened to kill me, if I do not disclose the names of the persons, who burned the shops and businesses.

I was not involved in the protest, but they still want to punish me. I fear for my life if I go back, the higher caste people will kill me or force me to change my religion. I do not like to change my religion and fear persecution on basis of my religious believes".

12. He also claims to have been "bashed by unknown people" in [2009], hospitalised for 2 days and rested for a few weeks. His family was "so scared from this incident that they organised student visa for me and sent me to Australia to save my life". He claims to fear harm from "higher caste anti dera people; they can harm me easily because they have power, resources and influence". His parents have said these people are looking for him.

13. He further claims in part:

I'm strong believer of Sach Khand dera, which is a kind of different religion. I used to spread principles of dera and attract young people of my age to join dera Sach Khand. The people from higher caste and anti dera Sikh associations didn't like it. They want their monopoly and do not want separation people from main Sikhism. The Sikh associations and local higher caste people believe that I'm encouraging people to join dera Sach Khand. They think I'm traitor and want punish me".

14. He claims the authorities cannot protect him in India as the people who want to harm him are connected to politicians and the authorities discourage people to be dera followers and have imprisoned some after the riots in 2009.

15. The applicant states he has returned to India a "few times" to visit his parents.

16. The applicant did not attend the interview with the delegate scheduled for [2013].

17. At hearing before the Tribunal on 19 March 2014 the applicant relevantly claimed as follows.
18. He said he has 2 brothers ([a certain age] and living in India, and the other [a certain age] and living in [another country]) and one sister ([a certain age] and living in [another country] for the past 14 years). He denied any education saying he is uneducated, though can read a bit in Punjabi. He has “never studied” in India or Australia. He said he currently lives by himself at [City 1] in a house he has lived in since 2010. His last flat mate was [name deleted]. He worked in India as a farm labourer on the family farm owned by his father; they grew crops such as rice, wheat and potatoes. His father has about 4 or 5 acres of land. In Australia until recently he worked at a [factory] in [City 1]. He had worked there 8 or 9 months and it has now closed. Prior to that he worked on farms in the [City 1] area. He married in India in [2009]. The marriage was arranged by a marriage broker. His wife is educated and had been studying in Australia, she is a Jat Sikh. She returned to India for 2 days prior to their wedding, and then lived in the same house as him in India for 20 days before returning to Australia. He then came to Australia [in] 2009. He lived with his wife for 2 days in [City 2] before “she left me”. She said that there was no work in [City 2] and he should move to [City 3] where he had a friend who helped him. He then moved to [City 1], and has lived there since at the one address. He has not lived with his wife since. She returned to India in 2011 and divorced him in India in 2012, and “I do not know where she is now”.
19. The applicant said he feared return to India as “they will try to kill me as happened once before”. He claimed this was as he follows the teachings of “Baba Raman Nand and he passed away”. People would say to him “why are you going there (to their temple) ... and they tried to kill me”. He was asked to name the religion he followed. He said at first “it is like a Hindu he was from the scheduled caste”. Baba Raman Nand he said was killed in Austria in 2009. He was asked again to name the religion he claimed to belong to and said “I am a Jat Sikh ... I consider all religions equally”. His whole family is Jat Sikh. He was asked to name the religious book his religion follows and said “Guru Granth Sahib ... it is like the Koran or Gita”.
20. The applicant was asked again to name his religion. He said he was a Sikh. It was put to him what he was saying was not what was in his application. He then claimed to belong to “Ramanam’s Temple it’s *abhrimi*” which he said meant as belonging to the scheduled castes. He then said he belonged to the Ravidassi religion “to that religion of the scheduled castes”. It was put to him he was not a scheduled caste such as a dalit (untouchable), he was a Jat Sikh. He said he was “doing selfless service” at their temple. He said the Ravidassi religion was founded by Ravdess Guru from Khashi and the other name for their religion was “scheduled caste”. It was put to him this wasn’t true. He claimed the Ravidassi temples were in Ballan, at Bita Mondri and in [his village]. It was put to him there wasn’t a Ravidassi Temple in his village. He claimed there were two temples in his village, one a Sikh temple and the other a Ravidassi temple.
21. The applicant was asked to name the holy book of the Ravidassi. He said it was called *Guru Granth Sahib*.
22. He was asked to name any hymns in the Ravidassi holy book. He said “there is a book from which they read the hymns”. He thought one was named “Khaheeri Vedas Arslariyuru”.
23. The applicant was asked to name any special holy days of the Ravidassi religion. He said this was the birthday of Ravdass. He said the day changed and could be in February or March in accordance with the Hindu calendar, and depended on the full moon. He was asked when it was in 2014 and said he didn’t know, as he didn’t know when the full moon was, but thought it was in March 2014. He was advised it was full moon now (noted by the Tribunal to be 17 March

2014). He couldn't say when Ravidass' birthday was. The Tribunal notes this year it was in February 2014 (*Guru Ravidas Jayanti* - <http://www.timeanddate.com/holidays/india/guru-ravidas-jayanti>). He was asked to explain why he didn't know this, if he claimed to be follower of this religion. He claims he had not been to any temple in Australia, as there weren't any, and all temples in Australia were Sikh. It was put to him there was a Ravidassi Temple and the Tribunal found one in [Melbourne] following a simple internet search (*Shri Guru Ravidass Sabha Australia Incorporated* – <http://www.gururavidass.com.au/history.asp>). He said he wasn't aware of this as “here I didn't even go to the temple ... I'm living in [City 1] ... I'm uneducated and can't do these things”.

24. He claimed that his application was written by him. When pressed he then said he had the assistance of a friend named [Mr A] who had been living with him at his address in [City 1]. The applicant said he told [Mr A] his story in Punjabi and [Mr A] wrote it in English. He said he had never had a migration agent. It was discussed with the applicant, and put to him pursuant to section 424AA, that his application was in relevant aspects identical word for word including spelling and grammar mistakes as another application. That application had been made to the Department over 6 months before the applicant's application to the Department. It was made [in] 2012 (Refugee Review Tribunal decision case [number and Member deleted] dated 17 July 2013). The applicant said in response he “can't explain it ... what can I say about this I don't know what is identical”. He claimed he didn't copy anyone's claims as “if I'm educated I'd read and copy it ... I didn't know about it, he wrote it in English and I didn't know what he wrote ... I've told you everything that happened in India”. The applicant asked for “more time to get the proof from the hospital in India” in relation to his claims. He was advised no additional time would be granted, noting he had plenty of time to obtain whatever he required. It was also noted by the Tribunal he had not attended the Department interview [in] 2013. He claimed not to have known about it as he doesn't read English. It was put to him this was not accepted as he would know about it, as it was sent to his residential address in [City 1] and he had then sought review to the Tribunal of the decision. He commented “what can I say, I told my friend and I don't know what he has written”.
25. The applicant was asked if he had ever applied for any other visas in Australia. He said at first “I think my wife did”. He was asked if he had applied for any in his own name. He said “when I went back to India I had a visa”. It was discussed with the applicant, and put to him pursuant to section 424AA, that he had applied for a VC-485 visa (skilled graduate) in his own name through a migration agency named “[name deleted]” (Migration Review Tribunal decision case [number and Member deleted] dated 20 December 2012). He said he thought this was the name of his agent and “I didn't know about what they were saying ... I gave the money to my wife I don't know about this ... I don't have any education”. It was put to him in that application he had fraudulently claimed to have a [Diploma] and, that he fraudulently gave a TRS skills assessment number. He said he understood what this was about, though claimed not to have any knowledge of it. The Tribunal put to him this was not accepted, as correspondence was sent to him from the Department and Tribunal. He had not attended the Department interview and not responded to the letters for the Tribunal. He said “what can I say I can get the proofs from India ... whatever your decision is I will accept it”.
26. The Tribunal discussed with the applicant it was concerned his marriage was a scam and entered into for the purpose of getting him to Australia so he could work here. He claimed his marriage was genuine and arranged by his parents, through a middle man who had said to his father “he is the age for marriage”. His wife he said had lived with him for 20 days in India. He was asked to explain then why, after his arrival in Australia they lived together for only 2 days. He said this

was as he needed to find work, and so left [City 2] and ended up in [City 1] working on farms. He claimed there had been no plan for him to come to Australia, and this only happened after he was assaulted in [2009]. He claims following this he moved to [City 4] for a month and worked at the crop market as a labourer. He rented a room at an ashram. He claims he didn't stay there as he was found by the "religious people" who wanted to harm him there. The applicant said he did send money home to his parents and last year said he had sent about \$10,000. He sent what he could afford after paying his expenses here. He owed his father money for the marriage (400,000 to 500,000 rupee) and also the ticket (50,000 to 60,000 rupee) to Australia.

27. The applicant was asked why, if he feared harm in India, he returned three times since he first came to Australia (in 2010, 2011 and 2012). He said he went back to "see if there were any ongoing problems ... I was just checking if there is a risk ... Here I have an English problem and I don't know if someone is verbally abusing me ... but there nobody ever verbally abused me". He claimed on return he had "lived at [City 5]" until the religious people found him there. He explained they were the ones who had threatened him originally. They are people from his village and nearby area who had accused him of burning their property in 2009.
28. He claimed he couldn't live anywhere else in India as "where can I live". He had tried to live in [City 4] for a month without success.

CONSIDERATION OF CLAIMS AND EVIDENCE

29. I have carefully considered the claims and evidence of the applicant. I have taken account that the applicant is poorly educated and has primarily been a farmer.
30. As detailed above the Tribunal has a significant concern as to his credibility. In particular:
 - Central to the applicant's claims is his claim of belonging to the Ravidassi religion. He made this claim at hearing, and previously in his application had said he was Sach Khand. He did not know of this at hearing and did not repeat this. At hearing he at first repeatedly said that he was a Jat Sikh, and it was only when he was alerted to the fact that this was not what he had said in his application, that he claimed he belonged to the Ravidassia religion. The Ravidassia religion is a break away religion of the Sikh religion. It formed in January 2010 (after the applicant came to Australia); and its sect was previously called Dera Sachkhand Ballan. That Sikh sect is a sect of Sikhism for the Dalit's or untouchables in the Punjab (*Ravidass, Dera Sachkhand Ballan and the Question of Dalit Identity in Punjab*, Roni Ram, Panjab University, Chandigarh; and, *The Ravidassia Religion*: <http://www.gururavidassguruji.com/theravidassiareligion.htm>).
 - Whilst I accept the applicant has a vague knowledge of the Ravidassia religion, I do not accept that he belongs to that religion or ever has. I do not accept that he belonged to the Dera Sachkhand Ballan prior to the formation of the religion in 2010. The Dera Sachkhand Ballan is a Dalit religious group. The Dalit (or untouchables) traditionally have been landless agricultural workers employed by the Jat Sikhs to work their land. This is the basis of the antagonism between that group and the new religion and the Sikhs. Whilst it may not be impossible for a Jat Sikh to become a member, in the applicant's circumstances I do not accept that he did. Not only is he a Jat Sikh, but so are all his family members. They are landowners. Further, the applicant did not know when this year was the birthday of the Ravidassia sant – Ravidass. He was not aware of a Ravidassi Temple in Melbourne. He was not aware of the new Ravidassia holy book, the *Amritbani Guru Ravidass Ji*. He said the holy book used by the Ravidassia religion was *Guru Granth Sahib*; this is the Sikh holy

book. It previously was used by the Dera Sachkhand Ballan as their central holy book but is not used by the Ravidassia religion (*Amrit Bani Granth installed at Ravidassia Shrine*, by I.P. Sing, TNN, 4 February 2012. [http://times of India.indiatimes.com/india/Amrit-Bani-Granth ...](http://timesofindia.indiatimes.com/india/Amrit-Bani-Granth...)).

- The applicant has in his original application copied another person's claims. I am prepared to accept that his friend [Mr A] assisted him; however this does not remove the significant concern that the claims, as detailed in the application, are not the applicant's.
 - The applicant has been party to making a VC-485 application. Clearly he does not have the education background to make such an application. The facts as claimed in that application were fraudulent. I do not accept that the applicant was an innocent party in this. The only address he has used in Australia was his own address in [City 1]. He would have received correspondence, including an offer of interview with the delegate, and letters from the Tribunal.
 - The applicant's coming to Australia as a dependant spouse of his wife is also of concern. I do not accept as reasonable his explanation that they separated after 2 days in Australian as there was no work in [City 2]. I find that the applicant's marriage was an arrangement entered into solely to enable him to travel to and work in Australia.
 - The applicant has returned to India 3 times since his initial departure. I do not accept as reasonable to believe that he would do so if he in fact feared any harm from anyone in India.
 - The applicant has not made any contact with the Ravidassia temple in Melbourne. He was not aware of its existence. If the applicant had an interest in, or association with that religion, I consider it reasonable to expect he would have made efforts to find and associate himself with them. That he didn't indicates he has no interest in it.
31. Overall, I find that the applicant is not a credible witness. I do not accept as reasonable to believe he is a member of the Ravidassia religion. I also do not accept as reasonable to believe he is a member of Dera Sachkhand Ballan. I do not accept he was harmed by anyone in India for reasons of any actual or perceived association with these groups. I find he is a Jat Sikh.
32. It is apparent from the visa history of the applicant, his involvement in an arrangement to qualify as a dependant of someone's student visa, his making a fraudulent application for a VC-485 visa, and the provision of copied claims for a protection visa application; when considered with his arriving in [City 1] a few days after arrival in Australia, his working on farms and in a factory since and his sending large sums of money back to India, that his motivation to come to Australia, and to remain here, is to work and send money home. It is also apparent he is using Australia's visa system so as to enable that goal.
33. Overall, I do not accept as reasonable to believe any of the applicant's claims of fearing harm in India in the reasonably foreseeable future.
34. 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).

35. 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). As detailed above the Tribunal has found the applicant is not a credible witness and does not accept as true his claims of fearing harm in India. For similar reasons the Tribunal does not accept there is a real risk that he will suffer significant harm on return to India.
36. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
37. 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

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

Chris Keher
Member