

**1109183 [2012] RRTA 567 (6 July 2012)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1109183
<b>DIAC REFERENCE(S):</b>	CLF2011/6699
<b>COUNTRY OF REFERENCE:</b>	India
<b>TRIBUNAL MEMBER:</b>	Sean Baker
<b>DATE:</b>	6 July 2012
<b>PLACE OF DECISION:</b>	Melbourne
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of India, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2010 and applied to the Department of Immigration and Citizenship for the visa [in] December 2010. The delegate decided to refuse to grant the visa [in] August 2011 and notified the applicant of the decision.
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] September 2011 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, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
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.
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. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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.

### **Complementary protection criterion**

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

### **CLAIMS AND EVIDENCE**

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

#### *The protection visa*

23. The applicant is a [age deleted: s.431(2)] year old male from India. He was born in Hyderabad, India on [date deleted: s.431(2)] and completed a Bachelor [degree] at [University 1] in December 2008. The applicant states he has never been employed in India. The applicant is a Muslim who reads, writes and speaks Urdu and speaks English.
24. The applicant states that he arrived in Australia [in] January 2009 as a student. He declared that he had not returned to his home country since arriving in Australia and had not been in contact with his family since then.

25. [In] December 2010 the applicant lodged the current application for a Protection visa. The applicant's claims are documented on file CLF2011/6699, folios 32 - 34 and can be summarised as follows:
- The applicant is a gay man who had been in a secret relationship with another man, [Mr A], since he was [age deleted: s.431(2)] years old. [Mr A] resides in India;
  - [Mr A]'s family threatened to kill the applicant if he continued to 'hang around' with their son;
  - The applicant's family have told him they will kill him if he returns to India;
  - The applicant cannot live in his home town of Hyderabad in India as it has a high population of Muslims who don't want him to live there;
  - Gay people in India are the victims of racism and discrimination;
  - The applicant applied for a visa to come to Australia to save his life;
  - The applicant loves Australia and believes this is the only place where he can live openly and comfortably as a gay man.
  - The applicant believes the Indian Police are corrupt and will hand him over to be killed to anyone willing to bribe them.
26. The applicant's agent made a submission [in] June 2011 which argued that:
- Whilst the Delhi High Court decision will set precedents and may ultimately lead to the legalisation of homosexual acts, the decision falls short of sweeping religious and cultural reform embracing homosexuality;
  - Community prejudices remain entrenched;
  - Rather than promoting tolerance, the court decision may incite resentment and a backlash against homosexuals from conservative and religious groups;
  - This leads homosexuals to remain 'in the closet'
27. Included with the submission was an article from *The Age*, dated 20 March 2010, titled 'India's gays happy to remain in the closet' by Matt Wade, which took the reports of several homosexual people in India, including the social activist Dr Anjali Gopalan, of the Naz Foundation, who said that the Delhi judgment had done little to help lesbians but that there is an acceptance of male homosexuality at some level. Another article from Ground report, with a date of 9 April 2010, which discussed the death of a Muslim university professor, the Delhi High Court ruling and some attacks on homosexuals that occurred before the ruling. Also submitted was two photographs of the applicant with other people and a Tribunal decision in full.

*Departmental interview*

28. In the departmental interview the applicant discussed his sexuality and his exploration of the gay scene in Australia. He discussed his fears of his family, specifically his brother who had

threatened to kill him if he ever returns to India for bringing shame on his family and their community due to his homosexuality. The applicant stated that his brother called him in July 2010 once he returned to Australia after a trip back to India for the period [from] June [to] July 2010. The applicant stated his family was unaware he returned to India at that time and he has had no contact with his family for approximately two years. The applicant was non-specific about what discrimination he would suffer in India on return, indicating that he would not be employed, although he acknowledged that he had never sought employment in India.

29. The applicant was asked to comment on the Delhi high court ruling that occurred after he left, and the applicant said that although this gay law had been passed it was not implemented in his home city of Hyderabad which was dominated by Muslims.
30. The applicant was questioned about his return trip to India from [June] 2010 to [July] 2010 and how he felt that he was able to return to Hyderabad given his stated fear for his life. The applicant said that he and [Mr A] had missed each other and wanted to see each other, and that he was told after his return that certain groups were now looking for him. He was vague about who these groups were and why he specifically would be targeted.

### **Review application**

31. The applicant applied for review [in] September 2011.

#### *Submissions and statutory declaration of the applicant*

32. [In] December 2011 the Tribunal received a submission from the applicant's representative which included a statement from the applicant and some country information. The statement, dated [November] 2011, included the following claims:
  - The applicant was born a Sunni Moslem but does not consider himself to be practising;
  - His parents, one brother and one sister reside in Hyderabad, India;
  - He has only one semester remaining to complete before graduating with [a diploma] from the [institute deleted: s.431(2)] prior to this he completed an accounting degree at [University 1] in Hyderabad;
  - His parents are conformist Muslims, and raised the applicant as a strict Muslim, including the obligation to consent to an arranged marriage;
  - The applicant's father forced him to pray, and the applicant consequently felt antipathy against the religion. The applicant's father, a police man, would apply physical discipline;
  - The applicant came to the gradual realisation that he was a homosexual when he was 13 or 14. Due to cultural and social pressures he grew up a closet gay, engaging in only one clandestine relationship with [Mr A], lasting for 4 years from the age of [age deleted: s.431(2)]
  - The applicant's father agreed to the applicant being educated in Australia, the applicant wanted to travel to Australia to further his education and as a site where his sexual emancipation would be realised;

- Prior to his departure, the applicant's parents became aware of his relationship with [Mr A] via [Mr A]'s parents. The applicant's father was enraged, so the applicant stayed with a friend prior to departing from India;
- After arrival in Australia, the applicant contacted his parents and told them he was proud of being a gay man – his father started to threaten him. After this he had no further contact with his parents;
- The applicant is gravely concerned for [Mr A].

*The hearings*

33. The applicant appeared before the Tribunal [in] December 2011 to give evidence and present arguments. The Tribunal also received oral evidence from [Ms B], a friend of the applicant.
34. The applicant was represented in relation to the review by his registered migration agent.
35. The applicant confirmed his details and his family composition, noting that his father, mother, brothers and sisters lived in Hyderabad, and he had other family in Mumbai and Andhra Pradesh. He confirmed that he was born and lived in Hyderabad.
36. The applicant then discussed his relationship with [Mr A], said that he had been in a de facto relationship with [Mr A] [for four years]. He said this relationship had ended a couple of months ago when [Mr A]'s family forced him to get married. He said [Mr A] was now unhappily married, 2 months before the hearing.
37. The applicant noted that he had studied a Bachelor [degree] in [University 1], Hyderabad. He said he finished this [and] in 2008 he was improving his English, he went to tuition, he said he went to these classes with [Mr A] in Hyderabad.
38. The applicant said that he came to Australia in January 2009. He said that he came to Australia because he was in trouble in India as his family were threatening him. His father is a police officer and very strict, he threatened the applicant, so the applicant fled and lived with friends until he came to Australia. The applicant claimed that he came to Australia to save his life.
39. The applicant said that there were fundamentalists trying to find him, and he said that MIM was also looking for him, wanting to punish him. He said that he did not talk to his family.
40. The applicant said that his agent in India had called him and told him he had the visa. The applicant said he used to live in a secret location with [Mr A].
41. The applicant said that [Mr A]'s family started torturing [Mr A] so [Mr A] decided to hide his sexuality.
42. The applicant said in Australia he had done [course deleted: s.431(2)] studies. The applicant said he wanted to be a professional [in this industry]. The applicant said after his studies he wanted to find a partner, he was happy to live in Australia and make a beautiful relationship.
43. The applicant said that his student visa had finished in November 2010. The applicant said he was really stressed and didn't know what to do, he asked his friend what he should do and his friend said you must apply as a refugee. The applicant said he had applied for his protection

visa around November. The Tribunal asked why there had been this delay – the applicant said he had been stressed. The Tribunal noted that the applicant said he had arrived in January 2009 and asked why he had not applied for protection. The applicant said that his family was trying to get him and threatening him and the applicant was under stress, and couldn't understand anything. The applicant said that his brother started threatening him after he came to Australia. The applicant said he told his father he was homosexual when he came to Australia in January 2009 and then his brother started threatening him two or three months later. The applicant said his brother was very religious. The applicant said his father would torture the applicant by giving him a hard time, by locking him in a room and giving him physical bad treatment.

44. The Tribunal noted that it seemed strange that the applicant had been threatened by his father in India and then by his brother on the phone in 2009 yet he had not sought to apply for protection.
45. The applicant said that he applied for the protection visa in December 2010 because he was afraid to return to India. The Tribunal suggested that it appeared the applicant had applied for protection because his student visa had expired. The applicant said this was not the case but he was scared for his life.
46. The applicant said he had returned to India for one month in June 2010. The applicant said he went to a village near Hyderabad to see [Mr A], and stayed with him for one month in a secret location, and they saw each other a dozen times. The applicant said [Mr A] used to go to his home, and would then come and visit the applicant. The applicant said this secret location was about 100km from his city, and the applicant sat in the home and didn't go out. The village was called [village deleted: s.431(2)]. The applicant said that [Mr A] would come on a motorbike to visit him. The applicant said that [Mr A] would sometimes come with another friend who would then go fishing.
47. The applicant said he was in deep love with [Mr A], and that [Mr A] couldn't go to another state, as his family would know, and this is why he had to go back to India and to Hyderabad. The applicant said he stayed in the house in this small village the whole month he was there.
48. The Tribunal asked who the applicant feared on return to India. The applicant then spoke about a leader in a mosque who takes sharia decisions – [name deleted: s.431(2)], the Sheikh for his area [mosque]. The Tribunal asked why the Sheikh would target the applicant – he said that it was because the sheikh did not agree with gays. The applicant then talked again about the political party MIM, and said that this party had attacked Taslima Nasreen as they thought she had insulted Islam. The Tribunal pointed out that Taslima Nasreen was well known but why would the applicant be at risk – he said because they disagreed with gays. Then the applicant said that his city, Hyderabad, you could not find homosexual people. The applicant said that he also feared his father, as he has strong power with the police, and also his brother. He said that his brother ran a small shop. He said that he feared MIM as they were a fundamentalist party and they want popularity so they attack homosexuals. The applicant said a lot of people were getting attacked every day.
49. The applicant said he feared that he would be caught and hung, or otherwise seriously hurt and then they would celebrate him being killed. The Tribunal asked if this had happened to many people and the applicant said it had. The applicant said that Hyderabad was mostly populated by Muslims, and every day you could see violence. The Tribunal asked if this



violence was directed to homosexual people, the applicant said that they were Islamic and it is unacceptable for them.

50. The Tribunal asked whether the applicant had suffered any of these things before coming to Australia – the applicant said he had not as he had hidden his sexuality. The Tribunal asked whether he had suffered any of these things when he returned in 2010 and the applicant said he had hidden.
51. The applicant said the authorities could not protect him as his father was strong in the police. The applicant said he had ID for his father to show that his father was in the crime branch. The Tribunal pointed out that he had not put this in his protection visa application which he had submitted to the Department. The applicant said that he had proof that his father was a police man and produced a pay slip from his father's work. He said that his father was an officer in the crime branch in Hyderabad.
52. The applicant then spoke about his relationship at the moment in Australia, with someone called [Mr C], he said he had met him [at a club] a year ago. The applicant described the photos on the file and said that these were in some of the clubs near there. The applicant said he enjoyed his life in these clubs and had friends there.
53. The Tribunal asked the applicant how he knew that he would be harmed – the applicant said that [Mr A] had told him. The applicant said that his family wanted these people to do something to him. The Tribunal asked who he was talking about and the applicant said he meant his father and brother and the political party and the Islamic people and the fundamentalists. The applicant then said that [Mr A] was talking about the Islamic fundamentalists. The applicant said that these people were trying to find him specifically because his story had become very popular and the Sheikh had told the story to a lot of people about the applicant and [Mr A].
54. The Tribunal asked why the applicant's family would have told the public that the applicant and [Mr A] were in a relationship. The applicant said that [Mr A]'s family told the Sheikh, before the applicant came to Australia, two months before that. Then [Mr A]'s family came to the applicant's family and told them, then the applicant went into hiding and came to Australia. The Tribunal asked what happened to [Mr A] and the applicant said that [Mr A]'s family thought that the applicant was trying to make [Mr A]'s sexuality change, so [Mr A] was not punished.
55. The applicant said that he had told people he was gay and proud of it, and everyone knew this. The applicant said he had told his family when he was in Australia that he was proud to be gay. The applicant said that [Mr A]'s family knew the applicant was gay as well as [Mr A]'s [brother] saw the applicant and [Mr A] having sex. The Tribunal asked the applicant again, if [Mr A]'s brother had seen them, why [Mr A] had not been punished.
56. The Tribunal said it could not see how this made sense, that the applicant had been threatened by his family and others but [Mr A] was not. The applicant said that [Mr A]'s family had said that the applicant was trying to make [Mr A] gay to the Sheikh.
57. The Tribunal questioned how [Mr A] could come and see the applicant in 2010 at the secret location if [Mr A]'s family knew that they had been having sex. The applicant said that [Mr A]'s family had made [Mr A] get married. The Tribunal pointed out that [Mr A]'s brother had seen the applicant and [Mr A] having sex before January 2009 and they had only forced

him to get married two months before the hearing. The applicant said that [Mr A]'s family had pressured [Mr A] a lot.

58. The Tribunal asked the applicant what stopped him being homosexual in India. The applicant said being from a Muslim family in a Muslim city it was really hard, they don't know about gays and they will not want to talk to you or sit with you. The applicant said there were now a lot of Hindu groups and Muslim groups attacking gays.
59. The Tribunal asked the applicant whether the police could protect the applicant against these groups and the applicant said that there was a lot of corruption in the police and also as his father was in the police so the police will help his father a lot. The applicant said that he would not be able to find a job, and no family will sit with him or allow anyone to take from his shop.
60. The Tribunal asked if the applicant had been discriminated in Australia – the applicant said no, that people were proud of him, the applicant said he had not been discriminated.
61. The Tribunal then raised with the applicant that he relocate within India to somewhere like Mumbai or Delhi. The applicant said he had a lot of relatives in Mumbai. The Tribunal noted that the applicant could live reasonably safely as a homosexual man in Delhi or Mumbai. The applicant said that half the Indian leaders were against the gay laws. The applicant said that a Muslim party had given a fatwa against gays in India. The Tribunal noted that there were gay pride marches in Delhi and Mumbai, so what the applicant said did not seem to make sense. The applicant said that the police maybe gave two or three hours protection, but then outside that, you could find that the gays were being killed. The Tribunal said that it had not found any evidence that homosexuals were being killed or seriously injured in Delhi or Mumbai. The applicant said that this was because they were Hindus and his city, Hyderabad, was a Muslim city. The applicant said as a Muslim and a gay he could not live in Mumbai, as he had family relations who would call his father and trace the applicant. The tribunal pointed out that there were many millions of people in Mumbai, and that his relatives were a small number in a big city. The applicant said if he went to Mumbai he would have to keep himself locked in a room, and that every day people target gays. The Tribunal pointed out that the country information does not say that homosexual people are being killed or seriously injured. The Tribunal pointed out that there were organisations, including the Naz foundation referred to in the article submitted by the applicant's representative, and these organisations are not saying that people are being killed or injured. The applicant said this was because Hindus were not being injured, but Islamic people are trying to trace the applicant and his father is a police officer with strong power. The applicant said that Islamic people and the Sheikh and the people from his community were looking for him and would easily catch him.
62. The Tribunal pointed out that the applicant spoke English as well as Urdu. The applicant said that he could not do a job in Mumbai in English. The applicant said that he would be in big trouble if his employer found out he was gay. The Tribunal said that there was no country information saying that homosexual people could not get employment, or suffer serious harm in Mumbai. The tribunal said that it considered that the applicant could live in Mumbai or Delhi as a homosexual man. The applicant said that people from Uttar Pradesh who came to Mumbai and got bashed so they don't want to come to Mumbai, and there are groups there who look for gays. The applicant said that his family might be in contact with other people in Mumbai or Delhi who would then tell his family.

63. The applicant said that his family would know the applicant had left Australia and could trace him in one week. The applicant said there were people in Australia from Hyderabad, and these people would tell his family, the applicant felt that his family had contact with someone here in Melbourne and someone in Sydney. The applicant said that his father's brother's son in Sydney gave information to the applicant's family. The Tribunal asked how this person would know if he was in Sydney and the applicant was in Melbourne.
64. The applicant said that it was easy for his family to find him. He then started talking about MIM and that this party had power, and then said that his father could go to Mumbai and show the applicant's picture and easily trace the applicant. The applicant said it would be easy to trace him anywhere in India. The applicant said they would find him anywhere in India. The Tribunal then asked why they had not found him in 2010 when he returned to India if he could be found anywhere in India. The applicant said that he was extremely secret when he went back and he was very careful. The applicant said he was very afraid but he wanted to spend time with [Mr A].
65. The Tribunal then took evidence from [Ms B]. She said that she had met the applicant about 3 years ago. She said that she managed an internet café on [address deleted: s.431(2)] and she met him there. She found him troubled and she had gone up to him and tried to help. She found him alone and decided to comfort him. He said that he was gay and had troubles with his family. She got to know him and found him to be a good and genuine person. She said that he could not return because of his religion, Islam. She felt that he could not go back as she believed he could be hurt or killed by his family or others as he had brought shame on the family or his religion. She believed that his brother would do something to him. She spoke about what the applicant had told her of his sexuality. When asked if the applicant could relocate in India, [Ms B] said that she felt that it would not be suitable for him to relocate, that his family would find him and that they are extremists, fanatical, and that his brother will find him. When asked if she knew how they would find him she stated that they will find him. She said that the applicant had told her that he had wanted to return to India to see [Mr A].
66. The applicant's representative made a short submission, arguing that independent evidence that he had submitted showed that relocation was not practical in this case, and asked whether his client could live openly as a homosexual in India. He said that there was abundant evidence that the treatment of homosexuals was a cause for concern. He asked that the Tribunal have regard to another Tribunal decision which he had submitted.
67. The applicant appeared before the Tribunal [in] April 2012 to give further evidence and present arguments. The applicant was represented by his registered migration agent.
68. The Tribunal questioned the applicant in detail about his identity as a homosexual. The applicant's answers about his awareness of his attraction to his friends around the age of 13, his statement that he felt comfortable with himself when he came to this realization and that his friends got to know that he had a different character seemed difficult to reconcile with his earlier claims that homosexuality is stigmatised in his community. On questioning further the applicant appeared to change his story and said that his friends would talk and say they should kill people like that, that this made him realise this was unacceptable behaviour. He then claimed that before 13 he had not watched TV, that most people in Hyderabad did not have a TV in their house and all he did was go to school and come home and he did not know about these sorts of things before 13. He said that his family, school and society in general

had not told him about homosexuality before 13 when he became aware that he liked his friends.

69. The Tribunal questioned the applicant about his relationships in India and the applicant said that [for four years] he was with [Mr A], that they were really so close, and there were no other relationships for him.
70. The Tribunal questioned the applicant again on the delay between his arrival in Australia and his applying for protection – the applicant said that there had been no-one to guide him and he was too stressed, he had just been studying and it did not come into his mind to apply for protection.
71. The Tribunal then asked the applicant about his relationship in Australia. The applicant said that he had not seen [Mr C] since 4 months ago, that their relationship had been almost a year and that the applicant had ended it. He then said he didn't end it, they were still in touch but [Mr C] is very busy. He said they went to [a] club in [street and suburb deleted: s.431(2)], that he has a really good time there and they play beautiful music, it's really nice there, every Monday he has a lot of friends there He said that they physically share, just kissing, but now not too bad, still in touch, but he is a bit busy, but the applicant is in a relationship with him. The applicant said he was not in a relationship in Australia with anyone else, he wants to find a good partner. He then said that when he arrived in Australia he used to go with one of his friends, [Mr D], they used to go out and have fun [at] a lounge, he had a sexual relationship with [Mr D].
72. The Tribunal asked the applicant if he knew of or had researched any lesbian and gay groups or organisations in India. the applicant said he did not and that in India they would get threats as India is a strong traditional culture, and the tradition and culture come first.
73. The Tribunal asked the applicant if he knew about the gay and lesbian communities in Australia or was aware of any social or political activities that some gay men and lesbians are involved in here. The applicant then said that he played cricket here. The tribunal determined that he played with a group that did not identify as homosexual. The applicant then talked about [the] club again.
74. The Tribunal asked what discrimination the applicant considered existed against homosexuals in India. The applicant said that in a Muslim society people don't accept it and the whole tribe wants to make you homeless, it is a shame for them.
75. The Tribunal asked him what he feared if he returned to India and the applicant said that straight away they would kill him and torture him. The Tribunal put to the applicant that this was really serious so it could not understand why he had returned to Hyderabad in June-July 2010. The applicant said again that he had really missed [Mr A] a lot; that was his love, so he went to India to see him. He said that [Mr A] had taken care of everything and he was in a really confidential place; that he had gone from the international airport in Hyderabad, moved to far away from Hyderabad. The Tribunal asked why, if he was afraid of returning to Hyderabad, he travelled to the Hyderabad airport when he could have used the Delhi or Mumbai international airports. The applicant said that he hadn't been to these cities so that is why he went to Hyderabad airport.
76. The Tribunal then raised complementary protection with the applicant and asked whether he had suffered any other sort of harm for any other reason whilst in India or feared harm if

returned. The applicant said that Hyderabad was in curfew and in fact most of Andhra Pradesh was in curfew. The Tribunal asked how this might lead to the applicant being harmed and he said that there was a lot of violence in Hyderabad and a lot of people get tortured there and people there are very religious. The applicant did not identify why he would be harmed.

77. The Tribunal put to the applicant that he could relocate in relation to his protection claims. The applicant said that people want to kill him and they are related to the big and powerful people in MIM, a Muslim based party from Hyderabad. The Tribunal asked how this would impact on the applicant if he relocated to a large urban areas such as New Delhi, and the applicant said that this party have millions of workers and they want to do things to him, he also brought up that his father is in the police and could easily trace the applicant in two or three months.
78. The Tribunal then raised the concerns it had with the applicant's claims, including why he returned to Hyderabad, his claimed relationship with [Mr A], and the delay in applying for protection whilst holding a temporary visa. The Tribunal made clear that this led it to have general concerns with his overall credibility, and all of the evidence given by the applicant, including his claims that he was homosexual, that he had had a homosexual relationship in India or a homosexual relationship in Australia, or whether any of the things which he said had happened to him in India had happened.
79. The applicant said that he was in contact with [Mr A] after he came to Australia and [Mr A] told him to come to India so he went to India to spend some time with [Mr A] physically. The applicant also said that it took him a long time to apply for protection as when he came to Australia he was very happy, and didn't think his visa would one day be finished. Then when his visa was close to finished he was very stressed, and his friend [Ms B] had advised him to seek protection.
80. The applicant's agent addressed the delay, arguing that he came from a society where homosexuality is not accepted. He said that his client comes across as shy and hesitant in discussing his sexuality, but this is down to his mentality and how he has grown up. The agent urged the Tribunal to consider that the applicant had cultural impediments which meant he could not apply earlier. The agent went on to say that one could not live openly as a gay man in Indian society, and that most homosexuals were in the closet and self-imposed restrictions on their expression of their sexuality. The agent said that if his client lived as a gay man in India he could not rely on protection by the authorities.
81. The agent requested a period of time to provide further submissions and indicated [a certain date in] May 2012 would be sufficient.
82. [In] May 2012 the agent provided further submissions, which were intended to address the concerns the Tribunal had expressed with the return trip of the applicant to India despite his claims that his parents were already aware of his true sexual orientation and were extremely antagonistic towards him. The submission stated that the applicant returned to be reunited with his gay partner and his family were not aware that he had returned to India, that the return could appear irrational but was motivated by pure emotion and his desire to be reunited with his gay lover. The submission argues that the seemingly irrational behaviour of the applicant was predicated upon a self-sacrificing desire to be with his lover, demonstrating the unadulterated dedication the applicant has maintained towards his former gay lover. This, it is said, is a compelling exposition of his true sexual orientation.

83. [In] June 2012 the Tribunal sent the applicant a letter pursuant to s424A, raising adverse information relating to the applicant's travel back to Hyderabad, India between [June] 2010 to [July] 2010 and seeking his comments or response. No response to this letter was received.

## **Country information**

### *Homosexuality in India*

84. On the general situation for homosexuals in India following the Delhi High Court decision, the US Department of State 2011 Human Rights report states:

*Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity*

The law permits consensual sexual activities between adults. In July 2009 the Delhi High Court overturned a portion of section 377 of the penal code, which prohibited same-sex relations. Section 377 still applies to cases involving minors or coercive sex. While a few groups and individuals challenged the ruling in the Supreme Court within a few days of the announcement, the government decided not to oppose the verdict. At year's end the Supreme Court had not rendered a judgment on the appeal. The law was previously used to target, harass, and punish lesbian, gay, bisexual, and transgender (LGBT) persons.

Although LGBT groups were active throughout the country, sponsoring events and activities including rallies, gay pride marches, film series, and speeches, they faced discrimination and violence in many areas of society, particularly in rural areas. Activists reported that transgender persons who were HIV-positive often had difficulty obtaining medical treatment. Activists also reported some employers fired LGBT persons who did not hide their orientations. LGBT persons also faced physical attacks, rape, and blackmail. Some police committed crimes against LGBT persons and used the threat of arrest to coerce victims not to report the incidents, although several states, with the aid of NGOs, had police education and sensitivity trainings.

During the week of April 3, transgender activist Laxmi Tripathi was banished from the elite Bombay Gymkhana club in Mumbai. After the club CEO told the dinner party's organizer that Tripathi had to leave, the entire group walked out of the club.

On April 10, a FIR was filed against six persons in the April 7 death of Srinivas Ramachandra Siras, a professor at Aligarh Muslim University (AMU) who was found dead in his home. In February, shortly before his retirement, the professor was secretly filmed having consensual sexual relations with another man. AMU suspended him without an inquiry, which he challenged in the Allahabad High Court. On April 2, the court ordered his reinstatement and stayed his unlawful removal from his official accommodation. On April 8, police claimed that preliminary investigations indicated suicide.

On May 6, the country's first transgender television host, Rose Venkatesan, officially announced her new gender status after undergoing sex reassignment surgery.

There were a few positive developments for transgender persons during the year. In April the state of Tamil Nadu hosted a weeklong transgender festival to facilitate the acceptance of transgender persons into mainstream society. The state, which established a transgender welfare board in 2008, continued to provide separate identity and ration cards to transgender persons. In November the central government announced that transgender persons would have the option to be counted as "Other"

in the 2011 national census. On November 12, the state of Karnataka announced transgender persons would be included in the "Backward Classes" list, making them eligible for pensions, ration cards, and housing assistance through special programs.

(United States Department of State 2011, '2010 Country Reports on Human Rights Practices; Human Rights Reports: India', US State Department website, 8 April 2011  
<http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154480.htm#> - Accessed 4 January 2012)

85. There is contrasting information available regarding the recent treatment of homosexuals by Indian security forces. The US Department of State report above can be contrasted with other reports, including a July 2010 report from *The Times of India* which quotes a gay right activist from Pune as stating that “[p]olice harassment has dropped” and that “[t]hey are more co-operative and understanding, and even suggest we contact them if we have a problem”.<sup>1</sup> Another July 2010 report from the *Associated Press* refers to events held by the gay communities in Mumbai, New Delhi, Calcutta and Bangalore to mark the one year anniversary of the aforementioned Delhi High Court ruling. The organiser of the event in Mumbai stated that the ruling had “reduced incidents of police harassment”.<sup>2</sup> However, a *Deccan Herald* report from January 2012 referred to claims by members of Mitr, “a community based organisation of men who have sex with men (MSMs) and transgender people”, that they were still not being accepted by society. The report indicated that Mitr members, which reportedly number “close to 20,000” in Delhi, continued to be subject to harassment from police and members of the public. These members considered that “society’s perception has changed over the years but it has been slow progress.” The article provides an example of a man who was beaten up by a group of boys and then approached the police to have a First Information Report (FIR) filed in relation to the incident. The police did not file the FIR, but instead “abused him and said he deserved to be beaten up because he was homosexual”. The FIR was only filed after Mitr approached the police in relation to this case.<sup>3</sup>

## FINDINGS AND REASONS

86. On the basis of the copy of the applicant’s passport on the Departmental file (Df. 38) and his testimony at the hearing, the Tribunal finds that the applicant is a national of the Republic of India and is therefore outside his country. The Tribunal has therefore assessed his claims against India.
87. The applicant’s claims are that:
- He is a gay man who had been in a secret relationship with another man, [Mr A], in India, and has had a short and a longer homosexual relationship in Australia;
  - he is a non-practising Muslim, whose family are very strict, his father applied physical discipline in order that the applicant would be a strict Muslim;

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<sup>1</sup> ‘Pink India tiptoes out of the closet’ 2010, *The Times of India*, 3 July

<sup>2</sup> Yan, D. 2010, ‘India gays celebrate 1 year since landmark verdict’, *Associated Press*, 3 July

<sup>3</sup> Sethi, A. 2012, ‘LGBT say they are harassed by society, denied employment, seek justice’, *Deccan Herald*, 6 January <http://www.deccanherald.com/content/217354/lgbt-say-they-harassed-societyhtml> – Accessed 11 January 2012

- Prior to his departure for Australia, the applicant's parents became aware of his relationship with [Mr A] via [Mr A]'s parents. The applicant's father was enraged, so the applicant stayed with a friend prior to departing from India;
  - After arrival in Australia, the applicant contacted his parents and told them he was proud of being a gay man – his father started to threaten him. After this he had no further contact with his parents;
  - The applicant's family have told him they will kill him if he returns to India;
  - [Mr A]'s family threatened to kill the applicant if he continued to 'hang around' with their son;
  - A Sheikh who has been informed of his relationship with [Mr A] will cause harm to the applicant or have other Muslims to whom he has told the story in Hyderabad cause him harm;
  - Members of MIM or other extremist Muslims will seek to harm him for his sexuality;
  - Gay people in India are the victims of racism and discrimination;
  - The applicant believes the Indian Police are corrupt and will hand him over to be killed to anyone willing to bribe them; and
  - The applicant is gravely concerned for [Mr A];
  - The applicant may be harmed in generalised violence in Hyderabad.
88. The applicant claims to fear persecution because he is homosexual, and will be persecuted as a homosexual if he returns to India. It is established that homosexual men may form a particular social group,<sup>4</sup> and evident that they may form a particular social group in India.
89. The meaning of the expression 'for reasons of ... membership of a particular social group' was considered by the High Court in *Applicant A's* case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:
- ... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...
90. Whether a supposed group is a 'particular social group' in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be for reasons of the person's membership of the particular social group.

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<sup>4</sup> *Appellant S395/2002 v MIMA* (2003) 216 CLR 473



91. Homosexual men in India are identifiable by the characteristics of their sexuality and desire for men, which is not the shared fear of persecution. Lastly, homosexual men are distinguished from Indian society at large by these characteristics, supported by country information above and submitted by the applicant. Therefore, homosexual men in India are a particular social group.
92. The applicant also claims to fear harm because his father, his family, the cleric, fundamentalists including MIM and other Muslims view his homosexuality as against Islam and will persecute him on this basis. The applicant also therefore claims he will be persecuted for religious reasons.
93. Therefore the Tribunal has considered whether the applicant will be persecuted for religion, his claimed particular social group, being homosexual men in India, or for any other reason
94. For the following reasons the tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention reason if he returns to India, now or in the reasonably foreseeable future.
95. The Tribunal has a number of concerns about the applicant's evidence, which cause the Tribunal to find that the applicant is not a credible witness and has not been truthful in relation to his evidence, including his experiences in India, his reasons for leaving India, his reasons for returning in 2010 and his fears about returning. The Tribunal's main concerns are noted below.
96. At hearing the applicant said that he had returned to India, for one month in June 2010, and said that he had gone to a village near his home city of Hyderabad to see his lover, [Mr A]. The applicant said that he had stayed with him in a secret location 100km from Hyderabad and they had seen each other a dozen times. When asked why he would endanger himself like this given the threats from his family, the applicant said that he was in deep love with [Mr A] and he just sat in the home in this small village the whole month and did not go out, and [Mr A] would come on a motorbike to visit him, sometimes with another friend. When questioned as to why he would stay close to his city, if his father and brother and others had threatened him the applicant said that [Mr A] couldn't go to another state as his family would know and this is why the applicant had to go back to India and to Hyderabad.
97. In the later hearing the applicant had spoken of his fear of being killed or tortured on return to India and the Tribunal had put to the applicant that it could not understand therefore why he had returned to India, and to Hyderabad in June 2010 if this was the case –the applicant said that he was really in love with [Mr A] and had missed him a lot, [Mr A] had taken care of everything and he was in a really confidential place, that [Mr A] had told him to come to India so he went to be with [Mr A] physically. The applicant said he had gone from the international airport in Hyderabad to the secret place. When asked why he would not have travelled via Delhi or Mumbai international airports to ensure he was not detected by those he feared the applicant said that he did not know these places.
98. In the post-hearing submission it was argued that his family were not aware of his return, and that whilst the return could appear irrational if he was in fear of his family and others it was motivated by pure emotion his desire to be reunited with his lover, and that this in fact demonstrated his dedication towards his former gay lover which demonstrated his true sexual orientation.

99. His return to Hyderabad, India in 2010 and the concerns this raised were also put to the applicant in a letter pursuant to s.424A. No response to this letter has been received.
100. The Tribunal does not accept these explanations. On numerous occasions the Tribunal attempted to discern why a person with the applicant's stated strong subjective fears of serious harm on return to India would travel back to India, to close to his home city. The applicant claimed that he was in deep love with [Mr A], and that the location was extremely secret, 100km from Hyderabad, and he did not go out, just sat in the house for the whole month. He said that he could not meet [Mr A] in another state as [Mr A]'s parents would then know, and he later said that he had gone from the Hyderabad international airport to the secret location as he did not know other airports in India. In the post-hearing submission it was claimed his family did not know of his return and that whilst it may appear irrational he was motivated by love, and that this proves his homosexuality. The Tribunal does not find these explanations convincing. The applicant testified on numerous occasions that he is in fear of being killed or tortured or otherwise harmed by his father, brother, and other Muslims in Hyderabad. The Tribunal does not accept that a person with such a stated strong subjective fear, who stated that he came to Australia to save his life, would return to his country, let alone a location close to his home city, via the Hyderabad international airport. The Tribunal accepts that love is a strong motivating factor but is not persuaded by the applicant's testimony that this is significant enough to outweigh his stated fear. The Tribunal does not accept that this is plausible behaviour and considers that the applicant is not being truthful about his reasons for his return in June 2010, or what occurred when he returned, or that he returned to see [Mr A], or that he went into hiding. The Tribunal finds that this also casts doubt on the applicant's overall credibility.
101. The applicant claims to have been in a relationship with a man in India, [Mr A], from which, in part, his claims of fear of harm arise. However, when tested on key aspects of the relationship with [Mr A] the applicant gave inconsistent answers. When questioned on how his and [Mr A]'s relationship had become public knowledge, with the local Sheikh telling their story, the applicant said that [Mr A]'s family had told the Sheikh and the applicant's family, as [Mr A]'s family thought the applicant was trying to make their son homosexual. The applicant then said that [Mr A]'s younger brother had seen the applicant and [Mr A] having sex. The Tribunal then put to the applicant that given this it did not make sense that the applicant had been threatened by his family and others but [Mr A] was not – the applicant again claimed that [Mr A]'s family had said that the applicant was trying to make [Mr A] gay to the Sheikh. The Tribunal then questioned how [Mr A] could come and see the applicant at the secret location in 2010 if [Mr A]'s family knew that the two of them had been having sex before the applicant left India initially – the applicant said that [Mr A]'s family had made [Mr A] get married. When the Tribunal pointed out that he had told the Tribunal that [Mr A] had only been married a considerable time later, some two months before the hearing, the applicant simply said that [Mr A]'s family had pressured [Mr A] a lot.
102. The Tribunal does not accept these explanations of events by the applicant. The applicant's evidence on how his family, [Mr A]'s family, the Sheikh and people the Sheikh had told their story to had come to know of their relationship, without [Mr A] having been harmed is not plausible. Whilst the applicant claimed he had grave fears for [Mr A] in his early submission to the Tribunal, at the hearings he indicated that prior to [Mr A] having been forced to marry two months before the hearing nothing had happened to [Mr A] and [Mr A] had been free to come and see the applicant at the secret location. The stated reason is that [Mr A]'s family told the Sheikh, and the applicant's family that the applicant was trying to make their son

homosexual but that [Mr A] was not homosexual, despite the fact that [Mr A]'s brother had seen them having sex together. The Tribunal does not accept this explanation explains the harm the applicant fears on one hand, and that the applicant claims all that happened to [Mr A] was that he was 'pressured' by his family a lot until forced to get married a considerable time later, some two months before the first hearing. The Tribunal does not accept the evidence of the applicant that these events occurred. The Tribunal finds that this further casts doubt on the applicant's credibility.

103. The applicant said that he had arrived in Australia in January 2009. He said that his family had found out he was homosexual prior to his departure from India. The applicant said that he declared he was homosexual and proud of it on the phone to his father in January 2009 after arriving in Australia, and that his brother, who was very religious, had started threatening him two or three months later. The Tribunal put to the applicant that it seemed illogical that he had been threatened in 2009 and yet had waited until December 2010 to apply for protection. The applicant said he applied for protection because he was afraid to return to India, that he had been stressed and there was no-one to guide him, he had just been studying and it had not come into his mind to apply for protection, that when he came to Australia he was very happy and didn't think his visa would one day be finished and then when it was close to finished he was very stressed and his friend Ms [Ms B] advised him to seek protection. The applicant's agent put to the Tribunal that there were cultural impediments that meant the applicant could not apply earlier.
104. The Tribunal does not accept these explanations and finds that in this case the delay of more than a year is significant. The Tribunal is not persuaded that protection would not have come into his mind if he had been threatened with death or other serious injury, nor that stress on its own would cause the applicant not to seek further information and apply for protection, nor that cultural impediments would somehow stop the applicant seeking protection earlier. The applicant was on a temporary visa and the Tribunal does not accept that he would not have turned his mind to what would happen if he was to return to India at the time of his arrival or at the time that his brother threatened him. The Tribunal finds that the significant delay in this case, combined with the return of the applicant to India in 2010 as explored above are indicative of a lack of subjective fear on the part of the applicant.
105. The Tribunal has found it has disbelieved the applicant on why he returned to Hyderabad in 2010, his claimed relationship with [Mr A], and the delay in applying for protection. The Tribunal finds that these concerns lead it to question the applicant's credibility more generally, and finds that the applicant is not a credible witness and has not been truthful in relation to his evidence, including his experiences in India, his reasons for leaving India, his reasons for returning in 2010 and his fears about returning.
106. The Tribunal has found above that it does not accept key events in his claimed relationship with [Mr A], and on the basis of this and its general credibility finding, finds that the applicant did not have a homosexual relationship, or a relationship that could have been perceived to be homosexual with [Mr A], secret or otherwise. The Tribunal finds that the applicant did not have any other homosexual relationships whilst in India.
107. The Tribunal has considered the applicant's evidence in relation to his claimed relationship with [Mr C] in Australia, and his later claim that he had an earlier relationship with [Mr D] on arriving in Australia. The Tribunal has considered the evidence of [Ms B] in this respect and generally on the applicant's claimed sexuality. The Tribunal found [Ms B]'s evidence to be helpful, but must consider this against its concerns with the applicant's evidence. The

Tribunal finds it must give greater weight to its concerns with the applicant's claims and the general credibility finding than to the evidence of [Ms B]. The Tribunal finds that the applicant does not, nor did he, have any homosexual relationships in Australia.

108. These findings lead the Tribunal to find that it is not satisfied that the applicant forms part of a particular social group, being homosexual men in India or homosexual men more generally, nor would he be imputed with being a member of such groups. It follows that the Tribunal does not accept that the applicant would be persecuted for reasons of religion for being or being imputed to be a member of such a group or for any other reason if he returns to India.
109. The Tribunal has also considered whether the applicant is a non-practising Sunni Muslim, that his parents are strict Muslims, that his father forced him to pray and the applicant therefore felt antipathy towards religion, and that this may lead him to be harmed for reason of being a non-practising Muslim under the Convention grounds of religion or for another Convention ground. The Tribunal has above found that the applicant is not a credible witness. The Tribunal does not believe these claims of the applicant, and finds that he would not be persecuted, on the basis of the evidence before it, for any reason related to the applicant's practice of religion or the strictness of his family.
110. On the basis of the above findings the Tribunal finds that:
  - The applicant's and [Mr A]'s family have not disclosed to anyone that the applicant is gay or that they believe he is gay;
  - The applicant has not been threatened with death or any other form of harm by his family, [Mr A]'s family, members of MIM, fundamentalists, the Sheikh or people who had heard his story from the Sheikh or any other persons or groups;
  - [Mr A], his claimed partner, was not tortured by his family and forced into an arranged marriage;
  - The applicant will not be handed over by the police to be killed by anyone willing to bribe the police;
  - The applicant would not face discrimination in India as a claimed gay man or as a perceived gay man or for any other reason;
  - The applicant will not suffer any harm for reasons of religion or any other basis for feeling antipathy towards religion;
  - The applicant has not suffered physical discipline from his father, on the basis of the claims elaborated by the applicant, which the Tribunal does not accept;
  - The applicant did not have to hide prior to his initial departure from India due to his father finding out he was in a homosexual relationship with [Mr A];
  - The applicant would not be subjected to generalised violence, as a claimed homosexual or for any other reason on returning to Hyderabad, given the applicant's vague evidence on what violence he referred to and how he would be harmed or why.

111. The Tribunal does accept that the applicant's father is a police officer, on the basis of the payslips shown at the hearing, but due to the above findings finds that the applicant will not be harmed by his father for any reason.
112. On the basis of the evidence before it the Tribunal finds that the applicant does not have a well-founded fear of persecution on return to India now or in the reasonably foreseeable future for reason of his membership of a particular social group, religion, or for any other Convention reason.
113. The Tribunal has also considered whether the applicant may meet the complementary protection criterion: s.36(2)(aa). The Tribunal has found above that the events the applicant claims to have happened to him have not happened, and that he has been vague and general on the claimed violence in Hyderabad, and that he will not suffer any form of harm on return to India. On the basis of the evidence before the Tribunal, the Tribunal finds that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to India, there is a real risk that he will suffer significant harm. He therefore does not satisfy the requirements of s.36(2)(aa).

## **CONCLUSIONS**

114. 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).
115. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).
116. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

## **DECISION**

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