

**0908372 [2010] RRTA 294 (23 April 2010)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	0908372
<b>DIAC REFERENCE(S):</b>	CLF2009/103284
<b>COUNTRY OF REFERENCE:</b>	India
<b>TRIBUNAL MEMBER:</b>	John Atkins
<b>DATE:</b>	23 April 2010
<b>PLACE OF DECISION:</b>	Melbourne
<b>DECISION:</b>	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 and Citizenship 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, arrived in Australia [in] October 2007 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] August 2009. The delegate decided to refuse to grant the visa [in] October 2009 and notified the applicant of the decision and his review rights by letter dated [in] October 2009. The applicant applied to the Tribunal [in] October 2009 for review of the delegate's decision.
3. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act and that the Tribunal has jurisdiction to review the delegate's decision under s.411(1)(c) of the Act.

### 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.
5. So far as is relevant to this matter, s.36(2) of the Act provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is a non-citizen *in Australia*. This means that a Protection (Class XA) visa may only be granted if the applicant is in Australia.

### CLAIMS AND EVIDENCE

#### *The application*

6. The applicant claimed to be a [age deleted: s.431(2)] Muslim man born in Ahmedabad, India. He was married [in] September 2007 in Mumbai, India [The Tribunal notes that documents filed in support of his Tourist visa application include a certificate which says he married [in April 2007]].
7. The applicant and his wife arrived in Australia [in] October 2007 as the holders of subclass 676 Tourist visas. The applicant's visa was granted [in] July 2007 and was due to expire on [a date in] November 2007. The applicant's wife returned to India in November 2007, and is now in Mumbai where she gave birth to their daughter in 2008. The applicant's mother and sister are in India, his father died in January 2008.
8. The applicant claimed to have completed 10 years education in India in March 1996 and was a business owner from January 1999 to September 2005.
9. The applicant claims for protection are contained in a statement provided in support of the Protection visa application. In summary the applicant claims that:
  - He and his family had operated a [business] for some seven years in Ahmedabad.
  - Due to heavy losses his father had suffered in the share market they had to borrow 60 Lakhs from financiers and sell the family business in 2005.

- They ran away to Mumbai in January 2006 because of harassment and threats from the financiers who had deep political connections all over India.
  - As it was not safe in Mumbai he engaged the services of an agent who organised his and his wife's departure from India.
  - As they could not afford the expenses in Australia his wife returned to India a month later.
  - His parents returned to Ahmedabad in January 2008 and his father was attacked by a man and died later that month. His mother later returned to Mumbai to care for his pregnant wife, but she is still 'in mental pressure' and 'always remaining ill'.
10. Documents in the Tourist visa application suggest that the visa applicant was in business in Mumbai at [Suburb A], they include an agreement for the purchase of a shop, [address deleted: s.431(2)] and transfer documents, and other documents holding out that the applicant was running a business called [name deleted: s.431(2)] The applicant appeared before the Tribunal [in] December 2009 to give evidence and present arguments.

#### *Hearing*

11. The Tribunal hearing was conducted with the assistance of an interpreter in the Gujarati and English languages.
12. The applicant told the Tribunal that he was married [in] September 2007, and claimed he did not understand how a document purporting to be a Certificate of Registration of Marriage dated [in] April 2007 came to be on his Tourist visa application file. He agreed that the details of himself and his wife given on the certificate appear to be correct.
13. He said the shop from which the business [name deleted: s.431(2)] is run, is owned by his uncle and that neither the shop or the business belong to him, despite documents signed by him including an income and expenditure account for the year ending 31 March 2004, and computation of income document for taxation purposes which indicate he was living in Mumbai in 2004 and paying tax on earnings in Mumbai. He told the Tribunal that he did not have any earnings in Mumbai and certainly did not pay tax on earnings in Mumbai even though his Tourist application showed what purport to be receipts for taxes paid by him. He said that those who prepared his Tourist visa application were responsible for the production of these and other documents but that these were prepared so that he could gain a Tourist visa, to gain entry to Australia He claimed that the person who prepared the Tourist visa application said it was necessary to show that he owned property and had other assets in order to obtain a visa.
14. The applicant said that he lived in a flat in [Suburb A], a suburb of Mumbai with his parents, and his uncle He claimed that his uncle owned the flat. The applicant said that it was his uncle's flat and shop which were used as the basis of his claim to have assets.
15. The applicant told the Tribunal that he had been in Business in Ahmedabad, the business was involved in the manufacture of [goods]. He said the business had been started by his family and run by his father for 20 years before he took it over. The applicant claimed that after he took over the management of the [business] his father had concentrated on his investments on the Indian stock exchange. He claimed that due to heavy losses on the stock exchange in

2005 his father had to borrow 60 lakhs from money lenders. He told the Tribunal that he was forced to sell the business for 13 lakhs and a small flat for 4 lakhs, and some of his mothers gold jewellery for 1 lakh. He said that he paid 10 or 15 lakhs to the money lenders. The balance of money from the forced sale of assets being 8 lakhs was divided between the applicant and his father, 5 lakhs was taken by his father and the applicant took 3 lakhs. The family moved to Mumbai in January 2006 to avoid the money lenders.

16. The applicant claimed that he did no work for which he got paid in Mumbai; he said he did some work in his uncle's shop in return for accommodation and meals. The applicant said his family were Muslim and so were the money lenders. He denied that his fears were based on religion, race nationality or political opinion His claim was that the money lenders had threatened physical violence and that he feared that he may be killed if he did not repay his fathers debt.
17. The applicant claimed to have met his wife at a Muslim prayer hall in Mumbai they are Muslim, he and his wife both belong to the Shia group. The visa applicant said that he was introduced to his wife by a friend who knew her, his friend and his wife grew up in the same area in [Suburb A]. He said that his mother met his wife's family and arranged the marriage. He claimed to have told his wife's father before they were married that he had not worked for three years, and that was afraid of the violence that would occur if discovered by the Money lenders. The Tribunal expressed surprise that in those circumstances his wife's father would give consent to their marriage. He claimed that he and his wife were in love and it did not matter that he had no money; his wife's family were not rich so there was no point standing in their way.
18. The applicant claimed that his parents returned to Ahmedabad in January 2008 where his father was soon discovered by the money lenders. The applicant claimed that the money lenders pushed his father during an argument, he fell and hit his head and subsequently died from his head wound The applicant said he could not complain to the police in Ahmedabad. He claimed the people who killed his father are criminal types and that in India the police would run with the money.
19. The applicant claimed that the money lenders gave him a year in which to come up with the money. At the hearing he could not remember when he was told to find the money. He said he was too upset to remember. He said he thought if he could get permission to work in Australia he would be able to repay the money lenders.
20. The applicant claimed that it had cost him 9 lakhs to pay for his travel to Australia, most of this going to the agent who prepared his tourist application. He claimed that he paid for this by borrowing 5 lakhs from a bank. The balance came from his own funds, he claims to have paid back 1 lakh to the bank. He also claims to have used up all his funds in Australia, having come here with about \$2000 in cash.
21. The applicant said his wife now lives with their daughter and his mother in India. He said they have not been harassed in any way.
22. The applicant claimed that he could not relocate in India as the money lenders would find him, as they did when he moved to Mumbai.
23. At the conclusion of the hearing the Tribunal told the applicant that the evidence he had provided and the submissions he had made appeared to lack a Convention nexus. The

applicant said that he was not in a position to afford a lawyer, and asked for Immigration to appoint a lawyer. The Tribunal informed the applicant that it had no power to appoint a lawyer on his behalf. The Tribunal said to the applicant that it was prepared to delay making a decision so that he could submit any documents that he thought would assist him in his protection application, the Tribunal told the applicant that it would allow him until [a date in] January 2010 to submit any further documents To date the Tribunal has received no further documents from the applicant.

24. On [a date in] March 2010 the Tribunal wrote to the applicant inviting him to comment or respond to information.

The particulars of the information are:

In your protection visa application you claimed that your father suffered heavy losses in the share market and had to borrow 60 lakhs from financiers and sell the family business in 2005.

- At the hearing you repeated the above claim and said that due to heavy losses on the Indian stock exchange in 2005 your father borrowed 60 lakhs from money lenders. You claimed that you had to sell the family business, a small flat and some of your mothers gold jewellery, and that you repaid the money lenders 10 or 15 lakhs before the family moved to Mumbai to escape the money lenders.
- In your application for protection you claimed your family ran away to Mumbai to escape harassment by money lenders, and that your father was killed by money lenders following his return to Ahmedabad.
- Country Information available to the Tribunal, “The Wall Street Journal’s” end of year review of stock markets in 2005 stated that Asian markets made hefty gains during the year with India being one of the “region’s big winners”. The Indian market was said to have drawn ‘torrents of capital from overseas, driving the Sensex index up 42.3%’. Santini,L2006, ‘Year-End Review of Markets & Finance 2005-Asian markets Overcome Bird Flue and Oil Concerns To Register Strong Gains’ The Wall Street Journal, 3 January 2006. The Bombay Stock Exchange website states that the Sensex is India’s key stock market index and comprises an index 30 stocks representing 12 Major sectors. <http://www.bseindia.com/about/introbse.asp>-accessed 12 January 2009 The Sensex grew to reach the 6000 mark in year 2000, and in year 2005 it crossed the 7000 mark in June and the 8000 mark in September 2005. ‘Indian stock market’ 2009, Stock Market.nu <http://www.stockmarket.nu/indian.php>-Accessed 12 January 2009.Berg,W ‘The Indian Stock Market’ Ezine Articles, 27 December <http://ezinearticles.com/?The-Indian-Stock-Market&id=118673>-Accessed 12 January 2010. The Press Trust of India also described the year 2005 in a positive light, citing that the Sensex Index “ touched new peaks on 59 trading days during 2005 thanks to Foreign Institutional Investors Injecting close to USD 11 billion” with analysts adding that ‘even better times are in store’. ‘Bulls to push Senseto higher peaks, feel analysts’2006, Asia Pulse Pty Limited, 2 January 2006.\\melsrv1\melref\RESPONSE\RRT\Melb-A-K\IND35920.kp.doc

The above information is considered relevant to the Tribunal and may be a

reason or part of a reason for affirming the decision as it may lead the Tribunal to question the credibility of your claims that your father suffered heavy losses on the Indian stock exchange during 2005 and was forced to borrow money from money lenders as a result of those losses, or that he was killed by money lenders for failing to repay those loans.

- In your application for a Tourist visa you claimed to have been the proprietor of a business known as [name deleted] from February 2002, in Mumbai.

You supplied documents in support of your Tourist visa application showing you as a purchaser of the [address deleted] from which the business [name deleted] is conducted. You also supplied a copy of a building contract for the construction of that shop. Dated [date] July 1992. (copies attached).

- You supplied a Certificate of Registration of Marriage in support of your Tourist visa application showing the date of registration of your marriage as the [date] April 2007 (copy attached).
- In support of your application for a tourist visa you supplied an income and expenditure account for the year ending 31 March 2004, a computation of income document for taxation purposes which indicate you were living in Mumbai in 2004 and paying taxes in Mumbai and submitted receipts for the taxes paid.
- You supplied documents claiming you were an owner of [address deleted], Mumbai, which you purchased paying a deposit in 2000 and balance of purchase money paid in 2003.
- At the hearing before the Tribunal [in] December 2009 you told the Tribunal that you were married [in] September 2007 and said you did not understand how a document purporting to be a Certificate of Registration of Marriage came to be on your tourist visa application.
- At the hearing you told the Tribunal that the shop from which the business [name deleted] is conducted belongs to your uncle, as does the business of that name.
- At the hearing you claimed not to have lived and worked in Mumbai during 2004 or to have paid taxes in Mumbai. And you claimed to have worked in your uncle's shop for no pay as he was providing you with accommodation and food.
- At the hearing you told the Tribunal that you lived in a flat in [Suburb A], a suburb of Mumbai with your parents and your uncle, in a flat owned by your uncle.

The above information is considered relevant to the Tribunal as it contains inconsistencies between what you told the Tribunal and what you put in your application for a Tourist visa. These inconsistencies may lead the Tribunal to question your credibility and find that you have not been a witness of truth. This may in turn

lead the Tribunal to find that you have not been persecuted by money lenders or that you fear returning to your country because you fear persecution.

25. [In] March 2010 the applicant telephoned an officer of the Tribunal and referred to the above letter. He advised that he would not be responding and that he had decided to leave the Country [in] April 2010. He was advised by the Tribunal officer to write to the Tribunal about this and that if he wished to withdraw the application he should do so in writing. The applicant asked if he could have a visitor visa and he was advised by the Tribunal officer that any questions in relation to visa application or his Migration status should be directed to DIAC and the officer gave him the telephone number The applicant told the Tribunal officer that he wanted to get a tourist visa and once he finds out about this he will then withdraw the application.
26. [In] April 2010 the applicant wrote to the Department advising that he was going to India permanently [four days later] He advised that he had informed the Tribunal by telephone and in writing not to proceed with his case He also enclosed a copy of his booking with Singapore Airlines to travel to India [in] April 2010. A copy of this letter was received by the Tribunal [the following day].
27. A check of movement records by the Tribunal confirmed that the visa applicant left the Australia [in] April 2010.

#### **FINDINGS AND REASONS**

28. The Tribunal is satisfied from the circumstances set out above that the applicant is not in Australia. Therefore, the applicant does not satisfy the requirements of s.36(2) and cannot be granted a Protection (Class XA) visa.
29. Having reached this conclusion, it is not necessary to consider the applicant's substantive case for the grant of the visa.

#### **DECISION**

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

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

Sealing Officer: PRMHSE