

0802058 [2008] RRTA 261 (24 July 2008)

DECISION RECORD

RRT CASE NUMBER: 0802058

DIAC REFERENCE(S):

COUNTRY OF REFERENCE: India

TRIBUNAL MEMBER: Gabrielle Cullen

DATE DECISION SIGNED: 24 July 2008

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 on [date] and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa on [date]. The delegate decided to refuse to grant the visa on [date] and notified the applicant of the decision and his review rights by letter dated [date].
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 on [date] 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 Parts 785 and 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. 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.

Information on the Department File

20. Information in the protection visa application indicates that the applicant is [age] single man from [Village A], [Region/State]. He left his home country on [date] to travel to Australia on a passport issued by the Indian authorities on [date]. He claims to have lived at [Village A] until [month, year] when he moved to [Location B], [Region/State] from [month, year] until [month/year]. He claims to have had several years education and left school in [month, year].
21. The applicant made the following claims in Part C of his protection visa application.
22. At question 40 he claims to have left India because of a homosexual relationship and his religious belief. He said due to his homosexuality he was harmed physically and assaulted socially and he and his parents suffered as a result because of this relationship and his religious belief. He indicates that he elaborates on these claims in his statement, which the Tribunal has summarised below at point 27.
23. At question 41 he claims he cannot return because of his religious belief and homosexuality as his religion does not accept this kind of relationship. He claims his family will suffer at the hands of the terrorists, and that he suffered an assault at the hands of the terrorists.
24. At question 42 he claims that he is not a terrorist but wants to continue his homosexual relationship and that he has chosen his life as a homosexual which in India is not accepted as valid, and is religiously forbidden and he claims he will be harmed by the authorities and the religious clerics as a result of the relationship.
25. At question 43 he claims if he returns to India, there are laws against being in a homosexual relationship, and that it will never be accepted and he will be harmed by his community and the religious clerics because such a relationship is not accepted by them. He claims the authorities will harm him as the relationship was established with a person directly involved in terrorist activities.
26. He claims at question 45 that the authorities will not protect him as they are against these activities.
27. The applicant attached a statement to his protection visa application, summarised as follows:
 - He claims the terrorists approached his father, who is an influential man in the community, to become involved with their activities, but he denied them and they became angry. He claims the terrorists threatened his father that they

would kill him and his family would face the consequences. He claims they also threatened to kidnap his older [sibling] and the lives of all the family members were at risk. He claims his family sent his [sibling] to Australia on a [type of] visa in [month, year].

- On [date] he claims he was kidnapped walking home from school, forced into a car, blindfolded and taken to an unknown place. He claims they introduced themselves as freedom fighters and in the Khalistan Movement. He claims they told him of the purpose of the movement, that he would be provided training and after the training he may be part of a suicide squad. He claims they tried to convince him to join, [information deleted under s.431]. He claims on [date], [Person C] came to him and asked him to participate in their organisation. He claims when he failed to answer him he became very angry and after he refused to join them he was ruthlessly [attacked]d. He claims [Person C] tortured him sexually for a few days. He said he was initially embarrassed but after [number of] weeks he became habituated with the life and he was released on the condition that he has to maintain a relationship with him or face the consequences. He claims he threatened him that his life would be at risk.
- He claims that after his release he continued his relationship for his safety and the safety of his parents and family members.
- He claims his parents and family came to know of the relationship and objected. He claims the religious leaders said the relationship was illegal and against their religion. He claims he was identified as a homosexual and that he continued the relationship.
- He claims the community leaders advised his parents to prevent the relationship otherwise his family would be ostracised. He claims his father told him not to associate with [Person C].
- He claims considering the safety of his family he decided to continue the relationship. He claims as a result his family was harassed and the applicant was banned from entering the temple, and the community leaders threatened to take his family to court on the basis that the applicant is a homosexual, as it is not allowed under Indian law and also not allowed under the Sikh religion
- He claims his parents became anxious and advised him to leave. He claims in September he went far from his home until he came to Australia. He claims in the meantime his father became anxious for his safety and organised for the applicant to travel to Australia with his mother on a [type of] visa.
- The applicant believes wherever he goes in India he shall not be left alone and [Person C] will follow him. He claims if he fails to maintain the relationship, his family members will be in trouble. He claims he will be victim of persecution by terrorists on one hand and also by members of the community on the other if he returns, and he will be punished by the authorities.

- He claims if he if he goes back to India he will have to maintain his relationship with [Person C] or his life will be in danger
- The applicant claims he will be persecuted because of his homosexual relationship and also for his religious belief because this kind of relationship is not permitted in the Sikh religion.

28. On [date] the applicant was interviewed by the delegate, with the assistance of an interpreter. The Tribunal has listened to the tapes of the interview

Further documentation received by the Tribunal

29. On [date] the applicant submitted the following summarised statement to the Tribunal:

- He claims he fears return to India because he is a victim of sexual and other physical assaults and fears being captured and harmed on return to India.
- He claims he arrived in Australia with his mother on [date] and he had not had any contact with his parents since they left in [month, year] (father) and [month, year] (mother).
- He claims he is from a proud Sikh family with many years in the Indian army.
- He claims he told his parents that the only reason he gave up to the demands of his captor, [Person C], were because he made threats to kill his family if he reported his actions to the police or refused to have a sexual relationship with him.
- The applicant claims his father returned to India on [date] and advised the applicant that he did not return to his village as he felt ashamed and unsafe. He said his father stayed at one of his [Relative E]'s homes who live in [City D]. He said he sent his [Relative E] to his village to investigate [Person C] and his men and he advised that they are still wanting to find the applicant and his [sibling].
- He claims [Relative E] advised that [Person C]'s men know that the applicant and his [sibling] have fled Australia and have sworn to kill them once they find them to teach the rest of the village a good lesson.
- He claims as he said in his previous statement on the advice of his parents he went and lived with his [Relative F] for [number of] months or so before coming to Australia between [month] and [month, year]. He claims he stayed with his [Relative F], to avoid having to meet [Person C] and being forced to engage in a sexual act with him.
- Between the first week of [month, year] and third week [month, year] when he left home to stay with his [Relative F], he claims he met [Person C] on [number of] occasions. He claims the reason he stayed in the situation was because he was scared that he might provoke [Person C]'s anger if he ran away. He thought if they kept looking for him, they might kill him. He claims in the period he stayed at his [Relative F]'s house, he stopped going to school

and spent almost all his time at home. He claims his [Relative F]'s village was [number of] km [direction] of his village.

- He claims the subsequent meetings he had with [Person C] were all arranged by various male callers, the callers did not introduce themselves and told him to wait at a certain time in a certain location. He claims he believes it was [number of times] at [Village H], [number of times] at [Village I] and [number of times] at [Village J]. He claims he was always blindfolded, picked up in a van and always found himself in a different room.
- He claims that he trembled with fear and cried thinking of himself in this situation, but he had to pretend that he consented to these actions because if [Person C] sensed that he did not like it that he might get angry and hurt his family.
- The applicant claims he walked in with his woollen head covered and started lecturing him about joining his efforts to free the Sikh people from the rule of the Indian government.
- He claims it is very painful for him to relive these memories as he was forced to do things against his will.
- He claims after he was finished with him he was taken to where he was picked up from. He claims it is very difficult for him to deal with those agonising memories and his agent has advised him to seek counselling.
- He claims his parents left last week and he lives with his [sibling].
- He claims his parents left Australia because their visa ran out. He claims they told him they will not be going back to their village and will try to sell their house.
- He claims his father said he will not take him back to his village and that he will be safe with him and his mother. He claims his father could not protect him before so why would he be safe this time.
- He claims he recently had an argument with his parents but they reunited before he left Australia.
- He claims he has been having many nightmares because of his experiences with [Person C].

30. The Representative indicated that he had made an appointment for the applicant to see a clinical psychologist on [date] and is in a fragile and traumatised state.

Tribunal hearing

31. 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 Punjabi (Indian/Pakistani) and English languages.

32. The applicant was represented in relation to the review by his registered migration agent.
33. The applicant indicated that he filled in the application form with his [sibling] with the help of an agent, [name] who told him not to say he helped him at the hearing. He said his office was in [location]. The Tribunal acknowledged that this is a different agent to the one currently assisting the applicant.
34. The applicant indicated that he had [number of] years schooling and stopped at the beginning of [month, year]. The Tribunal asked why the application says he finished his schooling in [month, year] and he said that is when he finished his tenth year, and that he returned to school in [month, year]. The Tribunal asked why this was not included in his application and he said he has a lot of tension on his mind and he did his best.
35. The applicant said he was born in [Village A], and lived there until he moved to live with his [Relative F] for two months in [Village K]. The applicant said [Village K] was about [number of] km from his village and the Tribunal asked how long it was by car to get there. He said he did not know as he travelled by bus and motorised rickshaw. He said it was approximately [number of] hours by bus. The Tribunal said it found it surprising that it took that long and he said that included waiting time, and when asked what it was without the waiting time, he said it was hard to say and he did not notice. He said it was [range of time] by motor scooter and it was flat. The Tribunal said it found it surprising that it took [time stated] to travel [number of] km on a straight road. He said he had no idea and that he just estimated it.
36. The applicant said he had lived in [Address L] since his arrival in Australia, and he lived with his [sibling] and friends. He said his [sibling] did not attend today as he had to study and attend classes. He said his father and mother lived there until his father left Australia in [month, year] and Mother in [month, year]. He said they lived with them when they returned to Australia for [number of] months and they left Australia last week. He said for [number of] days he stayed at his father's friend's house because of an argument he had with his father.
37. The applicant said his father was [information deleted under s.431] and he has a [type of] business in their village. He said when his father left India to come to Australia with his [sibling] he left his business.
38. The Tribunal asked the applicant why his father returned home last week. The applicant said because his father did not want to stay in Australia. The Tribunal asked him where his father lived in India, he said he did not know where as he had had an argument with him. The Tribunal asked when his father left Australia in [month, year] where he went and lived, and he said at that time he was not in connection with his father, so he did not know where. The Tribunal asked whether he had asked him when they had been living together and he then said he lived in [City D] with his [Relative E], which is [time/distance] from his village. The Tribunal asked whether his father faced any difficulties, and he said that he was living in the City as [Person C] was looking for him.
39. The Tribunal asked why his parents came back to live in Australia and he said he did not know. The Tribunal asked where they are going to live in India but he said he did not know. He said he did not want to live with them in India. He said he had an argument with them before they left last week because they wanted him to go with them to India.
40. The Tribunal asked why his parents did not apply for a protection visa, he said they are proud to be Indian and they wanted him to go back with them but he refused, because they could

not protect him. The Tribunal asked why they did not fear return after he had claimed that they were threatened by [Person C]. He said they were scared and their life was in danger, and they were going to sell everything through his [Relative E]. The Tribunal asked where they were going to move to and he said they are going to sell everything. The Tribunal asked whether they thought he was safe elsewhere, and he said they wanted him to travel with them but he would not.

41. The Tribunal asked whether his [sibling] was in touch with his parents and he said they had been the whole time. The Tribunal put to him that it found it surprising that he lived with his [sibling] and he had told the Department he did not know where his family was after they left Australia in [month, year] and [month, year]. He said his [sibling] did not tell him anything but said they would help him if he needed any.
42. The Tribunal asked whether he had any other family in India and he said he has an [Relative E] who lives in [City D], an [Relative F] in [Village K] and [Relative G] who lives in [Village L], a village in [another region] very far away. The Tribunal asked why he could not return to India and live with [these relatives] and he said it is too embarrassing to stay with them.
43. The Tribunal said if it was too embarrassing to stay with them now why could he have stayed with his [Relative F] before, he said he did stay with [Relative F] for [number of] months but [Relative F] was not aware of the circumstances. The Tribunal asked whether [Relative F] asked why he was there and he said they were busy with work and no one asked. He said he was in hiding and did nothing, he said he stayed at home most of the time. The Tribunal said it found it surprising they never asked why he was with them or did not know circumstances. The Tribunal asked him why he told the Department at interview he only stayed with his [Relative F] for [number of] days whereas now he says he stayed with [Relative F] for [number of] months. He said he did not know. The Tribunal asked him why he said to the Department that when he was staying with his [Relative F] before he left India that he used to go out in the village in the day time. He said he hardly went out. He said for the first [number of] days he had problems with others in the village and that is why he did not go out. The Tribunal asked him whether he went out of the house after that he said he had nothing to do so he hardly went out, only if an emergency The Tribunal put to him these inconsistencies again and he said he doesn't know why he said that to the Department, but that it was tension.
44. The Tribunal asked the applicant why he feared returning to India. He said because his life is in danger from [Person C] and if he went back he would find him. He said he would be treated the same way and he did not want this to happen again. He said because he had broken the relationship that [Person C] might beat him up severely.
45. The Tribunal asked how the relationship with [Person C] began. He said one day he was coming home and he was asked to join their Sikh group, and they gave him an ultimatum. He said he refused and they insisted he should join. He said he refused again and [Person C] threatened he would [information deleted under s.431]. He said he still refused and [information deleted under s.431]. He said he was detained [number of] weeks and then released but only under the condition that he continues his relationship with [Person C] and he agreed to do so.
46. The Tribunal asked the applicant why [Person C]'s terrorist group would want to kidnap him. He said [Person C] had previously told his father to join the group and his father had refused. He said [Person C] then threatened the family, so as a result his [sibling] and father came to

Australia, because they threatened to kill the father and harm the family. He said that is why he was targeted.

47. The Tribunal asked when his father was threatened and he said he could not remember. The Tribunal asked what month it was and he said he could not remember. The Tribunal put to him that he had indicated to the Department at interview that it was [month/month] and he said he told them that he could not remember that but they kept asking and then he said it could be [month/month]. The Tribunal put to him that it had listened to the department interview and that he had initially said [month/month] and later said that he could not remember the details, when the Department put to him that it had doubts whether his father and [sibling] left the country as a result of the threats. The Tribunal put to him that his father's [type of] visa application was made on [date] which raises questions whether his [sibling] and father left India because of the threats, and may lead it to conclude that they left as his [sibling] was to study in Australia. The applicant said that when he was asked last time, he said not [month] and could be [month] or [month] and he was pressured to give an answer. He said he gave an answer when he thought the threats were made but said he was not sure.
48. The Tribunal confirmed with the applicant that the sole reason his father and [sibling] left India was because of the threats from [Person C], and he said yes.
49. The Tribunal asked the applicant for further details about how [Person C] made the threats. He said [Person C] told his father to come to the militant group, that he did not know how he did it or how he approached him as he was at school. When asked for further detail about how it was done he said he did not know. The applicant said his father was reluctant to talk about the threats, after the Tribunal said it was surprising that the applicant did not know more details, when his father would have been concerned about the threats, so concerned that he was planning to leave.
50. The Tribunal put to the applicant if there had been threats against his father's life and the family, that it seems surprising that he did not take the applicant and his mother with him. The applicant said the problem was that they could not obtain a visa for both he and his mother. He said when his father left them they moved to the [Relative F]'s house at the insistence of his father.
51. The Tribunal confirmed with the applicant that he was saying that his father left him and his mother because they could not obtain a visa, and he said yes and asked when they applied. He said he did not know what happened, he said his father said he would make arrangements when he was in Australia and he suggested that we go and stay with his [Relative F] in hiding.
52. The applicant said after his father left for Australia they went into hiding for a few days at the [Relative F]'s house and then went back. He said as there had been no threat they thought it was okay and then suddenly on his way home from school he was kidnapped.
53. The Tribunal again said that it had difficulty believing that his father would leave him and take his [sibling] who was only a few years older. The applicant said it was because his [sibling] wanted to study and because his [sibling] was able to obtain a visa but he could not. The Tribunal said that contrary to his advice that they tried to apply for a visa at the time for he and his mother, it had no record that either he or his mother applied for a visa until [month, year] The applicant said that his father had told them it was hard to obtain a visa and that they should stay and he would make arrangements.

54. The Tribunal said it found it surprising that his father arrived in Australia in [month, year], had left because of threats to his family, had taken his [sibling] and there was no visa application for him and his mother until [date]. He said his father used to ring him and as there were no threats, that is why he did not apply.
55. The Tribunal said that it was surprising that even after the kidnapping he claims occurred in [month, year], a visa was not applied for until [month, year]. He said he did not know why.
56. The Tribunal put to him that it raises the following questions. It said it questions whether threats were made against his father, because it seems difficult to understand that if such threats were made against his father and his family that arrangements would not also be made for the applicant and his mother to leave soon after, or to go into hiding. He said his parents would know the reason.
57. The Tribunal said that it had difficulties with his evidence because even after his claim he was kidnapped in [month, year], a visa was not applied for until [date]. The Tribunal said it found it difficult to believe that if the applicant was kidnapped that they would not try to exit the country sooner or go into hiding. He said trying to obtain a visa through an agent is very difficult to obtain. The Tribunal put to him that the records show that after they applied on [date], it was granted within a short period of time by [date]. The applicant said it takes time because many people apply to enter Australia. The Tribunal said that these inconsistencies raised questions as to whether the threats and kidnapping really happened.
58. The Tribunal then tried to contact the applicant's father and [sibling] by telephone but was unable to do so.
59. The Tribunal asked the applicant why he did not tell the Department at interview that he went into hiding when his father left, he said there was a lot of tension and he did not know what to say.
60. The Tribunal asked whether the threats made by [Person C] were reported to the police and he said no, because they are scared of the police because they are corrupt and unless one pays a bribe they frame you. The Tribunal asked whether his father did anything about the threats, he said he did not know. The Tribunal asked whether his father went into hiding and he said he used to take us out to stay at this house and that for [number of] weeks, he said that they were going out to visit. The Tribunal asked why he did not tell the Department this and he said he did, and the Tribunal put to him that it had listened to the Department interview and he did not. The applicant said that he could not tell when this happened but he used to take the whole family away for [number of] days to the [Relative E] or [number of] days to his [Relative F]'s house.
61. The Tribunal said it had difficulty believing that he would take the whole family into hiding and then leave him and his mother when he went to Australia. The applicant says his father told them before he left that they should go and stay at his [Relative F]'s house until he made arrangements for them to leave.
62. The Tribunal said it found it surprising his father would return to [region/state] after his visit to Australia, if he left because of threats and the risk in [month, year]. The applicant said that he wants to sell and get his money and shift to another place. The Tribunal asked him whether he would be safe in another place and the applicant said that is what he said to me.

63. The Tribunal said it found it surprising that he would live in [Address L] in Australia with his parents for [number of] months but will not live with them in India. The applicant said he would not because the militant groups are linked throughout India and he would not be safe.
64. The Tribunal asked him about his kidnapping by [Person C] and the KZF. The applicant said it occurred on [date] The Tribunal put to him that it found it surprising that he was so clear about that date but could not remember the others and he said it was because his mum knew and when he wrote his protection visa statement he rang and asked. The Tribunal asked that it would expect he would similarly know when the threats were initially received by his father.
65. The Tribunal asked whether he went to the police and he said later on after he had been [attacked]. The Tribunal asked him why he and his mother went to the police after he was kidnapped when they did not go before when threats were received against the whole family. The applicant said the police have no power and are corrupt. The Tribunal asked why he went after the kidnapping if they had no power and were corrupt, he said when he made the complaint they created problems for him and they threatened him if he didn't pay the bribe. The Tribunal again asked why he went after the kidnapping but did not go before and he said because he was scared, because the militants had threatened they would kill him. The Tribunal again asked why he went to the police and he said because information was leaked and all the villagers knew of his kidnapping and [attack] and they insisted he go to the police and lodge a complaint. He said he lodged a complaint because of the pressure from the village community. He said it was so embarrassing and he could not go to the temple. The Tribunal asked him whether it was widely known and he said yes. The Tribunal put to him how could his [Relative F] not know about the kidnapping and [attack] and he said his [Relative F] knew because he had stayed with [Relative F] for a short while before he left the country. The Tribunal put to him that this was inconsistent with what he had said before because he had said when he went into hiding [Relative F] did not know of the reason. He said [Relative F] knew that they were making arrangements to live in Australia and it was so embarrassing because everybody knew of the kidnapping and [attack]. The Tribunal asked him specifically whether his [Relative F] knew about the kidnapping and [attack] and he said yes they knew. The Tribunal again put to him that it was inconsistent with what he said before, and he said at the beginning [Relative F] was not aware but later on they knew what happened.
66. The Tribunal then asked him about the details of what happened on [date]. He said he was walking home from school and he was picked up by a car and there were [number of] people in it and he was blindfolded; taken to a place and the blindfold was removed and he found himself in a room. The Tribunal asked whether he was unconscious in this period and he said he was not. The Tribunal put to him that this was inconsistent with what he said to the Department at interview, as he had said he was unconscious after he was picked up by the car. He said he did not think he was unconscious at the time. The Tribunal put to him that he had said to the Department at interview that when he woke up they told me they wanted to give me training and wanted me to go to [Country N]. He said he was just telling the truth.
67. He said after he was taken into the room and the blindfold was taken off than they tried to explain to him about the KZF and about how he would be trained in [Country N] to assist the organisation and how he would be trained in [information deleted under s.431]. He said he was so scared he did not eat and then [Person C] came after [number of] days.
68. He said [Person C] threatened him sexually unless he joined and he refused to do so and then he stripped him naked and forcibly [attacked] him. He said he then became unconscious and

was released after [number of] weeks. He said he was only released under one condition, that if he tried to break off the relationship, he would kill him. The Tribunal asked whether he was [attacked] once when he was kidnapped or more, he said he was unconscious and did not know. He said after the [attack] he was very tense and it was a terrible experience. The Tribunal asked whether he was unconscious for the [number of] weeks after the [attack] and he said no he was there, but he was technically absent. He said he was aware of only one incident of him being [attacked] but he cannot recall because his mind was elsewhere.

69. The applicant said after he was released he went home and told his mother what happened. He said both he and his mum informed his [Relative E] - the one the father had been living with in [City D] He said people came to know through his [Relative E].
70. The Tribunal asked him how the village would know as the [Relative E] does not live in the village and he said he used to live in his village, and about [number of] years ago he left the village and now lives in the city. He said his father sent him to the village to find out what was going on.
71. The Tribunal asked whether his mother or [Relative E] went to the police while he was kidnapped and he said no because these people rang up and said if they reported it to the police they would kill the applicant.
72. The Tribunal said he came home and then what happened. He said my mum said he should not tell anyone. The Tribunal asked whether his mother was alone and he said no his [Relative E] was there.
73. The Tribunal said that in the department interview he said that he told his mother and it was his mother who told the [Relative E] He said yes he can't remember whether it was the same day but that she was the one who informed his [Relative E] The Tribunal put to him that previously he had said that he had informed both his [Relative E] and mother. He said a child is reluctant to talk and that his mother told his [Relative E].
74. The Tribunal read to him the following from his statement attached to his protection visa application: "I was [attacked] a few days. I felt embarrassed. Eventually I was habituated with that life." The Tribunal put to him that he had told the Department at interview he had only been [attacked] once and had said to the Tribunal he only remembered being [attacked] once. He said when he made that application he was trying to remember and recall what happened to him and he is not sure.
75. The Tribunal asked him what is meant from his written statement "Eventually I was habituated with that life" he said what he means is that he was really terrified and he threatened to kill me and that he would have to continue to have this miserable life.
76. The Tribunal asked whether he is saying that what happened when he was kidnapped was against his will. He said yes. The Tribunal asked him why he said it was against his will but told the Department it was consensual and he said that is wrong, that it was forced initially but later on it was consensual. The Tribunal indicated that it is confused as he says it was consensual later on but also says his life was threatened, if he did not continue to have sex with him. He said he was threatened. The Tribunal explained what consensual meant. The Tribunal asked if he continued to have sex with [Person C] after he was released of his own free will, he said he did it because he threatened him. He said he did it because he threatened him and he is too young to make the distinction as to what is consensual.

77. The Tribunal read to him from question 43 of his protection visa application. It read "I want to continue my homosexual relationship. I have chosen my life to be a homosexual. I liked this kind of relationship."
78. The Tribunal asked whether he wants to freely continue his relationship with [Person C] if he returns to India and he said no he only did it because of the threats and he meant it became habitual to have sex with men. The Tribunal asked whether after the relationship with [Person C], he had had sex with any other man. He said no he is not saying he had any sexual relationship with any other men. He said he never had sex with any other man. The Tribunal asked whether he was saying he was homosexual and he said people look down on me because they view me as homosexual. The Tribunal asked whether he really wants to continue homosexual relationships and he said no I do not wish to continue homosexual relationships. The Tribunal asked him if it is right to say that he is not a homosexual but because of what happened with [Person C] he is saying he is viewed as a homosexual. He said yes he did not see himself as a homosexual.
79. The Tribunal then clarified that his fear is that he is viewed as a homosexual because of what happened with [Person C]. He said yes. It confirmed with him that if he returned to India, leaving aside [Person C] and the threats, he would not choose to have homosexual relationships with other men. He said he does not wish to have homosexual relationships with other men. He then again confirmed that he had sex with [Person C] both during the kidnapping and after because he threatened him.
80. The Tribunal asked when he lodged his complaint to the police, and he said a few days after he was [attacked] when everyone came to know. The Tribunal asked when his [Relative E] was told and he said [Relative E] knew immediately. The Tribunal asked whether it was the same day or the day after and he said he could not recall.
81. The applicant said that after he was released he had sex with [Person C] on [number of] occasions. He said his mother knew about it and that he told her, but that that he cannot remember when he told her. The Tribunal asked what his mother's reaction was and she said to him to forget the past and think of the future. The Tribunal asked how soon after he told his mother, he went into hiding. He said he could not remember. The Tribunal asked whether she told his father and he said yes. The Tribunal asked whether he told them he was being threatened and he said yes. He said he told her that [Person C] threatened to harm him and other family members. He confirmed that he told his mum before, and things settled down and that he was living with his mother.
82. The Tribunal said it found it surprising that when he told his mother who told his father that he was being forcibly coerced to have sex with [Person C], a visa application was not immediately made or he did not immediately go in to hiding or go elsewhere in India. He said his mother told him just to forget about it.
83. The Tribunal said it found it surprising that even after he went into hiding in [month]; when he had already told his mother about the continued forced sex that a visa was not applied for until [date] He said he thinks the agent was trying his best on their behalf but they needed documentation. The Tribunal then said it found it implausible that he told his mother of the forced sex; who told his father and it took over [number of] months at the minimum to apply for a visa to go to Australia. The Tribunal said it was also implausible as when the father was threatened previously, he left within [number of] weeks. The applicant said it was difficult to

make arrangements to deal with government departments. The Tribunal put to him that they had an agent and the applicant said that it takes time.

84. The Tribunal said it is surprising that even after he told his parents of the forced sex that he was not immediately taken into hiding at his [Relative F]'s house or to his [Relative E]'s house in the city. He said his mum was trying to do her best. He said if he received death threats the mind does not function.
85. The Tribunal asked what made him suddenly go into hiding and he said he did not know that he just did it. The Tribunal asked why he did not go before when he said he was scared and he said he did not know what kind of reaction [Person C] would have. He said he thought he would become angry and things would become worse.
86. The Tribunal asked whether his mother went with him and he said no she used to come and visit.
87. The Tribunal asked what [Person C] looked like and he said he had a beanie and a beard. The Tribunal asked how tall he was. He said he was not that tall and not that short. The Tribunal asked him whether he was his height and he paused and said maybe almost as tall. The Tribunal asked how old he was and he said he did not know, he said he was not old, not young maybe middle age.
88. The Tribunal said that his evidence indicated that he had spent time with him and expected him to describe his face; he said how can he describe him, that it was very difficult to describe him.
89. The Tribunal asked why he could not relocate to [another city] and he said terrorists are powerful men and can get you anywhere and it is embarrassing. The Tribunal asked why he told the Department if he relocated he would have started another relationship in those places. He said at that time there was no other option but when confronted with other people that look down on him and it is really bad to be a homosexual.
90. The Tribunal asked whether he ever wanted to have a relationship with other men and he said maybe it was his intention but circumstances have changed now and things have settled and he can think constructively. The Tribunal clarified with him and the applicant confirmed that at this point in time he is not claiming to be a homosexual.
91. The applicant said he cannot go back to his village because all the villagers know and it is embarrassing. The Tribunal again asked why he could not live elsewhere in India, he said it is hard to move elsewhere and now he is here it is quite peaceful and safe. He says he is currently working in a car wash two days and he lives with his [sibling]
92. The Tribunal put to him that he had said at interview with the Department that he went into hiding at his [Relative F]'s house for [number of] days but had told the Tribunal it was [number of] months. He said he was really confused and still confused. He said he still has nightmares that someone is following him and is terrified. The Tribunal put to him that he had told the Tribunal that when at his [Relative F]'s he was in hiding but in contrast he told the Department he went out in the day and that it may lead the Tribunal to find that he is not credible and did not go into hiding, and was not kidnapped. He said it is embarrassing and he did not want to go out of the house.

93. The Tribunal put to him it had difficulty believing that [Person C] would be able to find him in the whole of India particularly when his organisation was a proscribed terrorist organisation in India. He said his father's [Relative E] went to the village and found that they are still looking for him. The Tribunal asked whether [Person C] had gone to his [Relative E]'s or [Relative F]'s place looking for him and he said he did not know. He said he did not know the details just that he was still looking for him.
94. The representative indicated that the Tribunal should take into account that the first statement and application were prepared by another migration agent who appeared to be unscrupulous, and that there appeared to be a number of errors in the application, such as the schooling and claims he is homosexual. He said that the Tribunal should take into account that the applicant is 17 and that he felt an obligation to defend these claims made in his first statement to the Department. He said it should be noted that the application is not in his handwriting. He said the Tribunal should not scrutinise him on what was said in the statement and the inconsistencies in this regard. The Tribunal said it would take that into account but that most of the inconsistencies were with the Department interview and on aspects he was continuing to claim happened.
95. The Tribunal said it had a number of concerns with his evidence and had raised these throughout the hearing, but that it would also put the inconsistencies to him in writing. The representatives said that this was suitable as it would give him time to talk about them with his client.
96. The Tribunal then summarised a number of the inconsistencies previously referred to in the hearing and repeated in detail in the s.424A letter below

s.424A Letter

97. On [date] the Tribunal sent the following letter to the applicant.

The Tribunal has information that would, subject to any comments you make, be the reason, or part of the reason, for deciding that you are not entitled to a protection visa as you are unable to show you have a well founded fear of protection for a Convention reason.

The particulars of the information are:

- At hearing on [date] you said that after your father left Australia in [month, year], he returned to India but lived in [City D] because [Person C] was looking for him.

In your statement dated [date] you said that your parents did not return to their village because they both felt ashamed and unsafe.

Information in your father's application for a [type of] visa to Australia signed by your father on [date] indicates at question 13 that his residential address at that time was your village, [Village A], [region/state].

- At hearing on [date] you said that your [sibling] and father left India in [month, year] because of threats made against your father and the family by [Person C].

You also said at hearing your father did not return to his village because he felt unsafe.

Information in your father's application for a visitor's visa to Australia signed by your father on [date] indicates at question 13 that his residential address at that time was your village, [Village A], [region/state].

Relevance

These inconsistencies cast doubt on the claim that your fear is well founded and that you will be persecuted for one of the Convention reasons if you return to India because of threats made by [Person C] and your previous sexual relationship with him and may lead to a finding that you do not meet the relevant criteria for the grant of a protection visa.

It may also indicate that you may not be credible, that threats were not made against your father and family by [Person C] and that your [sibling] and father did not leave because of these threats as your father has returned to live in your village. It may also indicate that you were not kidnapped and [attacked] as a result of your father's lack of cooperation and that evidence has been created and provided to the Department and Tribunal to obtain a protection visa. It may indicate that you did not leave India because you feared persecution because of threats and the [attack] by [Person C], or community pressure. This may lead the Tribunal to find that you will not be persecuted for one of the Convention reasons if you return to India and that you do not meet the relevant criteria for the grant of a protection visa.

- At hearing on [date] and in your statement dated [date] you said you went into hiding for [number of] months at your [Relative F]'s house from [month, year].

At the Department interview you said you went into hiding at your [Relative F]'s house for approximately [number of] days before you left for Australia.

- At hearing on [date] you said that when you went into hiding at your [Relative F]'s house from [month, year] you rarely went out of the house.

At the Department interview you said you went outside in the daytime when at your [Relative F]'s. When asked why you were not scared, you said because you did not tell [Person C] you were in hiding.

- At the beginning of the hearing on [date] you said that your [Relative F] did not know that you had been kidnapped and [attacked] when you were hiding at [Relative F's] house.

Later on in the hearing you said everyone knew, including your [Relative F].

- At the hearing on [date] although you knew your [Relative F]'s place was [number of] km from your home, you were not clear about the time taken to travel to your [Relative F]'s place.

Relevance

These inconsistencies cast doubt on the claim that your fear is well founded and that you will be persecuted for one of the Convention reasons if you return to India because of threats made by [Person C], a member of the KZF and because you did not

continue the sexual relationship with him and may lead to a finding that you do not meet the relevant criteria for the grant of a protection visa.

It may also indicate that you may not be credible, that you did not go into hiding as a result of your fear of your relationship with [Person C], and fear of the community and that evidence has been created and provided to the Department and Tribunal to obtain a protection visa. It may indicate that you did not leave India because you feared persecution because of the threats made by [Person C] and fear of the community's view of you. This may lead the Tribunal to find that you will not be persecuted for one of the Convention reasons if you return to India and that you do not meet the relevant criteria for the grant of a protection visa.

- At hearing on [date] you claim the sole reason your [sibling] and father left India for Australia was as a result of the threats made by [Person C] and KZF against your father and the family.

At the Department interview you said these threats were made in [month/month, year].

At hearing you said you did not recall when these threats were made.

Information from your [sibling]'s visa application and father's visa application indicates that your [sibling]'s visa application was made on [date] and that [a particular document was] created on [date] It also indicates your father's visa application was signed on [date].

- At hearing you indicated that threats were made against your father and the family, that your father and [sibling] left India as a result and that your father was going to apply for a visa for you and your mother.

Information from the Department Movement records indicates your father arrived in Australia on [date].

However you did not leave India until [month, year] and information on your mother's visitor's visa application indicates that the application was not made until [date]

At the Department interview you said you did not go because you were too young.

- At hearing you said that after your father received the threats you were taken into hiding by your father at your [Relative E] and [Relative F]'s.

However even though threats were made against your father and the family, he left you and your mother behind when he went to Australia in [month, year].

Relevance

These inconsistencies cast doubt on the claim that your fear is well founded and that you will be persecuted for one of the Convention reasons if you return to India because of threats made by [Person C], a member of the KZF and because you did not continue the relationship with him and may lead to a finding that you do not meet the relevant criteria for the grant of a protection visa.

It may also indicate that you may not be credible, that threats were not made by [Person C] against your father and the family and your father and [sibling] did not leave India because of those threats. It may indicate that you were not kidnapped by [Person C] because your father would not cooperate with him after the threats were made. It may indicate that evidence has been created and provided to the Department and Tribunal to obtain a protection visa. It may indicate that you did not leave India because you feared persecution because of threats made against you and because of a fear of reprisals from your relationship with [Person C]. This may lead the Tribunal to find that you will not be persecuted for one of the Convention reasons if you return to India and that you do not meet the relevant criteria for the grant of a protection visa.

- At the Department hearing you said that on [date] you were picked up by the KZF and became unconscious after you were picked up and then woke up and you were in a room. You said you thought you were unconscious when taken in the car.

At hearing before the Tribunal on [date] you said that you were conscious during that time.

- You said at hearing on [date] that both you and your mother informed your [Relative E] about the kidnapping and [attack].

You later said at the same hearing that only your mother informed your [Relative E].

Then you said your [Relative E] knew immediately, when asked when your [Relative E] was told.

- You said you told your mother, who told your father that you were being forced to have sex with [Person C] after the kidnapping and that threats were being made against you if you did not. You said this was before you went into hiding.

You said you did not go into hiding immediately, but went in early [month, year] and you did not know what made you go into hiding

Information from the visitor's visa application indicates that it was not made until [date] and granted on [date]

You indicated you did not go elsewhere in India after you told your mother.

- You stated in your statement dated [date] that you had a relationship with [Person C] on [number of] occasions after the kidnapping.

You did not know how tall he was, his age and were unable to describe him.

Relevance

These inconsistencies cast doubt on the claim that your fear is well founded and that you will be persecuted for one of the Convention reasons if you return to India because of threats made by [Person C], a member of the KZF and because you did not continue the relationship with him and may lead to a finding that you do not meet the relevant criteria for the grant of a protection visa.

It may also indicate that you may not be credible, that you were not kidnapped and [attacked] by [Person C], did not continue to have to have a sexual relationship with him under coercion and did not go into hiding as a result of this relationship. It may indicate that evidence has been created and provided to the Department and Tribunal to obtain a protection visa. It may indicate that you did not leave India because you feared persecution because of threats made against you and because of fear of reprisals by the community and [Person C] because of your sexual relationship with him. This may lead the Tribunal to find that you will not be persecuted for one of the Convention reasons if you return to India and that you do not meet the relevant criteria for the grant of a protection visa.

Reply to s424A Letter

98. By way of a statutory declaration dated [date] the applicant replied to the s.424A letter and the particulars of concerns raised by the Tribunal at hearing. This can be summarized as follows:

- On [date] the applicant spoke to his parents and discussed with them the issues raised at the hearing and in the letter received on [date]. The applicant claims his father said that he had given his home address at the village in all applications to the Department despite not having lived there since [month, year] He claimed it is the only permanent address he has at the moment as he has had to move from place to place because of the problems encountered by the applicant and the family from [Person C]. He advised his neighbour collects the mail and his [Relative E] collects it from the neighbour. He claimed his parents advised him they now both live in [City D] as they fear being harassed by [Person C] and his men, their house is empty and his mother is very distressed about the situation, and that they will be moving to his paternal [Relative F]'s house in [another city] in India for one month and will then decide where to go to next. The applicant claims his father advised him that neither of them feel safe to return to the village as another person faced the same situation and fled their home.
- The applicant claims that with regard to the number of days he stayed at his [Relative F]'s house, his memory was affected by all the trauma he has gone through, and living in a small village in India does not require keeping track of time, he is not good at keeping track of time, has never owned a watch and only owned a mobile phone after he arrived in Australia. He claims if the Member asked how long the hearing took he would probably have guessed it incorrectly.
- He claims he was under a lot of pressure when being questioned by immigration and found some of the questions that he was being asked for the first time since the shocking events that happened to him, difficult to answer. He claims for that reason he may have inadvertently provided incorrect answers and claims the events had happened to him and that it is normal for a person of his age who has gone through such traumatic events to have vague memories surrounding the details of the circumstances.
- He claims since the first refusal by immigration he realized the necessity to think harder of the events that he has consciously been blocking. He said they are painful and he has been trying to forget them. He claims it is difficult to

remember insignificant details of such a terrible time in his life and every time he remembers those days his mind is drawn to what happened to him in the dark room.

- He claims his memory is vague as his only preoccupation since arriving in Australia is to block his memories. He felt he also had to answer all the questions at the first interview.
- He claims that he checked with his mother and she was not sure about it but thought he stayed with his [Relative F] for more than a month and much longer than the [number of] days he claimed. He claims his mother found the loneliness of the period very difficult as it was the first time she had to stay home alone since her marriage and giving birth to the children. He claims his mother said it was more than [number of] days and more than a month but she could not remember.
- He claims he tried to hide the incident as long as he could, but he eventually had to tell his [Relative F] about it, and they then called his mother and clarified it as he could not hide the reason when he was staying with them for so long. He claims when he said everyone he meant his [Relative F] and immediate family members including [Relative F's] children's spouses.
- With respect to the time it takes to travel from his village to his [Relative F]'s village, he claims it takes about [number of] hours and is [number of] km away but this is the long route taken by the bus though other villages and he had to take a connecting bus. He claims his [sibling] advised him it is about [number of] kilometers and the bus stops a lot and one has to wait for another bus and it takes about [number of] hours. He claims traveling by public transport is very slow in India.
- He claims at the first interview he said the threats made against his [sibling] and father occurred in [month] and [month, year] but he claims he added he was not sure, and he gave that answer when the case officer insisted on one, and he took a guess as he felt compelled to answer. He claims he checked with his father and they started preparing for their exit after the threats intensified. He claims his father tried to get them all out of India but the agent who organized the visa advised him that he would be unable to obtain visas for the entire family.
- He claims neither he nor his mother had passports until [date]. He claims his mother advised that the passports were applied for [number of] months before they were issued. He claims his father did not apply for a birth certificate or passport for either the applicant or his mother as the agent advised that he could not organize visas for him and his mother anytime soon. He claims his father said he did not see any urgency and organizing the visas for his father and [sibling] had been demanding and a time consuming process and he felt he should put all his efforts into achieving that.
- With regard to the question of being conscious and unconscious after being picked up by [Person C]'s men, he claims he was blindfolded and has no memory of what happened in his immediate surroundings. He claims he

cannot truly say whether he was conscious or unconscious and the reason for the conflicting answers arises from his uncertainty. He claims he has never been blindfolded before and he has tried very hard to remember but he cannot be sure.

- He claims he initially shared the information with his mother and later his [Relative F]. He claims his mother told his father and [Relative E] as he is only a child and he is not allowed to speak of sensitive matters to elders. He claims his mother told his [Relative E] as he is the head of the extended family.
- He claims being a child he had to follow everything his parents told him and it was his mother, in consultation with his [Relative E] who suggested he go to his [Relative F]'s house after she realized the situation was becoming worse.
- He claims [Person C] was in his forties, had a long bushy beard, of medium height, wore a woollen black beanie, a brown pajama and Kurta in typical Sikh fashion. He claims he only met him in dark rooms and his memory of his appearance is obscure. He claims he may have deliberately tried to hide his face from the applicant in order to protect his identity.
- He claims he found the experience at hearing of having to speak of these events quite difficult.

Psychological Assessment Report dated [date]

99. The applicant also submitted to the Tribunal a psychological assessment report by [Person O], organizational psychologist and rehabilitation counselor dated [date]. [Person O] indicates that the assessment was undertaken by a clinical interview, after referral from the applicants' representative on [date], with the applicant and his [sibling]. The psychologist was sent his statutory declaration of [date] by the applicant's representative. The Tribunal notes that while the report is dated [date] the psychologist notes in his report viewing the applicant's statement dated [date] in reply to the Tribunal's letter inviting comment of [date]. The diagnostic consideration, treatment and outcome and recommendations of the report are replicated as follows, except that the Tribunal has substituted the applicant's name with "the applicant"

Diagnostic consideration and Impression

The diagnostic impression according to DSM-IV for the applicant is Major Depressive Episode with the following characteristics of the condition;

- Depressed mood for most of the day nearly everyday
- Marked diminished Interest or pleasure in all or almost all activities most of the day
- Fatigue and loss of energy for most of the day
- Feelings of worthlessness and excessive or inappropriate guilt
- Somatic complaints and bodily aches and pains rather than reporting feelings of sadness

- Reduction in appetite with changes in diet and weight
- Insomnia and waking up during the night and having difficulty returning to sleep
- Psychomotor changes such as agitation, inability to sit still and pacing
- Symptoms have caused significant distress in social functioning

Treatment and Outcome

I have provided the applicant with an assessment of his condition and status and provided intervention by way of counselling and education to the applicant and provided a detailed report herewith. The best treatment for the applicant would be to pursue sexual assault counselling with an Indian speaking Psychologist or Psychiatrist.

Furthermore, it is in the psychological and emotional interest for the applicant to remain permanently in Australia as a resident of Australia. If the applicant was ever placed in the position of having to return to his village in India then he would be placed under enormous threat, stress and psychological pressure to lead a lifestyle against his free will. This would obviously undermine any gains he has made since being in Australia.

The applicant will require long term counselling to address all of his concerns including but not limited to lack of family support during the ordeal, fear of others, feelings of inadequacy in protecting family members, tension between family members, real fear of dying, intimidation and harassment, sexual and physical abuse, uncertainty in his future, re-living the stories of his past when all he wants to do is put them behind him and the real fear of having to return to India. The longer this application for permanent residency for Australia continues the longer he will need to endure the pain and uncertainty of his future.

The applicant has successfully attempted in a detailed manner to answer his inconsistencies in his detailed report (Statutory Declaration dated [date]). It should be of no surprise given the enormity of what the applicant has had to endure that some of his recollection of events and timeframes are somewhat distorted. It is the authors opinion that the applicant is not deliberately trying to fabricate or lie about events of his past but in fact is struggling with having to recall unpleasant memories. As a coping mechanism for many people who experience a traumatic event, they become fragmented in their memory not wanting to recall but wanting to forget unpleasant thoughts and memories. The applicant is showing classic symptoms of wanting to forget the unpleasant history he now unfortunately holds. The applicant has made a genuine detailed response to all his inconsistencies and has impressed upon me how well he has been able to justify his inconsistencies with the tribunal in his statutory declaration.

Recommendations

The following are the recommendations made for the management of the applicant's outlining in no specific order objectives which will benefit the applicant if followed up on.

- The applicant be granted unconditional permanent residency of **Australia immediately** without further delays.

- The applicant is a very obliging young man and will attempt to answer all questions asked of him which may be detrimental to his emotional and psychological well being and would ask the tribunal to reframe from asking repetitive questions of him and or questions pertaining to his parents involvement in his aid or lack thereof
- The applicant under the review of the tribunal not be asked questions relating to his traumatic history without proper supervision and support and not the asked questions of him which are out of his control given his fragile state of mind
- The applicant has undergone a very traumatic series of events and is understandably inconsistent at times with his responses which is a normal reaction to a traumatic event and ask that this not be held against him under the enormity of the strain he is under trying to come to terms with his past
- The applicant has successfully responded to all his inconsistencies in his detailed report to the tribunal from his Statutory Declaration and has done the best he can in recalling unpleasant events
- The applicant will continue to have inconsistencies in recalling some of his history due to the traumatic nature of events, which now form part of his unpleasant history.
- The applicant pursue further longer term counselling to address his sexual assault issues with an Indian speaking Psychologist or Psychiatrist
- The applicant to pursue further assistance with his immigration officer to assist with his residency application and bringing this to closure
- The applicant to liaise with a rehabilitation counsellor to assist with identifying his occupational and retraining goals in life and get assistance with engaging in these activities
- Follow up and review in 3 months time by referring body.

100. The Tribunal also considered other aspects of the report, including the assessment of his current condition and the psychologist's observations, and history but has not repeated them in total. The most relevant in this part of the report is the psychologist's view that the applicant is in a very fragile condition and would benefit from immediate to long term counselling, and that the applicant is showing signs of probable deliberate blocking of his memory of some events as a defiance mechanism for his well being The applicant also advised that his sleep and appetite were poor and that he has experienced this for the past 6-9 months.

Statement received on [date]

101. On [date] the applicant's representative submitted a further statement from the applicant indicating that he had been called by his mother who informed him that his father had returned to the village and through his [Relative E] was advised by [Person C] that he would end all ongoing problems if the family paid [amount] rupees. He claims that his mother advised they did this by selling [certain named possessions], but the father was beaten up and taken away by [Person C]'s men who said that the money only settled his father's problems

and that a further [larger amount of] rupees would need to be paid to settle the applicant's problems. He claims his father has to stay with them until he can raise the money, and that they threatened his [Relative E] not to tell the police. The applicant claims he feels very guilty and if he had stayed in the village none of this would have happened.

102. The representative submitted that the family is completely stripped of its assets and they can only pay the ransom by selling the family home. The representative claims the applicant fears the extortion may continue after meeting the current demand.

FINDINGS AND REASONS

103. On the basis of the Indian passport sighted by the Tribunal, a certified copy which is on the Department file the Tribunal finds that the applicant is a citizen of India and assesses his claims against that country.
104. The applicant claims that he fears persecution in India because he will be perceived as a homosexual by the community, authorities and the religious clerics because of his relationship with [Person C] and as a result will suffer religious persecution and persecution at the hands of his community and the authorities. He also claims if he returns to India, he will either be forced to continue a homosexual relationship with [Person C], or if he does not continue the relationship with [Person C] he will as a result be seriously harmed, killed or forced to become a member the Khalistan Movement. He also claims his family has been threatened with serious harm by [Person C], and his father has been recently kidnapped and the family extorted for money.
105. The applicant claims that he is from a proud Sikh family, and his father spent many years in the Indian army. He claims the terrorists from the Khalistan Movement approached his father to become a member of their organization and when he refused threats were made against his father and their family, and his older [sibling] He claims as a result his [sibling] and father obtained visas and left Australia, as the [sibling] was able to [come to] Australia. He claims that as his father would not join the movement, on [date] the applicant was kidnapped by the Khalistan movement and when he would not join, was [attacked]d by their leader [Person C] [number of] days later. He claims he was released [number of] weeks later but continued a relationship with [Person C] on [number of] occasions as he threatened he would harm both the applicant and his family if he did not continue the relationship. He claims once the community and the religious clerics knew about the relationship they threatened to ostracize his family and tell the authorities, and have him brought before the law for being a homosexual. He claims he went into hiding and left for Australia with his mother on [date]. He claims since his departure [Person C] has been looking for both him and his family. He claims that last Sunday his father and [Relative E] returned to the family village, and that his [Relative E] was advised by [Person C] that all problems with the family would be ended for a sum of [amount] rupees. He claims his father was then kidnapped and taken away by [Person C]'s men and told that the [amount] rupees only covered the father's freedom but a further [larger amount of] rupees was required to secure the applicant's freedom, which the family does not have. He claims the extortion will continue even after meeting the current demand.
106. He also claimed in his initial statement and in the protection visa application that he feared persecution in India because he is a homosexual.

107. The Tribunal does not accept the applicant suffered the harm in his country that he claims for the reasons that he claims, specifically that his father and the family were threatened by [Person C] and the Khalistan movement, that his [sibling] and father left India as a result, that as his father would not join the movement, the applicant was kidnapped, detained and [attacked] by [Person C] and continued that relationship on [number of] occasions, that as a result of the relationship the community and religious clerics threatened the family, that he went into hiding and left India because of these difficulties. It does not accept that as a result of his departure and not continuing the relationship, his father has been kidnapped and forced to pay a ransom for both he and the applicant. The Tribunal does not accept as true that the applicant left his country because of the harm that he claims or that he fears to return there because he fears persecution or harm in India. It finds the applicant's testimony internally inconsistent, inconsistent with other visa applications made by his family and implausible amounting to a fabrication for the reasons below. It does not find him to be a witness of truth. This leads the Tribunal to find that the applicant was not targeted in India in the manner he claims and it does not accept that he is a witness of truth.
108. At hearing on [date] the applicant claimed the sole reason his [sibling] and father left India for Australia was as a result of the threats made by [Person C] and the Khalistan Movement against his father and the family. At the Department interview he said these threats were made in [month/month, year]. At hearing he said he did not know when the threats were made. Information from the applicant's [sibling]'s visa application and father's visa application indicates that his [sibling]'s visa application was made on [date] and that a [relevant document] was created on [date] for his [sibling]. It also indicates his father's visa application was signed on [date]. This indicates that the applicant and his father instigated their visa applications prior to the threats taking place and not as a result, and is inconsistent with the applicant's evidence given to the Department and to the Tribunal. The applicant claims that he advised the Department that he was not sure, when he said [month/month, year], however the Tribunal has listened to the hearing tapes twice in this regard and he only advised he was not sure later in the interview after the Department put to him the inconsistency. Initially he said [month/month, year] without hesitation. It also explains why he said he did not know at hearing, as he was aware of his previous inconsistency to the Department in this regard, which was also noted in the delegate's decision. The Tribunal finds that his evidence that his father and [sibling] left India because of the threats made against his father, [sibling] and family by [Person C] to be a fabrication.
109. The applicant also gave evidence that his father did not return to his village because he felt unsafe, because of the threats made against him by [Person C] in [year], and that as a result of those threats he left India in [month, year]. However information in his father's visa application dated [date] indicates at question 13 that he indicated his current residential address was his home village of [Village A]. The Tribunal finds it implausible that if the threats were made against both the applicant and his father in [year] the applicant's father would have returned to live in his home village. The applicant indicated in his statutory declaration that the reason for this inconsistency was that his father gave this address in all his applications, although not actually living there as it was his only permanent address to receive mail. However the applicant has given evidence that an agent was involved. The Tribunal does not accept this explanation; if his parents were currently living elsewhere the Tribunal would expect his father's application to reflect this. It also notes that when the Tribunal asked the applicant repeatedly where his parents were living, he was very vague, he initially said he did not know as he had an argument with him, then he said he did not know where he lived when he left Australia in [month, year] and he said he did not know as he was

not in connection with his father. This was despite acknowledging that his [sibling] continued to be in contact with their parents at this time and had lived with their parents. It was also after the Tribunal asked whether he knew where they were living, after he had been living with his parents for the last [number of] months, the applicant said [City D]. The Tribunal finds this answer to be a fabrication and would expect him to provide this answer initially if it was true. It finds it implausible that he would not have initially known where they are living as he is living with his [sibling] who has continued contact and finds the response on [City D] to be an invention. The Tribunal views the record of the visa as accurate as to his father's current residential address as of [month, year]. As the father was prepared to return to reside in the home village, the Tribunal finds it implausible that he would do so if the threats were made against him and the family initially in [year], and if the applicant was kidnapped, [attacked] and detained by [Person C] in [month, year] with subsequent threats.

110. The Tribunal also finds it implausible that if the family were threatened by [Person C] to such an extent that the father took the entire family into hiding for periods at his [relative's], and then fled with his [sibling] to Australia, that preparation would not be made immediately for the applicant and his mother to also leave, or to go and live elsewhere. The applicant has given evidence that passports were not applied for he and his mother until about [month, year] ([several] months before their issue) and more than [number of] months after the threats, and that his father said he had not applied for birth certificates and passports at the same time as they were organising their visas because the agent said he could not organise it soon. The Tribunal does not accept that his father and [sibling] would leave because of the threats, but arrangements would not immediately be made for the applicant and his mother to leave India or to go and live permanently with another relative. While the applicant said they went into hiding for a few days at his [Relative F]'s house, he said they then returned as there had been no threats. This is implausible that they felt it safe to return after a few days, whereas the father and [sibling] had fled the country in response to the threats.
111. The Tribunal also finds it problematic that it took the applicant until [date] to leave the country, when his evidence was that he was in hiding at the time. It finds it implausible that once his passport was issued on [date] that arrangements were not made for a visitor visa application to be made soon after, whereas the evidence is that it was made [number of] days later. If the applicant was in hiding, and had been so since [month] and the family were in fear of harm from [Person C] that arrangements would not be made through the agent so that as soon as the passport was issued a visa application could be made.
112. The applicant was also inconsistent about who informed his [Relative E] about his attack by [Person C]. At hearing he initially said that both he and his mother informed his [Relative E], who was the one who told the rest of the village. He later said that it was his mother who told his [Relative E] and only gave this evidence when the Tribunal put to him that his response at hearing as to who informed his [Relative E] was inconsistent with what he had told the Department at interview.
113. The Tribunal also finds it implausible that once the family knew that the applicant had been kidnapped, detained and [attacked] he did not immediately go into hiding, especially as their reaction to the threats made against the father was for him to go overseas. When it was put to him at hearing that this was surprising, he said that his mother was doing her best and she told him just to forget about it, even though it was his evidence that his father and [Relative E] knew and his [Relative E] had suggested his father travel abroad after the initial threats. This and the other matters raised above lead the Tribunal to find that the applicant's father and his family were not threatened by [Person C]; that he was not kidnapped, [attacked] and

detained by [Person C] and the Khalistan Movement because his father would not become involved in the movement; that he did not continue having a sexual relationship with [Person C] after the [attack] and detention as he was threatened; and that the community and religious clerics did not accuse him of being a homosexual because of the relationship, nor did they threaten to advise the authorities and take him before the law.

114. The Tribunal does not accept that the applicant went into hiding because of the threats made by the community, due to his relationship with [Person C], which began after he was kidnapped, detained and [attacked] by [Person C]. The Tribunal finds his evidence to be lacking in truth on the basis that he has provided a number of inconsistencies as to when he went into hiding, for how long, his activities while in hiding and his [Relative F]'s knowledge of the reason he went into hiding. He said at the hearing on [date] and in his statement dated [date] that he went into hiding for [number of] months at his [Relative F]'s house from [month, year]. However at the Department interview he said he went into hiding at his [Relative F]'s house for approximately [number of] days before he left for Australia. He claimed in response to the s.424A letter that he subsequently spoke to his mother who also was not sure of the time frame, but remembers it as a longer period than [number of] days as it was the first time she had to stay at home alone since her marriage and giving birth. The Tribunal finds this response to be implausible when the applicant gave evidence that only [number of] months previously he had been kidnapped for [number of] weeks and at that time his [sibling] and father were in Australia, so the mother was also without her family then.
115. He was also inconsistent regarding his activities while in hiding. At the hearing on [date] he said that when he went into hiding at his [Relative F]'s house from [month, year], he rarely went out of the house, however at the Departmental interview he said he went outside in the daytime. When asked why he was not scared to go out in the daytime, he said because he did not tell [Person C] he was in hiding.
116. He was also inconsistent regarding his [Relative F]'s knowledge of the reason he went into hiding. At the beginning of the hearing on [date] he said that his [Relative F] did not know that he had been kidnapped and [attacked] when he was hiding at their house, whereas later on at the hearing when describing how the community was against him and why he had to go into hiding he said everyone knew, including his [Relative F]. He claims in the reply to the s.424A letter that this inconsistency arose as he tried to hide the shameful incident but eventually had to tell his [Relative F], who told their family. The Tribunal finds this answer implausible when viewed against his earlier comments at hearing. The applicant said in answer to the Tribunal's question at hearing why he could not go and stay with his [Relative F] now when he had stayed with them before, and he said they were not aware of the circumstances, referring to his detention and [attack]. The Tribunal then asked whether anyone asked why he was there and he said, they were too busy with work and no one asked.
117. The applicant has provided a further explanation for these inconsistencies and the implausible aspects of his evidence raised by the Tribunal, that his memory is lacking and vague as a result of the traumatic events he has gone through, including the kidnapping, detention and [attack]. He also claims his memories are vague and unreliable as he has been trying to block off and forget those events. He apologizes for saying things which he was not quite sure of at the first interview, but he felt he was responsible to know all the answers. In support of this claim the applicant has submitted a psychologist report.
118. The psychologist saw the applicant on one occasion with his [sibling]. He has diagnosed the applicant with depression, marked diminished interest or pleasure in activities, fatigue and

loss of energy, feelings of worthlessness, body aches and pains, reduction in appetite, insomnia, psychomotor changes such as agitation and distress in social functioning. The psychologist has suggested treatment and made recommendations for the management of his condition.

119. The psychologist on viewing the applicant's statutory declaration dated [date], in reply to the s.424A letter, indicated that some of his timeframes are distorted and recollection of events. It is his view that the applicant is not deliberately trying to fabricate or lie about events of the past but is struggling to recall unpleasant memories. The psychologist indicated that a coping mechanism for many people experiencing a traumatic events they become fragmented in their memory not wanting to recall but wanting to forget.
120. While the Tribunal accepts the psychologist's opinion and diagnosis that the applicant is suffering from a number of emotional and mental symptoms, including depression, whether the applicant has suffered persecution or will suffer persecution in the foreseeable future is a question of fact for the Tribunal to determine. The psychologist's opinion is predicated on accepting the truth of the applicant's claims, which the Tribunal does not accept. The Tribunal does not accept the psychologist's opinion in relation to the inconsistencies being as a result of the difficulties he faced in India at the hands of [Person C] as this issue is inconsistent with the applicant's presentation at the hearing, the conflicting evidence given by the applicant and the findings of the Tribunal. Notwithstanding, the Tribunal notes that it is not just the inconsistencies which suggest the applicant's claims are fabricated, but also the implausibility's surrounding his claim referred to above.
121. Further, the Tribunal had the opportunity of observing the first named applicant over a lengthy hearing, over three hours and listening to the interview tapes of the Department interview. He was able to answer questions clearly, providing dates and indicating that he did not know when he did not. While the Tribunal accepts that a person may be lacking in memory as a result of traumatic events, the Tribunal has difficulty accepting that the nature of the applicant's inconsistencies are explained by a lack of memory or compulsion to answer for the following reasons. In this case the applicant rather presented completely contradictory accounts of the events referred to above, and only indicated he did not remember or had difficulty remembering as a result of the trauma after the inconsistencies were put to him, suggesting that he was fabricating the claims not that he could not remember. It also notes that both at the Department interview and at the hearing on other occasions when he did not know the answer, he said he did not know, rather than try to concoct a reply. As he was able to advise when he did not know on some occasions to both the Tribunal and the Department, it has difficulty accepting that he was compelled to answer by providing contradictory information.
122. The Tribunal notes that the applicant is [age], and has taken this into consideration when assessing his claims. It notes that he has also been assisted by a representative since his later statement of [date] to date. It has taken into regard the representative's request that the applicant was previously unassisted when completing his protection visa application and attached statement and as a result has not taken into account any inconsistencies between these (the protection visa application and the attached statement) and the oral evidence he gave to the Tribunal and the Department, which it has listened to
123. For these reasons set out above the Tribunal is not satisfied that the applicant is a witness of truth, and was or is of any interest to the Indian authorities, community, religious clerics, [Person C] or members of the Khalistan Movement because of his relationship with [Person

C], and the events surrounding that. It does not accept that his family was threatened by [Person C] and the Khalistan movement, that he was kidnapped and detained by the Khalistan Movement and [attacked] by [Person C] and continued that relationship on [number of] occasions that he went into hiding and left India because of these difficulties. It does not accept that he was threatened with serious harm by way of death or serious harm from [Person C], that his family was similarly threatened or that he was threatened with being forced to join the Khalistan Movement. It does not accept that as a result of his departure and not continuing the relationship, that his father has been kidnapped and forced to pay a ransom for both he and the applicant, or that he or his family will be continued to be extorted in the future. It finds his testimony of the events that happened in India to be a fabrication

124. The applicant also claims he fears return to India as he is a homosexual. However at the hearing it became apparent after questioning by the Tribunal that the applicant viewed anyone as being forced to have sex with a man as a homosexual and feared other people viewing him as a homosexual because of his relationship with [Person C]. He gave evidence that he did not want to have a relationship or sex with any man and had not had sex or a relationship with any man, except with [Person C] as he was forced to. He said if he did not have to have sex with [Person C] if he returned to India, he would not have sex or a relationship with any man. As the Tribunal does not accept the applicant's account of what happened to him in India and in particular that he was kidnapped, [attacked] and forced into a sexual relationship with [Person C], and based on his oral evidence that he does not voluntarily want to have a sexual relationship with any man, the Tribunal does not accept his claim that he is a homosexual. It does not accept his claim that he fears to return to India because he is a homosexual, and does not accept his claim that he will be persecuted for being a homosexual.
125. The Tribunal does not accept that there is a real chance of the applicant being persecuted if he returns to India. The Tribunal is not satisfied on the evidence before it that the applicant has a well-founded fear of persecution within the meaning of the Convention as qualified by the Act.

CONCLUSIONS

126. 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

127. 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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