

0808706 [2009] RRTA 634 (1 July 2009)

DECISION RECORD

RRT CASE NUMBER:	0808706
DIAC REFERENCE(S):	CLF2008/135194
COUNTRY OF REFERENCE:	India
TRIBUNAL MEMBER:	Peter Murphy
DATE:	1 July 2009
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 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, last arrived in Australia [in] September 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] September 2008. The delegate decided to refuse to grant the visa [in] November 2008 and notified the applicant of the decision and his review rights by letter [in] November 2008.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention
4. The applicant applied to the Tribunal [in] December 2008 for review of the delegate's decision.

RELEVANT LAW

5. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
6. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 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).
7. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

8. 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.

9. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji*

Ibrahim (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

10. 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.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. 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.
13. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
14. 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.
15. 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 persecution 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.
16. 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.

17. 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.

CLAIMS AND EVIDENCE

18. The Tribunal had before it the departmental file, which included the Protection Visa Application, and the decision record of the delegate dated 26 November 2008. The Tribunal also had regard to the material referred to in the delegate's decision, as well as other material from a range of sources. That other material is referred to below.

The Protection Visa Application and supporting materials

19. According to his protection visa application form, the applicant was born in [information deleted in accordance with s431(2) of the Migration Act 1958 as this information could identify the applicant], in India on [deleted: s.431(2)], was married, a Christian, and a member of the "backward" ethnic group. He says he had 10 years of schooling in India, before working initially as a compounder, and more recently as a cook in [town deleted: s.431(2)] between 2001 and June 2008.
20. The protection visa application states he legally departed India at Calcutta [in] July 2008 and arrived in Australia [in] July 2008. He states he holds an Indian passport in his own name issued on "14 June" which remains valid until 13 June 2010, and obtained a visitors visa for which he had "to give a bribe".
21. In his application he states:
- He left India because he was "*in continuous and constant persecution*" and referred to an associated document for further details ("Annex A").
 - He feared if he returned to India he would "*surely be killed by [his] political opponent*" and be harmed or mistreated by members of "Shrimuni Akalidal (Sad) Badal" and members of "Bajrang Dal and Shiv Sena" because
 - He supported the Congress Party in elections,
 - He is a member of the "Dera Sacha Sauda Sect" ("DSS") which is a staunch enemy of SAD, and
 - He belonged to the backward class of the society".
22. Attached to the application was the "Annex A" referred to above, which states:
- I was under constant and continuous persecution when I left my country and have to leave my family, home and country and came to Australia to seek protection under U.N. Convention for Refugee status due to reasons mentioned below:*
- *That I belong to Christian and backward community and was hatred and maltreated by up groups of higher caste in our village and society.*
 - *I joined the Congress party in August 2001 and I took very active part in its activities. In 2002 state party election . We collected lot of funds for the party, enrolled new member and distributed propaganda materials . When our party was leading the*

procession, it was attacked by our opponent led by Akali Dal Badal and Bajrang Dal and Shiv Sena . In this attack lot of our workers were injured including me. Though report was lodged but no action seems to have been taken .

- When the congress party candidate [name deleted: s.431(2)] won the election from [deleted: s.431(2)] constituency and defeated [name deleted: s.431(2)] of BJP, I came to the notice of workers of Bajrang Dal , Shiv Sena and SAD(Badal) .
- By virtue of my active participation in election I was promoted [position deleted: s.431(2)] of [deleted: s.431(2)] rural area.
- I also joined DERA SACHA SAUDA SECT lead by Leader Baba Gurmeet Singh Ram Raheem as I was regularly harassed by members of higher caste specially Bjarang Dal and Shiv Sena and Siromini Akal Dal (Badal)
- [information deleted: s.431(2)].
- In May 2007 violence erupted in Punjab as a result of an advertisement featuring sect leader baba Gurmeet Singh Ram Raheem. I being member of this sect participated and supported our Guru Baba Gurmeet Singh Ram Raheem. Tough fight took place between followers of Shrimoni Akal Dal and members of our sect. where our members received multiple injuries but I luckily escaped.
- I visited Dera Sacha Sauda headquarters at [District 1] in March 2008 to attend [religious convention] conducted by our Guru. Members of Sikh organization at behest of Shrimoni Akali Dal raided our place at [Village A] situated near Haryana-Punjab border. Clash took place between followers of Baba and Shrimoni Akali Dal and other Sikh organization where I along with other members of group received multiple injuries. Ultimately I remained in nursing home for 10 days from [date deleted: s.431(2)] 2008. Though report was lodged with the police but no action was taken against the culprit.
- After this I was regularly threatened by numbers of my opposite party workers of Shrimoni Akal Dal, Shiv Sena and Bajrang Dal, being belonging to backward class and members of Sect of Baba Sacha Sauda. I was harassed and tortured number of times but any how passing my times.
- Luckily I was selected to participate in Youth Group festival which was organized by Australian Government . I along with some other members participated in this Youth festival in Sydney from 9th July 2008 to 23 July 2008 and then returned back to my country.
- I thought everything will become alright. But it look our selection in youth festival make our opponent party workers very unhappy. They were finding time to harm me being members of Sect of Sacha sauda and also belonging to backward class and becoming popular among people.
- On [date deleted: s.431(2)] 2008 some members of Akali Dal, Bajrang Dal and Shiva Sena came to my house to attack me. Timely information helped me to escape . But not finding me there they damaged my house property and threatened my family members with dire consequences
- Next day when I talked to my wife she told me the whole story and asked me not to return home as my life is in danger. The I moved to Delhi where my aunt was living. After consultation with my family members I was advised to leave the country as my life is not safe from my political opponent.
- As I was having valid visa for Australia I left my country [in] September 2008 and reached Australia [in] September 2008 and got much relief that my life is safe now.
- After coming to Australia I am in regular touch with my family members who are regularly advising me that members of our opposite group are regularly coming in search of me to kill me and advised me not to return to India.

Under circumstances stated above I have real chance of convention based persecution if returned back to my country and my fear of persecution on return is well founded. I, therefore, request Australian government to provide me protection to save my life under U.N. Convention reasons relating to status of refugees.

The delegate's decision

23. The protection visa application was considered by a departmental delegate. In the decision record of 26 November 2008, the delegate found that whilst the applicant had a genuine fear of harm, there was no real chance of persecution, as defined under the Convention and as a result the applicant's fear was not well founded. This was in part because the delegate found it would be reasonable for the applicant to relocate to another part of India in the event of harm from non state elements.
24. The delegate also concluded the applicant would not be denied effective protection by Indian authorities because of involvement with "DSS" or any other Convention reason.

Additional material contained in the departmental file

25. The department file contains the visitor visa application form and supporting documents, including a copy of a letter dated [deleted: s.431(2)] 2008 from the priest of the [church deleted: s.431(2)] in Jalandhar supporting the applicant's application to attend World Youth Day.
26. The departmental file also contained documents provided by or on behalf of the applicant apparently after the delegates decision refusing the protection visa was made. Those documents were date stamped as received on 5 December 2008, and include a "*Personal particulars for character assessment*" form, a document dated [deleted: s.431(2)] 2008 (in English) described as a "*medical certificate*" and an untranslated handwritten letter described simply as "*letter from relative*". There was no indication as to the contents or relevance of that letter and as the Tribunal was unable to read it, it was unable to assess its relevance Arrangements were therefore made by the Tribunal for the document to be translated into English.

The Refugee Review Tribunal Application

27. The applicant lodged an application for review by the Tribunal [in] December 2008, but no further information was provided at that time. On 14 January 2009 the Tribunal wrote to the applicant advising him it had considered all the available material relating to his application, but was unable to make a favourable decision on that information. It invited him to give oral evidence to the Tribunal at a hearing [in] February 2009. No further material was submitted prior to the hearing date.
28. On 3 February 2009 the Tribunal received confirmation the applicant would attend the hearing, and did not seek to have the Tribunal take evidence from any other person.

The First Tribunal Hearing

29. The applicant attended an initial hearing on 18 February 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi (Indian/Pakistani) and English languages. In the course of the hearing the Tribunal indicated it had arranged for the handwritten document received on 5 December 2008 on the departmental file to be translated into English. The English translation was read to the applicant during the hearing and he indicated this was an accurate translation of what he said was a letter from his wife.

30. The Tribunal asked the applicant about his background. He said he was born in Punjab, was married with two children, and his wife and children currently lived in Jalandhar, where he lived prior to coming to Australia. He had worked as a doctor's helper (a "compounder") for about 2 years from 1987 and then for a finance company updating files. The Tribunal asked him where he worked after he finished working for the doctor and he said he had a break for about a year because of ill health. After that time he worked casually for his brother as a kitchen hand for about 2-3 years, before joining the finance company where he says he worked for about 3 years. At the same time he says he was involved with the Congress Party.
31. The Tribunal noted the protection visa application indicated he had been a cook between 2001 and 2008. The applicant explained this was correct as he was working with his brother. The Tribunal observed the application made no mention of him working for a finance company. The applicant indicated this may have been because it had not "come to his mind" when the form was filled out.
32. The applicant produced his passport at the hearing, which indicated it was issued in 2000, but had not been used except for the travel in 2008 to Australia. The Tribunal asked the applicant why he got the passport in 2000, and he said it was because he was thinking of going out of the country, but at the time was learning work with his brother and wanted to keep learning.
33. The applicant said he first left India [in] July 2008 when he came to Australia for the World Youth Day ("WYD") in Sydney. The Tribunal asked him what his religion was, and he initially indicated he was Christian. When asked whether he was part of any particular branch of Christianity he initially said "no" but when asked if he was Catholic he said he was, and had been a member of the [church deleted: s.431(2)] in Jalandhar for about 3 years.
34. The Tribunal asked him why he decided to come to Australia for WYD. He said he came to see the Pope give a sermon and for a religious convention, and the Church had arranged for him to come. The Tribunal asked him if he needed a visa to come to Australia. He said the church arranged everything. The Tribunal asked whether he had any difficulty getting a visa to enter Australia and he said he had no problems. The Tribunal indicated his protection visa application form stated he "*had to give bribe to get visa*". The applicant denied he had given any bribe for his visa, and again said the church had arranged everything for him.
35. The applicant confirmed he initially arrived in Australia [in] July 2008 on a visitor's visa issued in respect to the WYD and returned to India [in] July 2008, before again travelling to Australia [in] September 2009. The Tribunal asked him why his protection visa application which was completed in September 2008 only referred to his initial trip to Australia in July 2008 and not his most recent arrival immediately preceding his protection application. The Tribunal observed that if someone was asked when they arrived in Australia, they might normally state the most recent arrival. It also indicated this might suggest the protection application form had been filled out in July after his first arrival, but prior to his second arrival in September. The applicant indicated this was not the case, and when asked to explain why the form did not refer to his more recent September arrival, said there may have been a mistake in the form.

36. The Tribunal asked the applicant what he feared if he was to return to India. He said he would be at risk of harm because of his association with the Congress Party as there were problems between it and other parties. He said he was a worker for the Congress Party and a supporter. He said his work involved being [position deleted: s.431(2)] of the rural area near [deleted: s.431(2)] and Jalandhar, making people aware of their rights and promoting the Party. This was part time work for the Party. The Tribunal asked whether he was an office holder or senior person. He said he was a [position deleted: s.431(2)] who was responsible for collecting donations and finding new members and doing some speeches. He said he was also involved in elections in his area and was able to provide the Tribunal with details of [deleted: s.431(2)] election history, which his Party's candidate won some years ago. He said he was a [deleted: s.431(2)], but was not a [position deleted s.431(2)] by the time of the 2007 elections, although he was still involved in distributing pamphlets and telling people about the elections. In response to Tribunal questioning he agreed there were a lot of other people doing the same type of political work as he was doing. He also said there was a sect called Dera Sacha Sauda which supported the Congress Party.
37. The Tribunal asked the applicant who would harm him. He said it would be people from the opposition party. The Tribunal asked why those people would want to harm him. He said it was because he was a good worker for the Congress Party. He said they were from Akali Dal, Shiv Sena and Bajrang Dal. The Tribunal asked why they would be interested in harming him if he was simply one of a number of people supporting a major party. He said there was a lot of trouble in the past – not only for him but other workers as well. The Tribunal asked if he had ever suffered harm because of his involvement with the Congress party. He said he had, in the 2001 and 2002 elections when the opposition BJP candidate was defeated. He said BJP was aligned with Akali Dal at the time, and after the election 10-12 workers were meeting when opposition members attacked them, but they did not suffer injury as they ran away.
38. Apart from that incident he told the Tribunal there was another time when he was injured. This was in 2008 when he went to a village called [village A] in [district 1] in where a sect leader was based. There was a convention by the sect leader and he went there to learn more about the sect. After the convention Akali Dal and Shiv Sena people attacked them. The Tribunal asked why he went to that convention. He said because the leader had invited them. The Tribunal asked whether he knew much about that sect before he went to [village A] on that occasion. He said he himself was not a member of the sect, but the sect leader (Baba Ram Rahim) was a Congress Party supporter and a preacher.
39. The Tribunal indicated to the applicant that his protection visa application form included a claim that he had joined the Dera Sacha Sauda (“DSS”). He said he was involved in the Congress Party but was not a member of the DSS. The Tribunal referred to the statement which asserted he was a member of that sect, and had been harassed because he was a member of that sect. The applicant said the friend who helped him complete the application may have misunderstood him, but confirmed again he was not a DSS member.
40. The Tribunal asked the applicant about the incident at [village A], [district 1]. He said he sustained injury to his back and other superficial injuries on that occasion, and rang his wife who was at her parent's house in [village B]. He then went to a hospital there and stayed for some time. In response to Tribunal questioning the applicant said this

was the only time he had sustained injury because of politics or his association with the Congress Party. He said there were a couple of times before when he had arguments or fights with Akali Dal and Shiv Sena members. He said he was told by the sect leader that the sect would talk to the police about the incident but they needed to run away to save their lives because the other people were armed. He said his family later told him not to get involved, and so the matter was not later reported to the police by him, and because it was not in his own area. The Tribunal observed that the protection visa statement said a report had been lodged with the police. He said this was about an incident in Jalandhar. The Tribunal asked about that incident and the applicant said it occurred in 2007 election when there was a scuffle and members of his party sustained injury although he had escaped. A report was made but nothing happened. The Tribunal indicated that the statement in the application referred to the incident in Sirsa in 2008 and stated that after having been in a nursing home for 10 days, a report was lodged with police but no action was taken. The applicant said the sect leader had said that a complaint was lodged but no action was taken.

41. The Tribunal asked if there were any other incidents or attacks after this incident. He said he had moved to Jalandhar because he was being threatened. He said after he was discharged from hospital he came back to his home in Jalandhar, and was resting at home, and a friend told him that people were looking for him. The Tribunal asked why people would be interested in him and he said this was because he was a good worker and had attended the conference. When he knew this, he went away from home.
42. The Tribunal confirmed that the applicant had been living in Jalandhar when he had gone to the conference in Sirsa, which he said was about 3-4 hours journey by road. The Tribunal observed this was a long distance away, and asked why people would be interested in him after he returned to Jalandhar. He said it was because he had been working with the Congress Party for a long time. He said he left his home, as people came and broke furniture and asked his wife where he was. He left from there and went to Delhi after that. This was in 2008.
43. The Tribunal noted that there was some confusion about his recollection of the events he said occurred after the alleged incident in [village A], and sought to clarify the history relating to what happened after that incident. The applicant said he left Jalandhar after [deleted: s.431(2)] July 2008. He later sought to clarify this by saying it was probably in August 2008. The Tribunal asked whether the incident in which he claimed his house was damaged had occurred after he had returned from Australia or before that trip. He said it was after he came back from Australia. He said he came back from [district 1], went to the hospital and then to his house in Jalandhar, and he left his house and went to Delhi. The Tribunal again asked the applicant whether this was before or after he went to Australia. He said the first time he went to Delhi was in August after he came back from Australia.
44. The applicant said the incident leading to his hospitalisation happened in March 2008. After he left the hospital he said he had relatives whom he stayed with in [district 2]. The Tribunal asked why he went there. He said it was because he was afraid he would be harassed. He said he feared for his safety at that time. He said he did not go to the police because Akali Dal was in power and he thought he may have been killed by those people. He said he stayed with the relatives for 2-3 days then he came to know about World Youth Day and spoke to the priest about going to that event.

45. The Tribunal asked him when he first became aware of World Youth Day. He said the priest had talked about it in the church every week. He said he initially had no intention to attend until only a few days were left before World Youth Day, when he decided to fill out the form. The Tribunal asked whether he had decided to apply to go to World Youth Day before or after he was beaten in [district 1] He said it was later, after he had been beaten.
46. The Tribunal asked why he decided to go to World Youth Day after the beating. He said it was because his family said his life was in danger and he should go away for a few days. He agreed he had to fill out forms for the church to arrange this, and again said this was after he claimed to have been beaten at [district 1].
47. The Tribunal referred the applicant to the document provided by the [church deleted: s.431(2)], which is dated [deleted: s.431(2)] February 2008, and noted this was more than a month before he said he had been beaten. It observed this suggested he had already decided to go to World Youth Day before he claimed to have been beaten, and had requested a letter of support from the Church. The Tribunal queried why he would get such a letter before he had decided to express interest in going to World Youth Day. He said for 6 months before World Youth Day the church had been filling in the forms. The Tribunal suggested this may be the case for persons who had said they wanted to go to World Youth Day and asked him why anyone would fill out forms for people who had not indicated any interest in attending. The Tribunal read the letter from the church dated [deleted: s.431(2)] February 2008 to the applicant, and reminded him he had previously told the Tribunal in evidence he had not decided to go to World Youth Day until after the March 2008 incident at [district 1] The applicant then said he had no intention to go, but had got the letter from the priest in case he decided to go, and because the priest was going on holidays. The Tribunal said it had difficulty accepting this, and the situation was perhaps more consistent with the letter being written in February 2008 because he decided to apply to attend World Youth Day by that time, and that his decision was not associated with any beating or fear of harm or a need to get out of the country.
48. The Tribunal asked whether the applicant left India on the first occasion because he was fearful of what would happen if he remained. He said this was the case and he decided to leave for a while to see what happened, and to also attend World Youth Day. The Tribunal asked the applicant why he returned to India after World Youth Day. He said after a few days he thought the matter might settle down. The Tribunal observed that if a person genuinely left their country because of fear of serious harm, it was unlikely they would chose to return to that country after such a short period of time. The applicant said his intention was not to stay overseas because he had a good job with the finance company when he left the country.
49. The Tribunal asked the applicant what happened when he returned to India. He said people came to his house and damaged the furniture as he had previously explained. He said he went back to Delhi. The Tribunal asked him what he meant by “went back” to Delhi as this suggested he had been there before. He initially said he had never been to Delhi before, but then said he had been there several times previously. He said he went to Delhi on this particular occasion because a friend said people were looking for him. He said he went to Delhi because his uncle lived there. He stayed 3 or 4 days, and his uncle said as he still had a visa he should go back to Australia to save his life.

50. The Tribunal asked how long after he returned to India from World Youth Day the incident in his house occurred. He said it was in August, and he rang his wife and she said they had been harassing the family about him and he should leave. The Tribunal asked why people would be interested in him even when he was not there. He said they knew his residence was there.
51. The Tribunal confirmed that the basis of his claims was that he feared harm because he was a member of the Congress Party, and not because he was a member of the DSS. He agreed this was correct. The Tribunal asked if there was any other reason why he feared he would be harmed if he returned. He said he had been a good party worker and the opposition party would not spare him.
52. The Tribunal said his protection visa application also referred to his membership of the “backward class of society”, and asked if he believed he may be harmed because of this. He said this was the case, and also because he had converted his religion. The Tribunal asked when he had converted and he said about 10 years and he had previously been “backward class”. The Tribunal observed this was not a religion, but a class, and asked again what his former religion was – He said he had been a Hindu.
53. The Tribunal asked who would want to harm him because he had converted from Hinduism to Catholicism, and also noted he had not previously raised his conversion to Catholicism as a reason for fear in his evidence to the Tribunal. He said this factor was combined with his Congress Party membership and his class. The Tribunal referred to his application which listed the things he feared he might be harmed for, and noted changing religion was not one of them. In response to Tribunal questioning, he said he had not experienced any problems before he joined the party. He also said he had been a Catholic before he had joined the party.
54. The Tribunal referred to the protection visa application which said that people may not have been happy with him because he had gone to World Youth Day. He said this was correct and opposition party members knew he had been to World Youth Day. The Tribunal asked why this would make opposition people angry with him. He said there was a lot of news in the country saying lots of people were going to World Youth Day. The Tribunal indicated it had difficulty understanding why this of itself would make people angry with him or want to harm him. He said the opposition would think people had converted to the Christian religion to go out of the country and might be jealous. The Tribunal indicated it had not seen any information to suggest persons from India would be at risk of harm simply because they had gone to World Youth Day. The applicant again said his concern was his membership of the party, but this could also have significance.
55. The Tribunal also referred to his membership of the “backward class” and asked if this was a cause of concern. He said it may be possible, but agreed however his primary concern was because of his membership of the Congress party.
56. The Tribunal asked the applicant why he could not have lived in Delhi where he stayed before coming to Australia the second time. He said his opposition may come after him. The Tribunal asked how far Delhi was from Jalandhar, and he said it was 375 Km. The Tribunal asked why people would go that distance to find him or harm him. He said there had been instances of people being chased as far as Bombay and being killed there. The Tribunal asked whether he thought he could go to the police in Delhi if he

was threatened. He said sometimes you don't get the chance before something happens to you. He conceded however that he could go to the police. The Tribunal asked whether he believed they would listen to him and take action to protect him. He said that in the past nothing happened.

57. The Tribunal asked which party was the national government in India at the current time. He said it was the Congress Party, of which he claimed to be a member.
58. The Tribunal referred the applicant to the handwritten letter sent to the department after the delegate had refused his protection visa, and was told the letter had been translated at the request of the Tribunal, and read that letter to him. He said this was from his wife and he had received a further letter from her since that time. The Tribunal asked why she would send him letters such as the one on the department file. He said he had no phone number initially, but she now speaks to him by phone and had told him people were coming to the house and were still looking for him. The Tribunal asked him why people would be coming to his house looking for him. He said they may not know he was in Australia. The Tribunal also asked why they would still be interested in him after this time. He said they may think he had come back.
59. The Tribunal indicated that even if it accepted his fear was well founded in his home area, it would then have to consider whether he could get effective protection from government or whether he could relocate to another part of India where people may not know his background. The Tribunal asked him whether relocation to some other part of the country would be possible.
60. The applicant said he did not believe he would be safe anywhere in India as his opponents could find him wherever he went. The Tribunal observed that one of its difficulties was accepting he was of sufficient profile or status to attract such attention. It also indicated it had difficulty accepting that even if there were political opponents in his local area who sought to harm him, that they would be interested in pursuing him outside his local area. The Tribunal indicated that whilst his evidence suggested he was a party member and may have been involved in political activities in the past, it did not accept he was a major participant or a high profile supporter, or of such importance that people would be likely to be interested in following him across the country. The applicant responded by saying these persons were angry because his party member had lost the election. The Tribunal asked why he believed he would be of such importance that people would try to track him down. He said it was because the person now in power in his area had made his party member lose the election, and because he had supported that member, they may not wish to spare him.
61. At the end of its questioning, the Tribunal asked the applicant whether he wanted to say anything else in support of his claims. He said there was a danger to his life and he was a "heart patient" as well. The Tribunal queried what this meant, and he said he had been treated for a heart condition in India. The applicant in response to Tribunal question as to the significance of that condition to his life said his children were young, and they may not kill him. The Tribunal said it did not understand this response. He then said there was a danger to his life and they may kill him. The Tribunal again asked about the significance of his heart condition. He said sometimes thinking about everything he got very worried. He confirmed however that he was working in Australia, doing casual fruit picking and was able to manage that work without difficulty.

62. At the conclusion of the hearing the Tribunal sought to summarise his claims. He confirmed the predominant issue was his past Congress Party association, but said his caste and religious conversion may have some significance. He confirmed again he had never been a DSS member and did not fear harm because of association with DSS other than its association with the Congress party.
63. The Tribunal indicated to the applicant that there were matters arising from the material available which it would have to formally raise with him for consideration and comment and that it would write to him for that purpose and invite him to comment.

The Second Tribunal Hearing

64. The applicant was invited to a second Tribunal hearing [in] April 2009, and again attended in person. The hearing was conducted with the assistance of the same interpreter in Punjabi (Indian/Pakistani) and English languages. The applicant confirmed he did not have any difficulty understanding the interpreter.
65. The Tribunal raised again the letter dated [deleted: s.431(2)] February 2008 provided by the Priest from the [church deleted: s.431(2)] in Jalandhar. The Tribunal indicated it considered that letter was relevant because at the last hearing he had told the Tribunal he decided to go to World Youth Day after he said he was beaten in [village A] in [district 1] to avoid further harm. The applicant agreed this was correct, and that he was beaten on either [deleted: s.431(2)] March 2008. The Tribunal indicated if his decision to go to WYD was in response to a beating on [deleted: s.431(2)] March 2008, it had difficulty understanding why he had a letter of support from his Church written in February 2008. The applicant then said he had decided to go to WYD before the beating, and obtained the letter from the priest at an earlier stage. The Tribunal pointed out this was not consistent with his earlier evidence which was that he decided to go to WYD after he claimed to have been beaten.
66. The Tribunal indicated it appeared his decision to go to WYD was made well before March and he had asked the priest for a letter well before the time he claimed to have been beaten in [district 1]. The Tribunal indicated this raised a real prospect his decision to go to WYD was made before March, and had nothing to do with the alleged beating.
67. The Tribunal indicated to the applicant that research indicated clashes between DSS supporters and opponents in [village A] in [district 1] were reported in the Indian press, and that those reports suggested an incident occurred on [deleted: s.431(2)] March 2008. The applicant then indicated he was not really sure when the attack took place, only that it was in March. The Tribunal observed the reports indicated there was a lot of press coverage of the incident in the Indian media and asked if he had read any of that coverage. He said he had not as he was in hospital. The Tribunal asked him about this aspect. He said the hospital was the [deleted: s.431(2)] in [village B], and that he went there the day after the [village A] incident.
68. The Tribunal asked about the letter he had supplied as part of his supporting material from the [deleted: s.431(2)] Hospital. He said he had asked his wife to get the letter after he had left India. The Tribunal noted the letter was dated “[deleted: s.431(2)] March 2008” and observed if this was correct, and the letter was written after

September 2008, it was unusual for it to have been back dated to [deleted: s.431(2)] March 2008, rather than show the date it was actually written.

69. The Tribunal observed the letter stated the applicant had been under treatment from [dates deleted: s.431(2)] and he agreed this was correct. The Tribunal then indicated this seemed inconsistent with news reports which suggested the incident which he said gave rise to the need for treatment occurred on [deleted: s.431(2)] March 2008. The applicant said there was an earlier incident in [village A] in which he had been injured. The Tribunal observed there was no record of an earlier incident, and given the nature of the clash referred to, it was likely if such an incident had occurred that it would have been referred to in some way in the press reports.
70. The Tribunal indicated to the applicant that on the material available to it, it had some concern over the credibility of his evidence in respect to the incident at [village A] as claimed. The applicant repeated his statement that he had attended a meeting at that location and there was a clash in which he was injured.
71. The Tribunal raised with the applicant country information which suggested Indian citizens could lodge complaints of politically motivated violence against them with police, and that police would generally respond to this and take action. This suggested in the event of such violence, a person could seek police protection. The applicant said police responded to the party who was in power and that such reports were only “eyewash” and where parties like Akali Dal were in power they didn’t want criticism.
72. The Tribunal asked the applicant about his movements once he had returned to India after his first trip to Australia. He said he had gone to Delhi and stayed with an “aunt”. The Tribunal observed that his evidence at the previous hearing was that he had stayed with his “uncle” in Delhi. The applicant said this was correct as his uncle and aunt lived together. The Tribunal asked how long he had stayed with that uncle and aunt and he said about 3-4 days. The Tribunal asked why he had stayed such a short time, and he said he did not feel like staying longer and had then stayed with some other relatives (another aunt) for about a week. The Tribunal asked where this aunt lived, and the applicant said it was in [district 2], which he said was about [deleted: s.431(2)] from Jalandhar. The Tribunal asked why he had decided to move closer to Jalandhar if he was fearful of people in that area. He said it was still well away from Jalandhar, but he had kept moving because people would get to know where he was. He subsequently indicated he had stayed in [district 2] for 2 days, and when reminded by the Tribunal he had previously stated he had stayed a week, said he had stayed with another relative in Amritsar for a week before going to Australia. He also said that his wife had then put pressure on him to go to Australia because he had a visa.
73. The Tribunal observed his protection application made no mention of staying with an aunt in [district 2] or any location other than with the uncle in Delhi. The applicant said he did not think that this was important and had not mentioned it in any detail.
74. The Tribunal raised with the applicant further country information that suggested India was a very large country with a high population, and that its citizens could relocate to other parts of the country without difficulty. As such the Tribunal asked him whether in the light of that information, if there was some reason why he could not remain in his home area, why he could not relocate to a place like Delhi, and if necessary seek police

protection there. The applicant said he was at risk anywhere in India, and his political opponents would be able to get him wherever he was.

75. The Tribunal indicated it had difficulty accepting he was a person of sufficient profile to attract such attention, especially outside his home area, or that anyone would be interested in pursuing him outside that area. It also indicated it was concerned if he was (as he claimed) fearful of harm in India, he would have returned to the country so soon after visiting Australia. The applicant said he had gone back, because the incident at [district 1] was far away from his home and he believed it would be safe to return.
76. The Tribunal raised country information (the US Department of State “Religious Freedom Report”, below) which suggests India generally respected religious freedom in practice, and that there was generally religious tolerance, and noted he had not identified any incidents of religious based harm in the past. The applicant said whilst this was true, he had simply said it was “possible” he could be harmed for this reason.
77. The Tribunal also asked the applicant about his membership of the “backward class”, and whether he was claiming to have experienced any harm because of this status. He indicated he had not suffered any particular harm because of this class membership.
78. The applicant told the Tribunal he had 10 years of education, and had always been in employment, and had secured a “good job” with the finance company he had identified in the first hearing. The Tribunal observed that this suggested that neither his religion nor his caste appeared to have precluded him from either education or work in the past to support himself and his family. He agreed this was correct but that his jobs had all been in the private sector, and not the government sector.
79. At the conclusion of the hearing the Tribunal invited the applicant to add anything else he wished the Tribunal to consider. He again raised the issue of his health, stating he had a heart condition, and did not want to return to India as he did not want any shock.

Subsequent information provided after the hearings

80. Following the second hearing the Tribunal wrote to the applicant in accordance with section 424A That letter, omitting formal parts stated:

The Tribunal has identified a number of aspects of the evidence provided by you at various stages, as well as information from other sources, which may lead it to question the veracity of your claims, and which may be the reason, or form part of the reason for affirming the decision to refuse to grant you a protection visa.

1. **Information relating to a letter dated [date] February 2008 from the [church]Jalandhar.**

As part of the material provided by you to the Department of Immigration in relation to your Visitor’s visa, you supplied a copy of a letter dated [date] February 2008 from the [name] Church in Jalandhar. That letter stated you were a member of the parish for two years, and the parish had no objection in you taking part in the World Youth Day convention to be held in Australia.

At the first Tribunal hearing on 18 February 2009 you gave evidence that although you were aware of the existence of World Youth Day Convention in Australia, you did not decide to apply to attend that convention until after you claim you were injured in an incident you said occurred in [village A], [district 1] on [date] March 2009. You said that incident involved a clash between the supporters of the Congress Party and the Dera Sacha Sauda sect, and

supporters of opponents of that sect and the Congress Party. You also said your decision to go to World Youth Day was made after you were injured in that incident and you decided to leave India and avoid further harm. You repeated those claims at the second hearing on 20 April 2009 stating the [village A] incident you described on that occasion as occurring on either [date] March 2008.

Why this information is relevant to the review.

The fact the church letter was written on your behalf more than 5 weeks prior to the [village A] incident in which you claim to be injured suggests your decision to attend WYD was made well before the specific incident which you claim led you to seek to take part in WYD and to leave India to avoid harm.

This raises significant doubts for the Tribunal as to the veracity of your claims to have decided to leave India after that incident because of a fear of persecution, and suggests your decision to apply for a visitor's visa to enter Australia and attend WYD was made well prior to March 2008, and was unrelated to any fear of harm in India. This may lead the Tribunal to infer you have not been truthful in making your claims and lead the Tribunal to question your credibility and to not accept that your decision to travel to Australia was in any way related to fear of persecution or harm. As such the Tribunal may find that you do not have a well founded fear of persecution for a convention reason and that you are therefore not entitled to a grant of a protection visa.

2. Information relating to a medical report dated [date] 2008 from the [name] Hospital [village B].

As part of the supporting material provided by you in respect to your Protection Visa you supplied a report dated [date] March 2008 from Dr [name] of the [name] Hospital in [village B] That report is on a printed form, with details and particulars in English, and the report itself is written in English. It stated you were suffering multiple injuries and was under treatment as a patient from [date] to [date] March 2008. Your evidence to the Tribunal was that you attended a [religious ceremony] at the [village A location of the Dera Sacha Sauda sect on either [date] or [date] March 2008 and there was an attack by opponents of the sect and the Congress party in which you received significant injuries.

Newspaper reports accessed by the Tribunal (and raised with you in the second hearing) indicate relatively widespread reports of an incident in [village A] involving a clash between supporters of the Dera Sacha Sauda sect and Sikh organisations, which occurred on [date] March 2008. No reports of a similar incident on or about [date] or [date] March 2008 in that location were able to be located by the Tribunal.

Why this information is relevant to the review.

The only identifiable incident in that location around the time you state you were injured occurred on 25 March 2008 which is after the date the medical report states you commenced treatment for multiple injuries. Given the news coverage of the clash on [date] March 2008 is (and other clashes between such groups) it is likely that any similar incident such as the one you claim occurred on either [date] or [date] March 2008 would also have been the subject of press reporting. No such reports are able to be located.

This may create doubts for the Tribunal as to the veracity of your claims that there was an incident in [village A] on either [date] or [date] March 2008 in which you received injuries caused by political opponents, which led to your being treated for injuries as stated in the medical report dated [date] March 2008. This may lead the Tribunal to infer you have not been truthful in making your claims, and lead the Tribunal to question your credibility and to conclude the incident in which you claim to have been injured by political opponents on [date] or [date] March 2009 at [village A] did not actually occur. As such the Tribunal may find you do not have a well founded fear of persecution for a convention reason and that you are therefore not entitled to a grant of a protection visa.

3. Information relating to date of the medical from the [name] Hospital [village B].

As part of the supporting material provided by you in respect to your Protection Visa you supplied a report dated [date March 2008 from Dr [name] of the [name] Hospital in [village B] That report is written on a printed form, with details and particulars of the hospital in English, and the report itself is written in English. It states you were suffering multiple injuries and were under treatment as a patient from [date] to [date] March 2008.

At the second Tribunal hearing on 20 April 2009 you told the Tribunal the report had been obtained by your wife at your request to assist with your protection visa application which you lodged after you returned to Australia in September 2008. In response to Tribunal questioning as to why the date on the report was [date] March 2008 (the date on which the report states you ceased being treated), you confirmed the report was not sought or written until after you had left India and returned to Australia in September 2008, and its date simply reflects the date on which your treatment by the hospital ended.

Why this information is relevant to the review.

The fact the report is clearly dated [date March 2008 suggests it was written on that date, and not at a later date as you claim. The Tribunal considers it would be unusual for a professional to backdate a letter like this by several months, and it would be more usual for a letter of this nature to bear the date it was actually written, and to set out a history of past treatment. This raises doubts for the Tribunal as to the veracity of your claims associated with treatment for injuries said to result from an incident on [date] or [date] March 2008 caused by political opponents. Alternatively it suggests the accuracy and reliability to be attributed to the medical report itself may be significantly diminished if the Tribunal accepted the assertion that the date on which it was purportedly written was inaccurate This may lead the Tribunal to infer you have not been truthful in making your claims and lead the Tribunal to question your credibility and to not accept that report as accurate. As such the Tribunal may find that you do not have a well founded fear of persecution for a convention reason and that you are therefore not entitled to a grant of a protection visa.

81. On 15 May 2009 the Tribunal received the applicant's written response which stated:

- It had been announced WYD was in Sydney in July 2008. He was interested to attend but at that time he didn't decide fully. As the priest was going on leave he took that letter before he went. This is what he had said at the hearings.
- A clash between DSS and Sikh organisations mainly occurred on [deleted: s.431(2)] March 2008 but he was at a [village A] meeting on [deleted: s.431(2)] March 2008 when Sikh people attacked them, and these incidents were not highlighted in the media.
- The medical report dated [deleted: s.431(2)] March 2008 was issued by Dr [deleted: s.431(2)], who signed and dated it "[deleted: s.431(2)] March 2008" in place of the current date.

COUNTRY INFORMATION

General

The US Department of State 2008 "*Country Reports on Human Rights Practices*" for India (published in February 2009) contained this broad overview:

India is a multiparty, federal, parliamentary democracy with a bicameral parliament and a population of approximately 1.1 billion with an active civil society. Manmohan Singh became prime minister following his Congress Party-led coalition's victory in the 2004 general elections, which were

considered free and fair, despite scattered instances of violence. Serious internal conflicts affected the states of Jammu and Kashmir, as well as several states in the north and east. While civilian authorities generally maintained effective control of the security forces, security forces occasionally acted independently of government authority during incidents of communal tensions in states such as Karnataka.

The government generally respected the rights of its citizens; however, serious problems remained. Major problems included extrajudicial killings of persons in custody, disappearances, and torture and rape by police and other security forces. Investigations into individual abuses and legal punishment for perpetrators occurred, but for the majority of abuses, the lack of accountability created an atmosphere of impunity. Poor prison conditions and lengthy detentions during both pretrial and trial proceedings remained significant problems. Officials used special antiterrorism legislation to justify the excessive use of force. Corruption existed at all levels of government and police. The government applied restrictions to the travel and activities of visiting experts and scholars. Significant restrictions remained on the funding and activities of NGOs. Increasing attacks against religious minorities and the promulgation of antireligious conversion laws were concerns. Violence associated with caste-based discrimination occurred. Domestic violence, child marriage, dowry-related deaths, honor crimes, female infanticide and feticide remain serious problems. Trafficking in persons and exploitation of indentured, bonded, and child labor were continuing problems.

References to DSS and [village A]

There were numerous reports of fighting and clashes between Sikh and DSS supporters in the Punjab, including the following report in the “[newspaper deleted: s.431(2)]” on [deleted: s.431(2)] 2008, which was the about the time of the applicants return to India in late July 2008:

INDIA: Sikh-Dera clash stops Punjab in its tracks

Rail and road traffic were paralysed in several parts of Punjab on Wednesday as supporters of the Dera Sacha Sauda and Sikhs clashed in [town deleted: s.431(2)] during the day-long bandh called by a Sikh group in Punjab and Haryana.

Activists of the Sant Samaj, a conglomerate of Sikh organisations, squatted on rail tracks near Vallah in Amritsar during the bandh and demanded the arrest of Dera chief Gurmeet Ram Rahim Singh.

Thousands of passengers were stranded at Amritsar railway station as bandh supporters blocked the Garib Rath Express and forced cancellation of nine trains, including the 2014 Shatabdi Express, 2460 Super Fast, 5708 Amrapali Express, 2716 Sachkhand Express, 2929 Paschim Express, 1058 Dadar Express and 2054 Jan Shatabdi, a report from Amritsar said.

Some private educational institutions, too, remained closed at various places in Punjab as a precautionary measure.

The authorities made tight security arrangements in view of the bandh.

[News report deleted: s.431(2)]

This further report was provided by India Express ([date deleted: s.431(2)] 2008):

Sikhs, Dera followers clash in [district 1]

[Information deleted: s.431(2)] Followers of Dera Sacha Sauda and members of some Sikh organisations clashed at [villageA] in [district 1] last night. The two parties pelted stones at the other, injuring at least four persons. A car was also torched and an LPG cylinder in the car burst, damaging property around.

The incident took place over holding of [a religious ceremony] late Tuesday in the village, situated near the [deleted: s.431(2)]-Punjab border. When the [religious ceremony] was on at the place of a dera follower, Dharampal, some members of Sikh organisations got to know of it and announced from the public address system of the local gurdwara to gather and move towards Dharampal’s house.

When premis got to know about it, armed with bricks and stones, they reached the top floor of the house.

Villagers said when the Sikhs reached there, the Dera followers pelted stones and bricks at them, which was reciprocated by the Sikhs.

[Information deleted: s.431(2)]

Villagers called the police and though the situation was brought under control, a case was registered against five persons for damaging property.

The matter was resolved between the two factions today.

[Name deleted: s.431(2)] told ENS, "Both factions agreed to resolve the matter. Damage to property would be compensated for by those involved in the clash. There is peace in the village now, though police force is still deployed there." [deleted: s.431(2)]

Religion

The US Department of State 2008 "*International Religious Freedom Report 2008*" for India released in September 2008 contained this overview:

The Constitution provides for freedom of religion; however, some state level laws and policies restricted this freedom.

The National Government generally respected religious freedom in practice; however, some state and local governments imposed limits on this freedom. There was no change in the status of respect for religious freedom by the National Government during the period covered by this report; however, problems remained in some areas. Some state governments enacted and amended "anticonversion" laws and police and enforcement agencies often did not act swiftly to effectively counter communal attacks, including attacks against religious minorities.

During the reporting period, the Government of Rajasthan passed an "anticonversion law" that, similar to other laws of its kind, restricts and regulates religious proselytism. However, at the end of the reporting period, the Governor had not yet signed the new law.

During the reporting period, the State of Gujarat implemented its "Freedom of Religion" Law initially passed in 2003 and withdrew an amendment that would have defined "conversions" as occurring only between denominations and not between religions and would have classified Jains and Buddhists as denominations of Hinduism. This law requires prior permission from the Gujarat Government for a conversion ceremony.

The vast majority of persons of every religious group lived in peaceful coexistence; however, there were organized communal attacks against minority religious groups, particularly in states governed by the Bharatiya Janata Party (BJP). In Orissa, governed by a coalition government that includes the BJP and the Biju Janata Dal (BJD), Hindu extremists attacked Christian villagers and churches in the Kandhamal district over the Christmas holidays. Approximately 100 churches and Christian institutions were damaged, 700 Christian homes were destroyed causing villagers to flee to nearby forests, and 22 Christian-owned businesses were affected.

Internal relocation

The UK Home Office released the following information ("UK Home Office 2008, 'Country of origin information report: <http://www.homeoffice.gov.uk/rds/pdfs08/india-210808.doc> - accessed 22 August 2008) which dealt with the ability to internal relocation within India generally. It stated:

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

This view on freedom of movement generally accords with a 2003 report from the Australian Department of Foreign Affairs and Trade ("DFAT") which stated:

Indian citizens have the freedom to relocate from one area of India to another, with two exceptions: in the state of Jammu and Kashmir, Indian citizens from other states are not allowed to buy property, but can stay in any part of the state without seeking official permission. Indian citizens who are not residents of the particular area are required to obtain a permit to visit some border areas of Jammu

and Kashmir, and border areas in the north-eastern states of India The permits are valid for six months. Indian citizens who have been arrested and released on bail are required to report regularly to local police authorities. In these instances judicial permission is required to relocate to another part of the country (Department of Foreign Affairs and Trade 2003, DFAT Report 254 – India RRT Information Request IND16042, 13 October 2003).

FINDINGS AND REASONS

82. The applicant states he was born in India and was issued a passport by that country in his own name which he used to lawfully enter Australia on two occasions in 2008. On the undisputed material before it, the Tribunal finds he is an Indian citizen and his claim for refugee status is assessed on the basis India is his country of nationality.
83. The Tribunal did not find the applicant credible on a number of critical issues, and in particular his evidence differed between what was contained in the protection visa application and his evidence to the Tribunal. The Tribunal considered the various claims made by the applicant, which are discussed below.

Religion and World Youth Day attendance

84. The Tribunal accepts the applicant is a member of the Catholic faith and was a member of the Catholic congregation at the [deleted: s.431(2)] Church in Jalandahar for some time prior to his departure from India. In reaching this conclusion the Tribunal accepts his own evidence on this issue, and the letter dated [deleted: s.431(2)] 2008 supplied as part of his visitor's visa application. That letter was provided by the Parish Priest of that church in support of his application to attend WYD.
85. The Tribunal does not however accept the applicant has experienced past persecution because he is a Catholic or because he may have converted from the Hindu religion some years ago. It also does not accept his assertion that he would face a real chance of persecution for reason of his religion if he was to return to India now or in the reasonably foreseeable future. In reaching this conclusion the Tribunal notes the applicant was unable to identify any instances of religious motivated harm or adverse behaviour towards him in the past Whilst he raised in his evidence a possibility he may face harm because of his Catholic faith or conversion, there is no evidence before the Tribunal to support that claim. The Tribunal is therefore not satisfied there is a real chance he would face persecution now or in the foreseeable future if he returned to India because of his conversion to Catholicism or his Catholic faith. In reaching this conclusion the Tribunal also takes into account country information above (US Department of State 2008 "*International Religious Freedom Report 2008*) which suggests that whilst there have been instances of religious violence, "*the vast majority of persons of every religious group lived in peaceful coexistence*".
86. The Tribunal also rejects the claim by the applicant that he would face harm on return to India because he had travelled to attend a religious function in Australia (WYD) There is no material before the Tribunal to support that assertion, and the Tribunal again notes country information (the US Department of State "Religious Freedom Report" above) suggests that generally different religions live in peaceful co-existence. The Tribunal is therefore not satisfied the applicant faces a real chance of persecution if returned to India now or in the reasonably foreseeable future because of his attendance in Australia at WYD.

87. The Tribunal does not accept the claim of the applicant that he joined the WYD program through his local church due to fear of harm from political opponents or supporters of parties opposed to the Congress Party. The Tribunal also does not accept that his decision to attend WYD was in any way connected or associated with involvement in an incident claimed to have occurred in [village A] in [district 1] on either [dates deleted: s.431(2)] March 2008. His evidence to the Tribunal on these issues lacked credibility, and in particular was inconsistent with the material supplied in support of his visitor's visa which indicates his application for World Youth Day was commenced at least a month prior to the date in which he says he was assaulted in [district 1].
88. The Tribunal notes the Church letter of support predates that claimed incident, and suggests his decision to attend WYD was made prior to the date of that letter ([deleted: s.431(2)] 2008). The Tribunal also rejects his explanation he had simply asked his priest to give him a letter of support in case at some stage in the future he might decide to go to WYD. That explanation which was put at the hearing and in his written response to the Tribunal's invitation to comment is inconsistent with his initial verbal evidence at hearing that he had not been interested in attending WYD until after he claimed he had been assaulted in [village A].
89. The Tribunal also rejects his claim that the Church would write personalised letters of support such as that provided to him unless there was a clear intention expressed by a person to attend WYD. The material before the Tribunal leads it to conclude, and the Tribunal therefore finds, the applicant decided to attend WYD well prior to March 2008, and his decision to do so was unrelated to fear of harm in India. The Tribunal also specifically rejects the claim in the protection application that the applicant had difficulty obtaining a visa and had to "pay a bribe" to get a visa to come to Australia. In reaching this conclusion the Tribunal notes at the first hearing the applicant specifically denied any such difficulty or the payment of a bribe.
90. As a result the Tribunal finds the applicant does not have a well founded fear of persecution now or in the reasonably foreseeable future if returned to India, for reason of his religion or because of his attendance in Australia at WYD.

Caste or class

91. The applicant claimed to fear harm from persons (high people) because he is part of the backward class of society. The Tribunal accepts that class is an entrenched aspect of Indian society and there remains discrimination against persons who are considered to be members of the lower castes or classes. The Tribunal cannot discount the possibility that the applicant may have experienced some instances of past discrimination because of his class however it does not accept he has experienced persecution as a result of his membership of his class or caste. In particular it does not accept the claims contained in his written statement that he had been "maltreated" or "tortured a number of times". In reaching this conclusion the Tribunal notes there was no specific allegation of past harm as a result of his membership to the "backward class" and at hearing he did not identify any such past harm, despite being asked about that issue. In addition he gave evidence of having been educated and being able to work in a number of jobs leading to what he described as the "good" job in a finance company before he left the country in 2008. This does not suggest a pattern of past harm nor is there anything to suggest a real chance that he would face such harm if returned to India now or in the reasonably

foreseeable future because of his caste or class. As such the Tribunal is not satisfied he has a well founded fear of persecution because of his class or caste if returned to India now or in the reasonably foreseeable future.

Political opinion and claimed association with the Congress Party

92. The Tribunal accepts the applicant may have been a supporter of Congress Party candidates in his local area, and may also have been involved in recruiting and promotion activities for the Congress Party in that area in the past. In reaching this conclusion the Tribunal notes the applicant was able to provide specific information about elections in his home location and in particular about the Congress Party role in those elections. The Tribunal finds however the applicant was never a high profile member of that party or held any senior or leadership position. In reaching this conclusion the Tribunal has had regard to the nature of the involvement described by the applicant himself, which he described as being the same as what a lot of other party supporters were doing, such as collecting donations, distributing pamphlets, finding new members and doing some speeches. The Tribunal does not accept the assertion by the applicant in his written statement that around the 2002 state election period he was attacked and injured because of his involvement with the Congress Party. In reaching this conclusion the Tribunal notes his verbal evidence to the Tribunal that whilst he and other party members were confronted by opposition party workers, he and his party members ran away and he did not sustain any injury.
93. The Tribunal does not accept his claim that following the 2007 election he became the subject of adverse attention by members of other parties or experienced any harm as a result of his membership or past or ongoing support of the Congress Party. In reaching this conclusion the Tribunal notes his verbal evidence was that apart from the 2001 and 2002 period described above, there were no other instances identified in which he experienced harm prior to the alleged assault occurring in [village A] in March 2008
94. The Tribunal cannot dismiss the possibility that as a consequence of his support for the Congress Party the applicant may in the past have been subjected to some intimidation by opponents of the Congress party. This would be consistent with country information which suggests politics in the Punjab can be volatile, particularly around election times. The specific instances he referred to were said to have occurred around the 2001 and 2002 elections and on his own evidence to the Tribunal did not result in any actual harm. Whilst intimidation of the nature described by the applicant is undoubtedly distressing, the Tribunal does not accept it was of sufficient significance to amount to “serious harm” of the type contemplated by section 91R(1) to constitute persecution.
95. Between the 2001 and 2002 period and his claim to have sustained injuries during a beating in March 2008 at [village A], there were no other specific instances he was able to identify to suggest he was of any adverse interest to supporters of parties opposed to the Congress Party, despite his claimed ongoing involvement as a supporter during the 2007 election in his local area. By that stage however he states he was no longer a [position deleted: s.431(2)] of the party but simply an active Congress Party supporter. The Tribunal is therefore not satisfied the applicant faces a real chance of serious harm now or in the reasonably foreseeable future because of his association with the Congress Party. As such he does not have a well founded fear of persecution now or in the reasonably foreseeable future if returned to India for reason of his actual or imputed association with that party.

Political opinion and claimed association with the DSS

96. The Tribunal rejects the claim in the statement accompanying the protection application that the applicant was at any stage a member or supporter of the DSS sect. In reaching this conclusion the Tribunal accepts the direct and specific denial by the applicant on several occasions during the hearings that he was ever been a member of that sect or a supporter of it, and his statements that the contents of the protection visa application in this respect were incorrect. As such the Tribunal also rejects the specific claims contained in the protection visa application that he has been harmed or threatened by persons because of his membership or support of the DSS, or any perception he was a member or supporter of that sect.
97. At the hearings he said his sole claimed association with the DSS sect was his alleged attendance at a convention at [village A] in [district 1] on [deleted: s.431(2)] March 2008, where he says he was beaten. His evidence as to why he would attend such a meeting and what he said occurred to him at that location was unconvincing, and the Tribunal does not accept he was credible on this or the associated claims about being injured and subsequently hospitalised following that alleged incident. These aspects are discussed further below. The Tribunal does not accept the applicant travelled to that location in March 2008 as claimed. As this was the only instance the applicant raised as providing a link between himself and the DSS, the Tribunal is finds he was not in the past and will not in the future be perceived to be a supporter of the DSS. As a result the Tribunal is not satisfied the applicant faces a real chance of serious harm now or in the reasonably foreseeable future if he returned to India because of membership or association with the DSS or any perception he may be associated with that sect or be a member of that sect.
98. The only specific instance in which the applicant claims to have been personally harmed by rival political elements was during an attendance he claimed occurred on either [dates deleted: s.431(2)] March 2008 at a convention held by the DSS in [village A] [district 1]. As stated above the Tribunal does not accept the applicant was present at that location as claimed or that he sustained injuries as a result of such an incident.
99. This aspect, in conjunction with the medical statement provided, is critical to the applicant's claims. He states he travelled a considerable distance (3- 4 hours by road) to [village A] [district 1] simply to attend a convention with a sect leader who was a supporter of the Congress Party. That location would appear from country information to be a headquarters of the DSS sect, and is referred to in a number of news reports to which the Tribunal had access. Incidents of violence have occurred at that location, and such incidents which appear to be well reported in the Indian press (see the country information above). There were several reports of a clash between DSS supporters and Sikh organisations on [deleted: s.431(2)] March 2008, but none a few days earlier at the time claimed by the applicant to be the time he attended and was injured, and which resulted in him requiring hospitalisation. There is however no report or reference to an incident on either [dates deleted: s.431(2)] March 2008, and the Tribunal considers that given the detailed manner in which the incident on [deleted: s.431(2)] March 2008 was reported, it is highly likely if an earlier incident had occurred as claimed, there would be either a report of it or at least some reference to it in subsequent new reports, such as the reports of the [deleted: s.431(2)] March 2008 incident. The Tribunal therefore rejects the claim of the applicant that there was an incident at that location on the date or dates he claimed, or that he was present at that location when an incident occurred.

100. If the evidence of the applicant was simply that he had attended a conference in [village A] at a date around that time, it may have been more plausible to consider whether with the passage of time, he may have simply experienced a lapse of memory as to the precise date of the incident. This may have given rise to the possibility he was involved in the [deleted: s.431(2)] March 2008 incident which was well reported in the public press. His evidence however involved specific assertions that as a result of the incident on [dates deleted: s.431(2)] March 2008 he subsequently spent time in a hospital in [village B]. In support of this he relied on a letter from that hospital dated “[deleted: s.431(2)]March 2008” which states he was a patient between [dates deleted: s.431(2)] March 2008. Although that letter was dated [deleted: s.431(2)] March 2008, in his evidence to the Tribunal the applicant said it was actually written at the request of his wife some time after he left India in September 2008. That letter makes no reference to the nature or cause of the injuries described, but indicates he was purportedly a patient from [dates deleted: s.431(2)] March 2008. The treatment dates referred to in the certificate are inconsistent with the only reported incident in [village A], and leads the Tribunal to the conclusion the applicant was not involved in an incident in [village A] [district 1] as claimed, and that he did not sustain injury in an incident at [village A].
101. As such the Tribunal places little weight on the medical report in relation to the claims made in this review. Despite it appearing on its face to have been written the day he was purportedly discharged from treatment ([deleted: s.431(2)] March 2008), this is inconsistent with his own evidence at hearing that the letter was only requested by his wife after he left the country in September 2008. More importantly it purports to relate to treatment the applicant says he received following injuries in an incident at [village A] on [deleted: s.431(2)] March 2008. Given that the Tribunal has rejected his claim to have been present at that location or to have sustained injury in that location on either of those dates, it follows that it does not accept the letter as evidence that supports his claim to have received treatment between [deleted: s.431(2)] March 2009 as a result of an injury in [village A].
102. The Tribunal therefore finds the applicant has not in the past experienced serious harm of the type sufficient to amount to persecution because of his association with the Congress Party, or because of any perception that he was or may have been associated with the DSS. Given its rejection of his claim to have been present at a DSS meeting in [village A] in March 2008, the Tribunal also finds he would not be perceived to be a supporter or follower of the DSS. It therefore finds he does not face a real chance of persecution now or in the reasonably foreseeable future if returned to India for those reasons. As such it is not satisfied he has a well founded fear of persecution now or in the reasonably foreseeable future for reason of his actual or imputed political opinion.
103. The Tribunal does not accept the claim by the applicant that his decision to travel to Australia in either July 2008 or September 2008 was in any way related to fear of harm in India for reasons of his actual or imputed political opinion, his race, religion or membership of any particular social group. The Tribunal does not accept he was a credible witness in respect to the circumstances relating to his decision to leave India and come to Australia on either of those occasions. If the applicant had, as he claimed, been influenced to leave the country in July 2008 because of fear of harm in India for any reason, the Tribunal does not accept as plausible his assertion that he would simply return to his home location some 14 days later.

104. In this respect the Tribunal also rejects his claim that he thought things would have settled down within that very short period of time. The Tribunal also finds the fact the protection visa application form only refers to the first date of arrival ([deleted: s.431(2)] July 2008) in Australia and not his more recent ([deleted: s.431(2)] September 2008) arrival supports the Tribunal's finding above that his motivation in seeking a protection visa was unrelated to fear of persecution in India or to events which he claims occurred in that country after his return there in July 2008.
105. The Tribunal does not accept that in August 2008 after his return from Australia there was an incident in which persons came to the applicant's home and sought to attack him, resulting in his decision to leave his home area and stay with relatives in other parts of India. It also does not accept he was in hiding in the period after his return from Australia from political opponents or other persons seeking to harm him. The Tribunal does not accept his claims on these matters were credible and on some aspects the claims were simply inconsistent with his own evidence.
106. His protection visa application contains the assertion that after the August 2008 incident was said to have occurred, he stayed with an uncle in Delhi, before being told by that uncle to use his visa to return to Australia to save himself. In his evidence to the Tribunal he claimed he in fact stayed with a number of other relatives in different locations, including relatives only [deleted: s.431(2)] Kilometres from his home area. His evidence to the Tribunal was that it was his wife who told him to return to Australia to protect himself, not the uncle as described in the protection application. The Tribunal does not accept as credible the proposition that if he had fled his home area as claimed and gone to Delhi, he would in effect return after only a few days to an area far closer to his home area if he genuinely believed there was any real risk to him at all. The Tribunal also finds his failure to previously mention any detail of his stays with other relatives is important, and strengthens its conclusion that the applicant was not in hiding prior to returning to Australia in September 2008. In light of its findings on the aspects set out above, the Tribunal places no weight on the assertions contained in the letter provided by the applicant and said to be from his wife.
107. In reaching these findings the Tribunal has considered each of the claims made by the applicant individually and has also considered those claims cumulatively. The Tribunal is not satisfied the applicant faces a real chance of persecution now or in the reasonably foreseeable future for reasons of his religion, political opinion or membership of a particular social group or any other Convention reason.

CONCLUSION

108. 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) for a protection visa.

DECISION

109. 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's I.D. prrt44