

0900297 [2009] RRTA 383 (5 May 2009)

DECISION RECORD

RRT CASE NUMBER:	0900297
COUNTRY OF REFERENCE:	India
TRIBUNAL MEMBER:	Pauline Pope
DATE:	5 May 2009
PLACE OF DECISION:	Sydney
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, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
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 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. 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.
7. 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).
8. 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'

9. 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.

10. 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.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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

19. The Tribunal has before it the Department's file relating to the applicant. It has the application and documentation relating to the Subclass 456 Short Stay Business visa. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal on [date] to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Malayalam (Indian) and English languages.

Application for Protection visa

21. According to the application for the protection visa the applicant is a [age] year old man. He is single. He says that he speaks, reads and writes Malayalam and Tamil and reads and writes English. He completed several years of education in [year] and from [year] until [year] he worked as a [Occupation A] in a [Business type A]. From [year] until [year] he says that he lived in [Town A], [State A]. From [month, year] until [month, year] he states that he lived in [City A].
22. The applicant has outlined his claims in a separate statement in which he states that he has followed his father's political affiliations. He says that he was born in [State B] and moved to [State A] when he was [number] years old. His father, he writes was in [Profession A] and supporter of the [Party A] He was never involved in violence but the [State B] police arrested him on two occasions and interrogated him brutally.
23. During the last State elections in the applicant and his father opposed the local [Party B] leader whom he says was corrupt. After the election he says that they were attacked at the work place and were warned to leave [State A]. They reported the matter to the local police but they took no action. [Party B] members came to the house and beat them badly. They could not stay in that place any more and they had no money to rent another place. They moved back to [State B] in early [year].
24. As soon as they moved local police came to the house and took them for interrogation. He says that he was tortured during the interrogation and he was asked the same question again and again. He says that finally they were released without condition.
25. The applicant states that he left India because he fears that, as a perceived sympathiser or a person with a link to [Party A], through his father he will be at risk of detention, interrogation and torture if there is any problem concerning any alleged attack by groups linked with [Party A] in India.

Hearing before the Tribunal

26. At the outset the Tribunal examined the applicant's passport which he had brought with him to the hearing. The passport was issued in [City A] on [date]. The passport indicates that the applicant's address at that time was [Address A, Village A, City A] in [State B]. The Tribunal asked whether this was the first passport that he had obtained. He said that it is the first passport and he obtained the passport because he wanted to go somewhere. The Tribunal heard that the applicant was born in [City B, State B] on [date]. He said that he speaks, reads and writes Malayalam and Tamil. He said that he learned English from Years 5 to 10 Standard at school and he reads and writes English but at a school level only.
27. The Tribunal asked the applicant whether his parents were living. He said that his father is still alive and was living in India when the applicant left India to come to Australia. However his father is now in [Country A]. The Tribunal asked when his father went to [Country A]. The applicant said he does not know. He only came to know of this through a friend and has not been in touch with his father. He told the Tribunal that he was last in touch with his father just before he came to Australia. At that time his father was living in [State B]. The applicant told the Tribunal that he has no siblings and his mother died when he was very young. He said that his father raised him. He told the Tribunal that he has no surviving grandparents. He said that he understands that he has aunts and uncles on his father's side but he does not know any details of them. He said that his father told him that he had brothers and sisters but the applicant has not met them. He said that his mother had had one sister and he met her once. At that time she lived in [State A].
28. The Tribunal asked the applicant about his education. He said that he attended school to Year [number]. The Tribunal asked where he attended school. All of his education, he said, was undertaken in [City A] and he completed his schooling in [year]. He told the Tribunal that having completed his education he looked for a job for some time. However he said by that time his father was no longer in [State B] and had moved to [State A]. He said that that was in [year] about the time when the applicant's exams started. The Tribunal asked the applicant whether he found a job in [State B]. He said that problems had already begun there so he followed his father to [State A]. The Tribunal ascertained that the applicant lived in [State B] the entire period from his birth until he finished school.
29. The Tribunal asked the applicant about his father. It heard that his father was also born in [City B]. He told the Tribunal that his father left [State B] because the police often came to their house and questioned the applicant's father and sometimes the applicant was also questioned. The Tribunal asked when that happened. He said it began when he was still a student. He said also if they met him on the street they would always stop him and ask him questions mainly about his father. The Tribunal asked the applicant whether his father was working in [State B] at that time. He replied that his father was in [Profession A]. The Tribunal asked the applicant what the police questioned his father about. The applicant said he did not know. He said that the police asked him where his father went when he was out of the house. They also asked the applicant whether other persons were coming to the home. The Tribunal asked him when that began. He said it was in about the [number] year of his standard schooling. The Tribunal asked if he could say when that was. He replied it was around [year]. The Tribunal asked how often the police came to the house. He responded that it was not predictable. The Tribunal asked for some idea of the frequency of these visits. The applicant said it was probably about three times a month.

30. The Tribunal asked the applicant what the police asked of his father of these visits. He said that he does not know. The Tribunal asked whether his father was ever taken away from the home for questioning. He said he was taken on two occasions. The Tribunal asked him when that happened. He replied it was when he had finished Year [number] The Tribunal further heard that the two episodes took place in the one year. The Tribunal asked where his father was taken. The applicant explained that the police came in a jeep and he was taken to the police station. The Tribunal asked to which police station he was taken. The applicant answered that there are two or three and he does not know exactly which station his father was taken to.
31. The Tribunal asked the applicant whether he had asked his father about these events. He said that when he was released his father remained at home in the company of his lawyer and some other friends and he just told the applicant not to say a lot to the police when or if they asked questions. The applicant told the Tribunal that he knew that his father was discussing matters with friends. The Tribunal asked him what they discussed. He said he does not know. The Tribunal asked who those persons were. He said that he only saw them and could not say anything more about them. The Tribunal asked what he knew about these associates of his father's. He said that he only knows that they did not have jobs; he meant that they were unemployed.
32. The Tribunal asked the applicant whether his father was a member of any political parties. He said he was not a member but he was a supporter of [Party A]. The Tribunal asked when his father first became a supporter of [Party A]. The applicant said he does not know. He says that he knew from others outside that those people who came to their house were also from that group. The applicant told the Tribunal that sometimes his father used to discuss these matters if they were alone at home. The Tribunal asked the applicant what his father said. He said that he just warned him that his friends might come and that he should not let it be known that they were there if the police came.
33. The Tribunal asked the applicant if he could recall what his father and those friends talked about. He said he was a student at the time. He said that they closed the door. The Tribunal asked him if he is saying he does not know. He said that is correct. He added that sometimes he would serve them coffee or water and that was the extent of it.
34. The Tribunal asked the applicant why his father left [State B]. He said that after he was taken on two occasions to the police station he decided to leave [State B] The Tribunal asked him whether his father was arrested. The applicant said he does not know. The Tribunal then asked him how long his father was held on those two occasions. He replied that it was two or three days. The Tribunal asked the applicant if he ever asked his father what happened at that time. He replied that his father would not say much. The Tribunal then pressed the applicant for further details, asking whether his father ever said why they took him in for questioning. He said he asked this but his father did not say. The Tribunal recalled that the applicant had said that his father left [State B] and at the time he was still at school. He said that is correct. For a short time he was left alone in [State B].
35. The Tribunal asked the applicant where they lived in State B He said that he and his father lived in a very small place which belonged to someone else. The Tribunal asked him how long he was alone in State B before he joined his father in State A He said it was around eight months. The Tribunal then asked him whether the police came to their place in that time. He said that they did. The Tribunal asked how many times they came. He replied that the police used to come and go. The Tribunal asked exactly what the police asked of him on

these visits. He said that they would just ask where his father was. They would make threats to him that if he did not say then they would take him as well. He told the police he did not know where his father was. He simply said that his father had gone and had not called him. He said that after this the police would usually just drive away.

36. The Tribunal asked the applicant whether the police ever gave any indication of why they were looking for his father. He said that if he gave these police money they would go away but they told him that when his father returned he should tell him to report to the station.
37. The Tribunal asked the applicant what his father did in [State A]. He said that in the beginning he lived with a friend; later he worked in a [Business type A]. The applicant told the Tribunal that he joined his father in [State A] in [year] and subsequently worked at the same place. He said his father was a supervisor in a [Business type A]. He told the Tribunal that he lived together with his father in [Town A]. They remained there until after the state elections in [State A] in [year]. After that he said they returned to [State B]. The Tribunal asked where they lived when they returned to [State B]. He said that they returned to the same house in [City A]. The Tribunal asked how the house came to be available. He said it was deserted and it is always vacant. That house, he said, is at [Address A, Village A, City A].
38. The Tribunal asked whether his father worked after they returned to [State B]. He said he did not. The Tribunal asked whether the applicant worked in [State B]. He said that he did not work either. The Tribunal asked how they both lived. He said that his father supported him. He could not tell the Tribunal where his father obtained money for their support. The Tribunal asked him whether he looked for a job in [City A]. He said he looked sometimes but spent a lot of time out with his friends. He said that he found some casual jobs in [Job A] and helping with labouring work. The Tribunal asked him how seriously he looked for work. He said that he has not studied much and so he could not find a suitable job.
39. The Tribunal asked the applicant how the situation was for his father when he returned to [State B] after [year]. He told the Tribunal that his father still met with those former friends. He said he would go off for a couple of days. The applicant had no idea where he went. The Tribunal asked whether the police still came to the house looking for him and he said that they did. He said that whenever they saw the applicant on the street they would also ask him about his father. The Tribunal asked how often the police came to the house. He said sometimes they came during the day; sometimes at night. He then told the Tribunal that he used to pay the police money when they spoke to him as he was doing his labouring work. The Tribunal asked why he paid this money. He said usually it was because the truck was parked illegally. The Tribunal asked him then how often the police came to the house looking for his father. He had not been specific on this matter in the Tribunal's earlier questions. The Tribunal asked, for example, whether they came as regularly as once a week. He said that they did. The Tribunal asked what they did if they found his father at home. The Tribunal said it could not understand why the police continued to come if they had no actual evidence against his father. He said it is possible that they came there looking for his father's friends. On one occasion the police hit him. He said they even struck him if he did not answer their questions. He told the Tribunal he does not know his father's background. He saw the friends coming and going but he said that his father did not tell him about these friends even if he asked him.

40. The Tribunal asked the applicant whether he thinks that his father was involved in any unlawful activity. He said as far as he knew, he did not do anything unlawful but friends told him that his father's associates were bad people and the applicant should not join them.
41. The Tribunal said it wished to discuss the Statutory Declaration which the applicant made in support of his application for a protection visa. He said that he told his story in his own language and a person known to him assisted by translating it into English. The Tribunal read parts of the statement and questioned the applicant about the contents. The Tribunal said it read that they moved from [State A] back to [State B] in early [year]. He was asked whether he could recall when, in [year], they moved. He said it was early [year], possibly in [month]. The Tribunal said that it also read in the statement that his father had a friend who had a friend in [State A] and that friend was a leader of [Party G]. The Tribunal asked about that friend. The applicant identified that friend as [Person A]. He said that he was a leader of [Party G] in [Town A]. The Tribunal said that it also read that his father became a union leader when he was working in the [Business type A] in [State A]. The applicant said that he later joined his father. The Tribunal asked the applicant about the union. He said that it was the [Union A]. The Tribunal asked him what those letters stand for. He said that he does not know. The Tribunal asked the applicant what his father's role as a union leader was. He said he became a leader of the union and already occupied that role when the applicant joined him. The Tribunal read in his statement that during the last state legislative election in [State A], he and his father opposed the local [Party B] leader whom he said was corrupt. The Tribunal asked about that person. He identified that person as [Person B], the candidate who stood in the constituency of [Town A].
42. The Tribunal asked the applicant whether he supported any political party. He said he did not. He said that he and his father did not support any party, but they joined with his father's friend [Person A] in opposing [Person B]. The Tribunal heard that [Person A] was not himself a candidate. The Tribunal asked how many candidates stood in the constituency of [Town A]. The applicant said that he thought that there were four. [Person B] was the successful candidate. The Tribunal asked who held that seat before [Person B]. He said as far as he knows, it was previously held by [Party C]. The Tribunal asked the applicant what he could tell it about the candidate [Person B]. He said he does not know much about her. He said that he just put up notices against her. The Tribunal asked about those notices. He said that mainly they put them up at night. The Tribunal asked what those notices said. He said that they were general; they said things like she is not the right one to elect. The Tribunal asked why he thought that. He replied that she had stood for office once before and she accepted bribes. The Tribunal asked the applicant how he knows that. He replied that is what his father's friend, [Person A], said. The Tribunal asked whether there had been any proof of that. He said that there was no proof; there were just newspaper reports about it. The Tribunal asked the applicant who the other candidates were in that election. He said he believes for [Party F] the candidate's name was [Person C]; for [Party D] it was [Person D]. He said that there was another party, it could have been [Party E] or something and that candidate was a person called [Person E]. The Tribunal heard that the applicant, together with his father and his father's friend, [Person A] all used to go out to put up the notices. The Tribunal asked where they obtained these from. He said that his father and [Person A] got them. He thinks that they had them printed. The Tribunal asked the applicant specifically what the posters said. He said they said things like *do not vote for [Person B]*. The Tribunal asked him when they started putting those posters up. He said it was before the election. The Tribunal asked when it was. He said it was around {month, year}. The Tribunal asked him when the election was held. He said he thinks it was [month] or [month]. He said he did not

know when. He then said he thinks it was in [month]. The Tribunal asked if he knew what date in [month]. He said he does not know the date. The Tribunal asked what the result of that election was. He said that [Person B] won the seat. The Tribunal asked what percentage of the vote [Person B] got. He said he does not know. The Tribunal asked who the runner was up. He said he thinks it was the [Party F] candidate. The Tribunal asked the applicant whom he wanted to win that election. He said he did not support anyone; he merely did not want [Person B] to win.

43. The Tribunal asked more about the posters against [Person B]. He said his father and [Person A] did it. He said he does know; he only helped them. The Tribunal asked him what he knows about [Person B's] policies. He said he does not know anything. He added that only his father knows.
44. The Tribunal said that it read in his written statement that after the elections they were attacked at the workplace and they were warned to leave [State A]. The Tribunal asked when that happened. The applicant replied that this was as soon as the result of the election was known, probably around [month]. The Tribunal asked who attacked him. He said he does not know who they were but he saw them. He said that he knew that they used to go out to support [Person B]. The Tribunal asked him where and when these attacks took place. He said that he was hit when he was at home. He said that the people also came to the [Business type A] but they were not able to do any harm to him there because his father was a union leader.
45. The Tribunal asked whether these people came against all of them, meaning against [Person A], the applicant and his father. He said it usually happened when they were at their house and all of them were together. The Tribunal asked how often these people came after them to their house. He said that they came once to the house. He said that they warned his father that they did not want to see him in [State A]. The Tribunal asked why [Person B's] supporters would act in this way, particularly when she had been successful in the election. He could not offer any explanation. The Tribunal asked how many people were involved. He said that there were around [number] of them. He did not know any of them by name but said he had seen them before. The Tribunal asked the applicant when he and his father returned to [State B]. He said it was in early [year]. The Tribunal put to him that it seems then that they remained in [State A] for some [number] months after the election outcome. The Tribunal asked why they left [State A] at that particular time and not earlier. He said it was his father's decision. The Tribunal asked why his father made that decision. He said it was because he had problems when he went out. He told the Tribunal that his father had more problems than the applicant himself did.
46. The Tribunal asked the applicant whether they returned to the same place to live when they went back to live in [State B]. The Tribunal heard that his father did not have a job and the applicant, although he looked for work, only found casual jobs. The Tribunal asked whether the police came back to the house again. He said that they came on a weekly basis. The Tribunal asked the applicant why the police continued to come. He replied that that they said that they had seen his father at some place or another. They asked why he was there. The Tribunal asked why he believed that the police would come back so frequently and yet ask only very general questions of his father. The Tribunal put to the applicant that it seems that the police had no actual evidence against his father. He said they asked where the applicant was, what his movements had been and he said that if there were any problems like a bomb blast, they would ask him if he was involved. He said that if anything bad happened they

always thought of him and his father. Mainly their interest was in his father but their actions affected him as well.

47. The Tribunal said again that it was trying to understand why the police had this intense and ongoing interest in his father, particularly when it seems they had no evidence against him. The applicant said he does not know. He told the Tribunal that sometimes his father went away for two or three days and then he would come back. The applicant did not know where he had been. The Tribunal asked him if he believed that it is possible that his father was involved in activities which were of interest to the police. The applicant said he does not know. He said his father never told him anything about that.
48. The Tribunal asked the applicant when he made the decision that he would leave India. He told the Tribunal that he was not happy. The police used to come every once in a while; his father would not come home for two or three days. Again the Tribunal asked him when he made the decision to leave India. He said he does not know. Friends told him that he should leave. The Tribunal asked the applicant how he made a plan to come to Australia. He said it had not been his intention to come to Australia specifically. He said that he gave money to an agent in order for the agent to make arrangements for him to travel away from India. The Tribunal asked the applicant how much money he paid this agent. He replied that first he paid him money for the passport and more money was due to be paid. He told the Tribunal that he paid the agent [amount] rupees. For that amount he got the passport and some papers. He said that he understands that his father later went and talked to that agent. The Tribunal asked when that was. He said the agent simply told him that his father had been to see him. The Tribunal asked how much money his father paid. The applicant said he has no idea. The Tribunal asked the applicant who that agent was. He said it was a place which he called [Place A] in [City A]. He said friends told him about that agent. Again he said he gave that agent money and the agent arranged the visa. He said the agent also travelled to the airport to see him off. The Tribunal asked the applicant how the agent secured the visa. He replied he has no idea. The Tribunal asked whether the information provided to the Australian authorities was truthful and correct. The applicant then explained that he gave the agent a photograph and the money. The Tribunal asked him what else he provided to that agent. He told the Tribunal that he did not sign any form; the agent did everything.
49. The Tribunal asked the applicant when he first located that agent to discuss his plans. He said he does not know. He then said it was around [year]. The Tribunal asked whether that same agent assisted him to obtain the passport. He said that he did. The Tribunal said that according to the passport, it was issued in [month, year]. The Tribunal speculated that it must have been in [year] that the agent first began to help him. The applicant said that everything took a long time. He said that the agent had the passport. They told him they were trying to obtain visas for [Country B, Country C] or any other country. He said whenever he went to that area he used to go to see them. The Tribunal asked the applicant how much his father paid to the agent. He replied that he does not know. The Tribunal asked who paid for his air ticket. He said that they gave him the air ticket. The Tribunal asked the applicant whether he asked his father how much he paid. He said he did not. The Tribunal asked when his father made a payment. He said the agent told him that his father came and saw him. The Tribunal asked whether his father knew of his plans to leave India. He said that he did. The Tribunal asked him whether he knew that his father also intended to leave India. He said he did not. The Tribunal asked the applicant what his father is currently doing in [Country A]. The applicant said he has no idea. The Tribunal then asked the applicant where he was living from late [year] when he got the passport until [month, year] when he left for Australia. He

said that he stayed at their address in [Address A in City A]. The Tribunal asked the applicant whether his father was still living there when they returned to [State B] from [State A]. He said that he was there but he went away for days at a time. Again the Tribunal asked the applicant whether he questioned his father about his absences. He said his father said that he away with friends.

50. The Tribunal asked the applicant why he used the services of an agent to secure a visa. He said that friends told him he should use an agent. He said that they advised him that because he had had problems with the police it could be hard for him to get a passport. The Tribunal put to him that he had not been charged with any offence, he had no convictions. The tribunal asked why he might have difficulties in obtaining a passport. The applicant did not offer an explanation.
51. The Tribunal asked the applicant what he fears if he goes back to India. He said he fears the same things will begin again. He fears he will be beaten. He said if he goes back to [City A] it will be to the same place. The Tribunal asked whether his father has now left [City A] for [Country A]. He said that is correct. The Tribunal put to him that there is therefore no reason why the police would continue to have any interest in the applicant. He replied that if he goes back to [State B] his father will hear of it. He will then come back from [Country A] The Tribunal put to the applicant that he can live somewhere else away from his father. The applicant replied that that is a bit hard to live away from his own father. He said he is not sure whether something will happen to him or not. He said the police might come again and torture him and he is afraid.
52. The Tribunal asked the applicant why the police would come looking for him now. He said that they will come because of his father. Again he said if he goes back to [State B] his father will return; if his father returns to India it is likely that he will be questioned again by the police because of his recent absence in [Country A]. The Tribunal put to the applicant that he is now an adult and has lived apart from his father for some time. He may consider living separately from his father if that is what he needs to do for his peace and safety.
53. The Tribunal asked the applicant whether he believes that it is acceptable and appropriate to give false information to the Australian authorities. He said that he has not given false information. The Tribunal asked him to explain how he obtained the visa. Again he said that the agent did it for him. The Tribunal then showed the applicant the application for the [type] Visa and the photo on that application. It asked the applicant whether the photo is of him. He said that it is. The Tribunal asked him when he dressed in a suit to have that photo taken. He told the Tribunal that he did not wear a suit at any time. He added that when he had the photo taken he was wearing a t-shirt. It was only when the photo came back to him some time later that it had been enhanced to show him wearing a suit. The Tribunal asked why that was done. He explained that this is common practice; passport photos do not depict people wearing t-shirts.
54. The Tribunal then discussed with the applicant other particulars and information provided in the application for the visa. The Tribunal explained to the applicant that his occupation has been described as [Position A] and the purpose of the visit has been stated that he was coming to Australia for discussions with the [University A]. The applicant replied that he knows nothing of this information and this was all done by the agent whom he engaged.
55. The Tribunal asked the applicant why, if he fears harm in [City A], he does not relocate elsewhere in India. He said that if he goes back to India there are problems because of the

past. He added that it is also hard to live in an unknown place. The Tribunal put to him that nevertheless Australia, to which he travelled, is also an unknown place to him. The Tribunal asked the applicant why, in the circumstances which he has claimed, he does not move away from his father in [City A], given that, according to his evidence, his father has been the source of the applicant's particular problems. The applicant replied that even if he stays elsewhere in [State B] it is difficult to live in a place where he does not have his friends. He said it is hard to live in [Area A] of India because of the language and because he would have no-one to help him. The Tribunal put to him that it is possible that he could escape the harm which he claims to fear because of his father, even if he moves elsewhere in the same city and away from his father. The applicant's response was that if he goes back to India he cannot live away from his father because this is after all, his father. The Tribunal put to the applicant that if it means avoiding the harm which he claims to fear, it may be reasonable for him to relocate away from his father's residence. The applicant replied that even if he moves away from his father, he cannot tell his father not to visit him. The Tribunal asked the applicant if it would be possible for him to relocate safely to State A. He said that because of the problems after the elections he left that place. He speculated that it may be possible to live in State A for a short time but as soon as the election is approaching there would be problems. He said some people have already been killed in State A in disturbances related to the elections. The Tribunal asked the applicant when the elections would take place in [State A]. He said he does not know but he believes that the time is fast approaching. In summary, the Tribunal put to the applicant that it may consider that it would be reasonable to find that the applicant can avoid the harassment that he claims to fear by relocating away from his father, either elsewhere in [City A] or elsewhere in the district or the country.

56. The Tribunal asked the applicant why, if he feared harm in [City A] for any reason, he returned to [City A] and indeed he returned to the same address when he returned to [State B] from [State A] in early [year]. The Tribunal reminded the applicant that according to his evidence he had remained at the address in [City A] from the time of his return up until the time he obtained his passport in [month, year] and indeed until the time that he eventually left India in [month, year]. The Tribunal put to the application that this might suggest that he was not facing serious harm in [City A]. The applicant said that sometimes he stayed with friends and much of that time his father was not there. He said that he himself was not at that address all the time. The Tribunal put to the applicant that he had not stated this earlier when the Tribunal asked him about his addresses in India. The applicant then told the Tribunal that the problem is from the police, no-one else. He said that the police come when his father is there. The Tribunal asked the applicant whether the police fail to come when his father is not at home. He said that the police do not come so often if his father is not there. Sometimes they stop him if they see him on the street and they ask him about his father. The applicant then told the Tribunal that police who are known to them are not really a problem; it is the unknown ones who cause the problem. The Tribunal asked the applicant what he means by this. He explained that some police they used to see every day but the other new ones were a problem. He said that those unknown police do not know about them. The Tribunal asked the applicant what he meant by this. He said those that know the applicant and his father just ask questions and go again but the new ones who are not known to them use the lathi.
57. Again the Tribunal asked the applicant why, if he was suffering harassment at the hands of the police because of his father's activities, he did not move away from his father. The applicant replied that he can only follow his father. The Tribunal put to him that in the end he did actually leave his father to come to Australia and that is not so different had he moved elsewhere in [City A] or indeed elsewhere in India. The applicant said that his father told

him that he must leave India. The Tribunal asked why his father did not seek to leave India in the same way as the applicant. The applicant replied that he cannot speak on behalf of his father. However he said his father has also now left. The Tribunal asked the applicant why he did not go to [Country A] as his father did. He said this is because the agent arranged for him to travel to Australia. The Tribunal asked the applicant what his instructions to the agent had been. He said he merely told the agent that he had to leave the place because he was fed up and the agent did the rest.

58. The Tribunal put the applicant that it had listened to the tape of his interview with the delegate. The Tribunal said that it had heard the applicant tell the delegate that he did not have working rights in [State A]. The applicant explained that he did not state that he had no working rights in [State A]. He told the Tribunal that he had said that he did not have actual voting rights in [State A]. He told the Tribunal he worked as a [Occupation A] in [State A] for some years.
59. The Tribunal asked the applicant whether his father ever approached the police and sought protection when they were experiencing problems in State A. The Tribunal said that it had heard his evidence to the delegate on this matter. He said that his father told him he went to the police twice because of this problem. As far as the applicant knows, no action was taken. The Tribunal asked why he believed that no action was taken. He replied it was on account of the power of the ruling party. The Tribunal asked the applicant whether he is saying that the police will not assist citizens if those citizens hold a different political view. He replied that he did not have the right to vote in [State A] because he had not enrolled. The Tribunal suggested that this was not a denial of a right, but rather due to a failure on his part to complete the appropriate enrolment in State A].
60. The Tribunal put to the applicant that it had heard in the interview with the delegate, the delegate asked the applicant what would happen to him if he went back to India. In his response he had told the delegate that when the problems with his father cease, he wants to go back to India. The applicant replied that when his father comes back the problems will start again. The Tribunal asked the applicant why his father went to [Country A]. He said he has no idea. The Tribunal asked the applicant when he heard that his father had gone to [Country A]. He said he heard that news about three weeks ago. He did not know that at the time he was interviewed by the delegate. He said that he understands that his father was still at the [City A] address at that time. The Tribunal asked the applicant how he learned the news about his father. He explained that he heard it through friends with whom he used to work. He said that he used to phone them from time to time and it was through them that he heard that his father had gone to [Country A]. In spite of continued questioning on this aspect, the Tribunal was unable to ascertain definitively how these friends came to know that the applicant's father had left India and left specifically for [Country A]. The Tribunal understood that the friends to whom the applicant referred were friends that he met when he was doing packing and unpacking work on the roads. The Tribunal asked how they knew that his father had gone. His response was that they work on the road not far from that place. The Tribunal asked how they know that he has gone to [Country A]. The applicant's response is that they are not even 100% sure that he is in [Country A] but as far as they know he is in [Country A].
61. The Tribunal put the applicant once again that it may come to the view that he has exaggerated what happened to him in [City A]. The Tribunal put to him that the fact that he returned to [City A], to the same house, and that he remained there with his father, may lead the Tribunal to believe that his account of his experiences has been exaggerated. He told the

Tribunal that he left the country and this was because of his problems. The Tribunal noted however that he then remained in [City A] for many months. He did not leave his father's house and he did not leave his father. The Tribunal put to him that it seems that the police had no actual evidence against his father because they did not take the matter further. The applicant responded his father was not always there. The Tribunal put to the applicant that it seems that there was not evidence of any kind against the applicant himself. Furthermore, the Tribunal speculated that the fact that he was able to obtain a passport and leave India without any apparent difficulties further suggests that he was of no interest to the authorities. The applicant told the Tribunal that he did not go to the passport office personally. He handed the matter to the agent. The Tribunal put to him that nevertheless the passport was issued to him, in his own identity, and through the normal channels. The applicant told the Tribunal that everything that he has said in his evidence is truthful.

62. The Tribunal asked about the applicant's father. He told the Tribunal his father's name is [Name A]. The applicant informed the Tribunal that he has no contact details for his father in India or in [Country A]. He merely said that if and when he returns, friends will tell him. The Tribunal heard from the applicant that he had no contact with his father from the time that the applicant left India.
63. Finally, the Tribunal put to the applicant once again that if he fears harassment in [City A] because of his father and police suspicions of his father, it is open to him to relocate away from his father's place, be that elsewhere in [City A], elsewhere in [State B], or indeed elsewhere in India. The Tribunal noted that the applicant is a young man, he has work experience gained over many years' work in [State A] and in the circumstances it may be reasonable for him to relocate. The Tribunal is mindful that the applicant has no other relatives apart from his father. The applicant replied that if there were no problems for him in India he would be ready to go back.

FINDINGS AND REASONS

64. On the basis of the passport issued to him on [date] the Tribunal accepts that the applicant is an Indian national.
65. The applicant claims that he was harassed in [City A, State B] by the police who appear to have had a close interest in his father whom it seems they suspected of an involvement with [Party A]. He says that the police came to their home on a regular basis checking on his father and asking questions about his father's activities and his associates. During these visits and questioning the applicant says that the police also physically harassed him.
66. The applicant also claims that he lived with his father in [State A] from [year] until [year]. He says that he worked in a [Business type A] and his father was a union leader in that workplace. He claims that before the elections in [State A] in [month, year] he helped his father and an associate (by the name of [Person A]) who was a member of [Party G] to put up posters opposing [Person B] who was eventually the successful candidate ([Party B]) in the election. After the election he says that they were attacked at their workplace and warned to leave [State A]. The applicant and his father left [State A] and returned to [State B]. The applicant initially told the Tribunal that they left [State A] as soon as the election results became known in about [month, year]. Later he said that they left [State A] and returned to [State B] early in [year].

67. In [State B] the applicant says that his father was harassed and frequently questioned by the police. It seems that they suspected that he had links with the [Party A]. In their pursuit of his father the police frequently questioned the applicant about his father's associates and activities. He says that on one occasion the police took the applicant and his father for questioning. He says that he was mistreated by the police. He says that they were both released without condition.
68. The applicant fears that if he returns to [State B] he will continue to face questioning by the police in relation to his father's whereabouts and his activities. He says it is likely to be worse given that his father has gone to [Country A]. The Tribunal put to the applicant that if his father is no longer in [State B] there will be no reason why the police will continue to harass him about his father. He replied that once his father comes to learn that he is back in [State B] he will return there from [Country A].
69. The Tribunal accepts that the applicant assisted his father with low level political campaigning during state elections in [State A] in [year]. The Tribunal accepts that there was a backlash after the elections and the applicant's father was threatened by members of [Party B]. The Tribunal does not accept that the threats were serious or taken seriously by the applicant's father at the time for the reason that he did not leave [State A] immediately but rather remained there for some months after the elections only leaving [State A] in early [year].
70. The Tribunal accepts that the applicant's father was a person of some interest to the police locally in the area of [City A] where he lived with the applicant. The applicant was unable to tell the Tribunal anything of his father's activities or of his associates. However, he said that his father was frequently absent from home for several days at a time. He did not explain these absences to the applicant and when the applicant asked questions his father was not forthcoming with responses. The Tribunal accepts that his father's activities drew the attention of the local police.
71. The Tribunal accepts that the police frequently asked the applicant about his father's whereabouts. It accepts that they came to the house and they also questioned him if they encountered him on the street. The Tribunal is satisfied that the applicant did not know anything about his father's activities and associates. Further, it is satisfied that the police were also aware of this. Whilst the Tribunal accepts that the police questioned the applicant about his father and whilst it accepts that he was taken to the station once for questioning with his father the Tribunal finds that the police have no interest in the applicant. At the present time his father is in [Country A]. The applicant does not know when he went but he said that he has heard of this through friends. He has not had any contact with his father since he himself came to Australia in [month, year]. In view of this the Tribunal finds that the applicant will not be questioned or harassed by the police on account of his father if he returns to [State B] in the reasonably foreseeable future.
72. The applicant told the Tribunal that if he returns to India his father will come to know of it and will go back there himself. The Tribunal cannot accept that this is inevitable. Rather, the Tribunal considers it likely that his father has gone to [Country A] to escape the intense interest of the police in [City A]. In such circumstances the Tribunal questions that he will return to India as the applicant claims he will do.
73. In the event that his father returns to [State B] the Tribunal accepts that the police will continue to monitor him. As part of their inquiries it is inevitable that the police will continue

to question the applicant about his knowledge of his father's activities and associations. The Tribunal finds that such questioning relates to attempts by the police to apply laws of general application in the maintenance of national security. It does not relate to the applicant's political opinion or one imputed to him because of his father. The Tribunal does not accept that questioning of the applicant in the circumstances he has described is discriminatory nor does it accept that questioning of the applicant in the past has been such that it could be described as amounting to significant physical harassment or ill treatment. Although the applicant claimed that he was physically mistreated by the police on occasion, when called on by the Tribunal to describe those events he was not able to describe the particular events or particular actions. The Tribunal finds that he exaggerated his treatment by the police. It notes his evidence that those police who knew him and his father just asked questions and then they went away. It was those who were unknown who were a problem. The applicant's vague responses to the Tribunal's questions on the matter convince it that he did not suffer serious harm at the hands of the police. His evidence convinced the Tribunal that the police called at the home or questioned the applicant if they encountered him on the street. The questions put to him as described by the applicant were general in nature and when the applicant was clearly unable to provide information the police left.

74. The Tribunal finds that the conduct of the police and their treatment of the applicant in the past is not serious harm for the purposes of 91R. Furthermore the Tribunal finds that the treatment cumulatively does not amount to persecution. The Tribunal finds that the chance that the applicant will suffer serious harm such that it amounts to persecution for a Convention related reason in India in the reasonably foreseeable future is remote.
75. The applicant does not have a well founded fear of persecution for a Convention reason if he returns to India.

CONCLUSIONS

76. 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

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

<p>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 <i>Migration Act</i> 1958. Sealing Officers ID: PRRTIR</p>
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