

0808255 [2009] RRTA 1012 (12 March 2009)

DECISION RECORD

RRT CASE NUMBER:	0808255
DIAC REFERENCE(S):	CLF2008/124535
COUNTRY OF REFERENCE:	India
TRIBUNAL MEMBER:	Patricia Leehy
DATE:	12 March 2009
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of India, arrived in Australia [in] July 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] August 2008. The delegate decided to refuse to grant the visa [in] November 2008 and notified the applicant of the decision and his review rights by letter [on the same 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 [in] December 2008 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal [in] February and [in] March 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Malayalam (Indian) and English languages.

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21. According to his Protection Visa application, the applicant is a Christian male born in Kerala, India, on [date deleted: s431(2)]. The applicant was married in October 2007. He says that his parents are currently resident in India, and he has a brother and two sisters who are also resident in India. The applicant says that he was resident in [village name deleted: s431(2)], Kerala, India, from 1997 to 2007, and that from 2007 to 2008 he was resident in [location deleted: s.431(2)], Kerala, India. He says that he was educated from 1986 to 2003, but did not complete his college studies in Kerala. He gives his past employment as "student".
22. The applicant in his statement submits a number of examples of conflict between the state's ruling Communist Party government and others, including Christians, in Kerala. In relation to his own circumstances, the applicant submits the following relevant information:
 - The applicant fears persecution for all five Convention reasons, which he says are indistinguishable from each other;
 - The applicant is the son of a fisherman and the life of the family is centred on the Church;
 - He was encouraged by his father to study, and was kept inside when there were clashes between Muslims and Christians in their area of [location deleted: s431(2)], Kerala; this is an area well known for constant altercation between Muslims and Christians;
 - The applicant was well known in [village deleted: s431(2)] as a decent boy and a good Christian; the priest took him for trips to other parts of Kerala and he and his friends spoke of the love of our Lord to the uneducated and the poor; the applicant was asked by the villagers to teach the children how to live a Christian way of life;
 - When the applicant completed his schooling in 2003, he wanted to get involved in serving Lord Jesus as well as doing a degree; he joined [college deleted: s431(2)] in [suburb deleted: s431(2)] to pursue a private course leading to a degree in English literature;

- The applicant progressed well at college together with two friends who also attended;
- One of the friends the applicant acquired was a Muslim girl called [Miss A's name deleted: s431(2)] who fell in love with the applicant; when she told the applicant of this, he said that it would not work because of the conflict between Muslim and Christian fishermen; [Miss A] wished to marry the applicant and elope with him to another State;
- [Miss A] stopped attending college and tried to force the applicant to elope with her; she threatened suicide;
- The applicant told his brother and the church priests about this and they advised him to keep away from her;
- In January 2007 the applicant was manhandled by four Muslim men and taken to a Muslim village where he was kept inside a Muslim house;
- The applicant's brother suspected foul play and gathered a group of Christian youths to search for the applicant, especially in [Miss A's] home town of [town deleted: s431(2)]; there was a fight between the brother's group and the Muslim group with bloodshed on both sides;
- The men who had taken the applicant released him after the Communist Party authorities negotiated with the Muslims and released him, his brother having insisted that the applicant had been abducted out of Kerala or hidden in [town deleted: s431(2)];
- The applicant's brother feared for his safety and sent him to Dubai on a visit where he stayed for three months; he renewed his visa for a further three months as he could not return to Kerala because of the tension;
- The applicant stayed in Tamil Nadu when he could not renew his visa for Dubai, and he could not return to Kerala; his parents decided to get him married to a Christian girl, [Mrs B's name deleted: s431(2)], and the marriage took place in October 2007 in [location deleted: s431(2)], Kerala, where the applicant lived with his wife at her family's residence;
- The applicant helped in the Church and worked there as a social worker until he found a job;
- In about December 2007, police arrested the applicant and took him for investigation to [town deleted: s431(2)] police station where they accused him of raping [Miss A], which led her to commit suicide;
- The police officers who were Muslim beat the applicant and threatened to send him to prison permanently;
- The applicant's brother in the meantime collected his men and demanded that a post mortem should be done; the Muslims refused a post mortem and another riot took place in the area; the police released the applicant in order to stop the riots;

- When the applicant came out of prison, Muslim groups searched for him to take revenge on him;
 - Police officers had told the applicant's brother that they had been told by the Muslim men that [Miss A] had committed suicide after his marriage, and the Muslim men who had manhandled him previously spread rumours and planned revenge; they said that unless the applicant left the area, the Muslim men would murder him;
 - Christians and Muslims continued to fight in the streets;
 - In February 2008, the applicant had to flee from Kerala when a group of Muslim men were searching for him to kill him; they had said that they would kill the applicant anywhere in India;
 - Police officers in the meantime had told the applicant's father that he should be sent to prison for causing riots around the villages and for the injury of innocent people because of the rape of the Muslim girl;
 - The applicant's parents tried to convince the police that he had no illicit relationship with the Muslim girl;
 - The church convinced the authorities that the Muslims had created the rumour in order to take revenge on him for the death of the Muslim girl;
 - The police said that if the applicant left the country they could control the riots and their consequences; they said that the Muslim criminals would go in search of him and not stop until he was killed;
 - The Church fathers advised the applicant to use the opportunity of the World Youth Conference in Australia to stay away from Kerala
23. The applicant attached a number of documents to his application. The documents are drawn from various media sources and refer variously to persecution of Christians, Marxist oppression of Hindus, opposition by Kerala bishops to the State family planning bill, and other sources of conflict in Kerala. None appears to be directly relevant to the applicant's claims. The applicant also submitted a copy of his passport showing a visa and exit and entry stamps for Dubai; the applicant's results in the Leaving Certificate examination in March 2000; an identity card issued by the Election Commission of India [in] May 2002; a baptismal certificate for the applicant showing him to have been registered for baptism at [church and baptismal date deleted: s431(2)], and a marriage certificate for the applicant's marriage at [church and location deleted: s431(2)] [in] October 2007.
24. Notes on the applicant's Departmental file indicate that he was sponsored to come to Australia as a Pilgrim by the Catholic Bishops Conference.
25. The applicant was interviewed by a Departmental officer [in] October 2008. Information provided at interview included, relevantly:
- The applicant told his story to a lawyer who wrote the application;

- He was born in [village deleted: s431(2)], Kerala, where his parents and two sisters live; his father is a fisherman; his brother lives in Israel; his brother works with older people; he left India because of the applicant's problems but the applicant was uncertain when this was, apart from the fact that it was in 2008; the applicant was still in India when his brother left; his brother did not live with the applicant, but half a km away;
- The applicant is married with a child; his wife is living with her parents;
- The applicant completed three years of university; he finished high school in 2003 and then enrolled in a two-year pre-degree course; the university is 13-15 km away from home;
- The applicant lived in five different places in the last ten years; Dubai for 5 months in 2007 from March to August; Bangalore in 2001 to study; his village of [village deleted: s431(2)]; his wife's village; and Tamil Nadu from September to December 2007; he lived there with a friend of his brother;
- Regarding his relationship with the Muslim girl, [Miss A], the applicant said that they were college mates and friends in 2004, travelled together on the bus and went together to the library to study; two other friends of the applicant were in the group; she told the applicant she would like to marry him, even though she is a Muslim; the applicant said this could not happen because of the problems between Christians and Muslims in his area; they had a casual friendship, and he would see her only during study times every day at college;
- [Miss A] in 2007 told the applicant that she seriously wanted to get married to him; his friends were not there at the time but came to know later; neither the applicant nor his friends expected her to say she wanted to marry him; the applicant did not remember when [Miss A] proposed to him; they were returning from classes;
- [Miss A] never stopped coming to college; when it was put to the applicant that he had said in his statement that she stopped coming to college, he said that after she proposed to him both she and he went to college but not so often;
- The applicant told [Miss A] that he could not marry her; she told him that if he did not marry her she would commit suicide; she did not commit suicide; two months after his marriage in December 2007, there were some problems; she did commit suicide then, and it was alleged that because she was raped by the applicant and was pregnant she committed suicide; the allegations were made by her brother's friends and her household; they wanted to convert the problem into a religious problem;
- The applicant was asked why they should target him, and he responded that the household knew that she was in contact with him;
- The applicant was asked whether this was the first time he had had problems; he said there was one instance when four friends of [Miss A's] brother and her brother took the applicant to their house in the evening, kept him there for two days and told him that he must marry the girl and become a Muslim; they beat him

during this time; this happened sometime before he went to Dubai, but he could not remember exactly when except that it was in 2007; he was kept in the household of somebody perhaps related to [Miss A], but he did not know exactly where; it was in her village in an uninhabited area; [Miss A] came to know about this somehow; she enquired about the applicant at his house and he was not there, so the applicant's brother started looking for the applicant with his friends; the applicant was released because his brother and his friends located him and got him released after some discussions;

- The applicant informed police about the abduction and the police investigated, but they could not locate him; his brother's friends found him; when questioned further on who informed the police, the applicant said that his brother informed the police; the applicant did not inform the police later because the police were supporters of [Miss A's] people;
- The applicant's brother then arranged for the applicant to go to Dubai to avoid problems; his visitor visa was for two months, and it was extended for a further month; altogether he lived in Dubai for five months; he did not work there but was supported in Dubai by a friend of his brother's;
- The applicant went to Tamil Nadu in August 2007 and came back to his village for his marriage which was arranged by his brother to find a solution to the problems; this marriage would cause [Miss A] to desist from her wish to marry him;
- The applicant said that [Miss A] committed suicide two months after his marriage; at the time the applicant was living with his wife; the applicant knew nothing of the details of the suicide; the police came to the applicant's wife's house and told him that he had impregnated [Miss A], and as a result she had committed suicide; the applicant's brother said that there should be a post-mortem to see if he had impregnated her, but they did not agree; they said they wanted to take the applicant's life in revenge;
- The police took the applicant to [Miss A's] local police station at [town name deleted: s431(2)]; he was kept for two days; it was put to him at the Departmental interview that he had been accused of a serious crime, and was asked whether he was charged; he said that they did not do the post-mortem but he was charged; he was asked whether he had any evidence of his arrest, and he said that he had not; the police did not want to make this a serious issue, although they were on the girl's side;
- The applicant was asked why he was released apparently without charge when he had been accused of a serious crime; he said that there had to be a post-mortem before a charge could be brought and the police refused, so their case was weak; later the police came to know it was a matter of allegations; the case did not go to court; it was put to him at the Departmental interview that documentary evidence of his arrest and release would have been expected; he said there was nothing;
- After this incident, the police told the applicant that if he stayed around there, there would be problems; the police contacted the Church people and said that there was an opportunity for the applicant to go to World Youth Day;

- The applicant said that the opposing people threatened to kill him; when questioned further at the interview, he said that they only warned him; the people who made the threats were [Miss A's] brother and his friends;
- When the applicant was released from prison he stayed at his wife's parents' home; the applicant's brother and the parish priest of the Church helped him get a visa to come to Australia;
- The applicant was asked what happened with his studies; he said he could not finish his final year because of the problems he had talked about;
- The applicant's father paid for his trip to Australia; he came to Australia six weeks after his visa was granted;
- The applicant was asked why he delayed his trip for six weeks when he was afraid of being killed; he said there was no other opportunity on which he could come except for Youth Day;
- The applicant was asked why he delayed lodging a Protection Visa application until 6 weeks after he arrived; he said that he did not know how to go about it and did not have the money;
- The applicant said that if he returned he might be killed on the way from the airport or later when he left his house; [Miss A] brother and his friends would kill him; the Muslims are in the majority in the areas where he and [Miss A] live; there were problems there in 1992 between Muslims and Christians;
- When asked why he could not relocate to avoid problems, he said that Muslims are all over the place and have said they would kill him; it was put to him that in fact Muslims are a minority in India and it was difficult to believe that he could not find somewhere safe to live in such a large country; he said they would come to know, and it would be difficult to live anywhere else;
- It was put to the applicant that he could obtain protection from the Indian authorities against his aggressors and was asked for comment; he said that Christians cannot do anything in India because of Muslims.

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26. The applicant provided no additional information with his review application to the Tribunal.
27. The applicant brought his passport to the Tribunal hearing [in] February 2009. He said that this was his first passport. When asked why he had obtained the passport in November 2002, he said that he had intended to go to Dubai, because his brother was working there. However, he was studying at the time, so he did not go in 2002. His brother had advised him to obtain a passport in case he wished to travel.
28. The applicant said that his parents were resident in [village name deleted: s431(2)]. He said that his wife's parents' house, where his wife is staying with their 5 month old son, is also in [location deleted: s431(2)], about 30 km from his parents' house. The applicant's parents are Catholic, as is his wife. The applicant said that his brother is currently resident in Israel, and

has been there for 9 months. The applicant's brother had been in Dubai for about 5 years before 2002. The applicant also stayed in Dubai from March 2007 for about 5 and a half months. He was there on a tourist visa, and did not work there.

29. The applicant said that he was in regular contact with his family since he has been in Australia. He spoke to both his wife and his parents in the last week. When asked whether anything had been said in his conversations with his family which he thought important for his claims, he said that his parents had said nothing of importance, and that in his conversations with his wife he had told her about his current situation here.
30. It was put to the applicant that he was nearly 28 years of age but apparently had never had a job. He said that this was so. He was asked what his father's occupation was. He said that he is a fisherman. He works with his father occasionally. It was put to the applicant that this would not seem to be enough to support himself and his family. He said that he made enough money to support them.
31. The applicant said that he graduated from high school in 2003. He began college in June-July 2003 and his course was of three years duration. However, he did not complete the course, finishing in 2005 after only two years. He was asked why he did not finish his course. He said that he could not sit the exams in 2005 because of problems with the Muslim girl, [Miss A]. It was put to the applicant that the Tribunal had formed the impression from the evidence he had given to the Department that the problems with [Miss A] were of later date. He said that the problems had continued.
32. The applicant was asked when he first met [Miss A]. He said that he did not remember. He said his bus used to pass her house and she would board the bus when he was on it. It was put to the applicant that it was difficult to believe that he did not know when he had first met [Miss A], given the problems with the relationship. The applicant said that he first met when he started college in 2003. She was in the same class and he lived about 5-6 km away from her. He saw her every day. He was asked what his feelings for her were. He said that they lived in the same area and would talk about their studies. Sometimes he would borrow her notes. They did not go out together socially, but they would sometimes go to the library together. The applicant was asked what were the problems with his friendship with [Miss A]. He said that [Miss A's] "household" did not like them to be friends. When asked what he meant by her "household" he said that he meant her older brother, [name deleted: s431(2)], who was about 30. He told the applicant that he should not be with his sister. He told the applicant that he did not want to see them together in public. The applicant said that the problem seemed to be that they travelled on the bus together. It was put to the applicant that this did not seem to be a serious problem when they were both students together. He said that her brothers do not like Christians.
33. The applicant was asked about the college he attended. He said that [college name deleted: s431(2)] was a non-denominational college. There were a lot of Muslim girl students, along with students of other backgrounds. It was put to the applicant that given it was a mixed college, it was hard to understand why there should be a problem, if he and [Miss A] were simply students together, attending classes, going to the library, catching the bus. The applicant said that this was not a problem but that she was from the [town deleted: s.431(2)] area. He said there was always conflict between the [location deleted: s431(2)] because of religion. This caused the problem with the relationship between the applicant and [Miss A].

34. The applicant was asked when [Miss A's] brother first confronted him. He said first that he did not remember. It was put to him that he had said that he met [Miss A] in 2003 and that they then caught the bus together and studied together and so on, and that it might be expected that the brothers would have become annoyed about the relationship in 2003 or 2004. He then said that he thought it was in 2005 that [Miss A's] brother confronted him. It was put to the applicant that it was not credible that the relationship had gone on for two years before anything was said. He said that it was the end of 2005 that the confrontation took place. It was put to the applicant that if there were traditional enmities between [towns] it seemed strange that it was only at the end of 2005 that a problem arose. He then said that they probably knew that [Miss A] liked him very much. He was asked whether he himself knew this, and he said that he did. When asked when she told him this, he said that she told him in 2004 that she wanted to marry him. It was put to the applicant that it was difficult to believe that an intelligent girl who was a Muslim and knew he was a Christian would have suggested such a thing. He said that she wanted him to change his religion. He refused to do so. She said that if he could not change his religion perhaps they could go away together. He also refused to do this. The applicant was asked whether he continued to see [Miss A] after he refused to marry her or elope with her. He said that his brother also came to know about this relationship and he tried to avoid travelling with her. He was asked how many were in the class, and he said about 40. There were about 10 Muslims and maybe 20 Christians and the rest were Hindu.
35. It was put to the applicant that after he had refused to marry or elope with [Miss A], it was to be expected that he would have avoided her, since the situation had become very difficult. He said that this was true. He was asked what the problem then was, given that [Miss A's] proposals had been turned down. The applicant said that he tried to avoid her, but she said that she was going to commit suicide. He was asked whether she did in fact commit suicide. He said that she did. He was asked when she did this. The applicant said he could not remember. It was put to him that he had claimed in his application that she had committed suicide two months after his marriage, which was in October 2007. The applicant said that this was true. It was put to him that the suicide in 2007 was hardly the result of events taking place in 2004. He agreed. He was asked what the problem was. The applicant then said that his brother decided to send him away to Dubai. It was put to him that this happened much later, in 2007, well after he had stopped study, as confirmed by the dates in his passport. It was put to the applicant that his story was not holding together. It was put to him that he had said that he had a problem in 2004, then he went to Dubai in 2007, came back to get married, and then the girl committed suicide. The applicant said that if he looked at the certificate from his college, he could be more accurate about the dates. It was put to him that he had in fact submitted a high school certificate, showing that he finished there in 2003. He had said that he went to college in the same year he graduated from high school. He had said that he only attended college for two years and then left. He then said he went to Dubai. It was put to him that he went to Dubai in 2007, not in 2005. The applicant then said that he left college in 2005 and went to work in different places. It was put to him that he had said previously that the only work he did was occasional work with his father. The applicant said that he went to Tamil Nadu. It was put to him that he had said previously in his application that he went to Tamil Nadu in 2007 after he went to Dubai. He said that he did not say this previously, but he actually went to work in different places in Kerala, and in Tamil Nadu. The applicant said that he went with friends to paint houses. The applicant was asked when he left college. He avoided the question, and said that he left the college because of problems with [Miss A]. It was put to the applicant that it was very difficult to believe that he was still having problems two years later, in 2007. He did not respond.

36. The applicant was asked when he came back to Kerala. He avoided the question and said he came back to Kerala, but his brother advised him to go to Dubai. He said that he was also in hiding in different places. It was put to him that this was very hard to believe. He said that he could get the details of all these events, but they were at home in Kerala. It was put to the applicant that the Tribunal found it very hard to believe his story. He was now saying that he had been away from home from 2005 when he left home in Kerala, until 2007 when he came back from Dubai. He said that this was so. It was put to him that it was difficult to believe that he felt obliged to stay away from home for two years when there was nothing other than a student relationship between him and [Miss A]. He said that it was not two years. He agreed that the end of the college year was about April. He agreed that he left college and went painting with friends about April 2005. He said that his brother advised him to go and do the painting because he would not earn any money if he was in hiding. The applicant was asked whether he had any problems between 2005 and 2007. He said that he had no problems during this time. He was asked when he did have problems. He said that it was when he returned in August 2007. His marriage had then been arranged. There were no problems then. He went to live with his wife's parents. There were no problems then.
37. The applicant said that his problems started again because [Miss A] had kept her word, and committed suicide. The applicant's parents had said that to avoid problems he would have to be married. It was put to the applicant that this was very difficult to believe. He had never been romantically involved with [Miss A], and the relationship had effectively ended in 2004 when he had refused to marry her. The applicant was asked whether he had any documentary evidence of [Miss A's] death. He said that he did not.
38. It was put to the applicant that he had said in the statement he had lodged with his Protection Visa application that he had been abducted. He said that he had been. He had been abducted by friends of [Miss A's] brother. He said that he did not remember the time or the year. It was put to the applicant that this was not credible when it would have been such a traumatic event. He then said that it was probably in 2005. It was put to him that this was not what he had claimed. He said he did not remember because he was trying to forget about it. It was put to him that he had claimed that he was abducted in January 2007. It was put to him that it was difficult to believe that [Miss A's] connections would have waited for three years before they did anything to him. He then said that they actually abducted him while he was still studying in college, in 2005. He was asked why there was a discrepancy between what he was saying now, and what he had claimed previously. He did not respond.
39. The applicant was asked to describe the abduction. He said that they threatened him, telling him to go away, and beat him. He was asked to describe where they took him. He said that they took him to a place called [location deleted: s431(2)], near a mosque. They took him one day, and released him the next. He was asked whether he told his brother about this. He said that his brother came to know about it, and they released him after his brother came with friends to get him. He was asked whether he complained about this criminal abduction to the police. He said that he did not. He said that the people around him talked with each other and settled the matter. When he was missing, they complained to the police that he was missing, but there was no complaint after the abduction because it might create more problems.
40. The applicant was asked what happened when [Miss A] committed suicide after his marriage in 2007. He said that her brother and his friends accused him of causing the suicide. They said that she was pregnant by the applicant. It was put to the applicant that this would have been impossible since he had been away in Dubai and elsewhere for most of the relevant

time. He agreed. The applicant said that he would get evidence to prove everything to the Tribunal. It was put to him that he had had every opportunity to get such evidence but had not done so.

41. The applicant was asked what exactly happened after [Miss A's] suicide. He was evasive and was asked the same question several times. He said that [Miss A's] connections told him that he had made [Miss A] pregnant and had caused her suicide. He was asked how they told him this. He said that they came and complained to his wife's people. The police also came. His brother said that if the police wanted to prove this, they had to do a postmortem and get evidence. It was put to the applicant that there had been no crime, so it was difficult to see how the police were involved at all. The applicant was asked whether he was charged with a crime. He did not answer the question but said that the police came to the house and took him to the police station. He was asked when this happened. He said that he could not remember, soon after the suicide of [Miss A]. He was asked when. He said maybe one week after. He said that it was maybe October 2007. It was put to him that this was when he got married. He then said it was one week after she committed suicide. He was asked whether this was December 2007 or January 2008. He said he could not remember. The applicant was asked whether he was charged with a crime by police. He said that there was no charge. There was no other problem. He was taken to [town deleted: s431(2)] police station. The case was withdrawn after his brother asked for a post-mortem. He was asked how long he was kept at the police station. He said it was one or two days. He said eventually that he was arrested around noon and was kept until noon next day. He was asked what happened after that. He said that he came to know through other parties that "there was still enmity", and that they were after him, so he left the country. It was put to him that he did not in fact leave for another 7 months. He said that he was in hiding. It was put to him that he got his visa in May 2007 but he still did not leave for another two months. He did not respond. When he was asked again, he said that he was making arrangements for the journey.
42. The applicant was asked whether he spoke to the connections of [Miss A] after his encounter with the police until he left for Australia. He said that he spoke to no-one from [Miss A's] family in this 7 month period. He said they used to make threats to his friends, saying that if they saw him there, they would do something. His friends told him about it.
43. The applicant was asked what he feared if he returned to India, and he said that he would have to avoid these people. He was asked what he thought they would do to him. He said that they wanted to take retaliation against him.
44. It was put to the applicant that information before the Tribunal indicated that there was an effective legal system and a functioning police force in India, so that if he needed protection the authorities would be willing and able to provide it. He was asked whether he had a comment. He said he had not.
45. The Tribunal summed up the adverse comments which had been made to the applicant in the course of the hearing. Essentially, these were adverse comments about the credibility of the applicant's claims. If the Tribunal did not accept the applicant's claims, then it might find that the applicant was not in danger of serious harm if he returned to India. Furthermore, as had been put to him, even if there were threats against him, the applicant would be able to access protection from the police. In these circumstances, he might be refused a Protection Visa. He was asked whether he had any comment. He said he had nothing further to say, but wanted more time to submit information about his claims. He said he wished to do this at a hearing. A further hearing was set for [date] March 2009.

46. [In] March 2009, the applicant submitted three documents to the Tribunal. Two documents related to the results obtained by the applicant in his Higher Secondary Examination in March 2003 and June 2003. The March Certificate states that the applicant failed in the examination. The June Certificate says that he passed Mathematics. The third document appears to have been issued by the [Education Provider 1] and is in two parts though recorded on one page. One part makes reference to a “First Year BA Degree Examination of March/April 2005” and does not record the applicant as receiving any marks in the exam. The other part makes reference to a “Second Year BA Degree Examination of March/April 2005” and shows the applicant to have failed four subjects and been absent for one. The document is signed by the Controller of Examinations and carries a date [in] November 2005.
47. [In] March 2009, the applicant came to a further hearing at the Tribunal. It was explained that while his Higher Secondary Exam results are consistent with his account of events, it was difficult to understand what the [Education Provider 1’s] document meant. The applicant clarified that though exams were taken through the [Education Provider 1], he was actually attending [Education Provider 2] a private institution, at the time. It was put to the applicant that the document appeared to show that he sat for exams in March/April 2005, though it was unclear from the document submitted whether this was his first or second year there. He said that he did not know which it was. He thought he continued until 2006, but did not complete his course. It was put to him that both [education provider’s] results appeared to indicate that he had failed or not sat for his exams, making it unlikely that he would be continuing for a further year. He said that he did.
48. It was put to the applicant that the Tribunal’s concerns had not been allayed by the documents he had presented. It still appeared to be the case that, according to his evidence, he broke up with a Muslim girl with whom he had never had a sexual or romantic attachment in 2004, and that she committed suicide at the end of 2007. He had said that he had been arrested because she committed suicide, but that he had not been charged with anything. It was put to him that it was difficult to believe that he had any problems in relation to this matter now, if there had ever been a problem. The applicant said that the girl’s brothers were after him. He was asked why this would be so. He said that it was because their sister had committed suicide. It was put to him that if this was the case, that is that he feared harm from [Miss A’s] brothers because their sister had committed suicide, any harm done to him would not be done for a Convention reason. He said that he had nothing further to add, but that he would have difficulties if he went back to India.

Country Information

49. The US State Department in its *Country Report on Human Rights Practices 2008* (published February 2009) states:

The law provides for secular government and the protection of religious freedom, and the central government generally respected these provisions in practice. While the law generally provides remedy for violations of religious freedom, it was not enforced rigorously or effectively in many cases of religiously oriented violence...

The legal system accommodates minority religions' personal status laws by providing for different personal laws for different religious communities. Religion-specific laws are paramount in matters of marriage, divorce, adoption, and inheritance...

50. While the US State Department Country Report notes incidences of Hindu-Christian violence and violence between Muslims and Hindus, the only report of sectarian violence at all in the

state of Kerala relates to attacks on Christians by Hindus. Various articles refer to the relatively progressive community of Muslims in Kerala (Sikand, Yoginder 2007, 'Muslims In Kerala And Elsewhere: Accounting For The Difference', Counter Currents website, 30 June <http://www.countercurrents.org/sikand300607.htm>), and their political involvement in the state via membership of the Left Democratic Front (LDF) (Kerala State Government Website <http://www.kerala.gov.in/knowkerala/political.htm>).

51. The Catholic News Agency reported in December 2007 that a local bishop who was an outspoken critic of the rule of the local communist party had received a threatening letter. The report includes the following:

Diocesan spokesman Father Joseph Thomas Therakam said that no complaint had been made to the police.

"It's the first time a bishop is getting threatened in Kerala, a state known for harmony. It's most unfortunate," Father Therakam said. "We are not concerned about the threat," he added, insisting the Church "is not going to dilute its stand against the government's anti-people policies."

The Catholic Church in Kerala has opposed the Marxist-led coalition government mainly because of its education policies ('Death threat promises dismemberment of Indian bishop' 2007, Catholic News Agency, 12 December <http://www.catholicnewsagency.com/new.php?n=11249>).

FINDINGS AND REASONS

52. On the evidence before it, including the evidence of the applicant's passport, the Tribunal finds that he is an Indian national.
53. The Tribunal further finds on documentary and other evidence, including Departmental records, that the applicant is a Catholic who came to Australia to participate in the Catholic celebrations of World Youth Day.
54. The Tribunal had considerable difficulty with the applicant's credibility and advised him of this in the course of his Tribunal hearing [in] February 2009. He was given an opportunity to respond to the Tribunal's concerns in a further hearing [in] March 2009, but the issue of the applicant's credibility remains central to the Tribunal's findings. Essentially, the Tribunal finds that the applicant fabricated his claims in order to obtain a Protection Visa, and found him to be an unreliable witness.
55. The applicant claimed that he lived in an area of Kerala where there was ongoing friction between Muslims and Christians. He also claimed that he was actively involved in his religion when he was at school. The Tribunal accepts these claims, but notes that the applicant did not claim to have suffered harm because of his religion either when he was at school or later. The applicant claimed that he progressed well at college, but it is clear from the documentary evidence of the results which he presented, that in fact he did very poorly in those exams which he took.
56. The applicant's claims centre on an alleged relationship which developed in about 2003 or 2004 with a fellow College student who was Muslim, and who wished to marry him. While it may have been the case that the applicant some six years ago was friendly with a Muslim girl at College, and the Tribunal is prepared to give the applicant the benefit of the doubt on this claim, the Tribunal does not accept that the relationship developed in the way the

applicant has claimed. It does not accept this because when the applicant's claims were tested at his Tribunal hearing he was evasive and equivocal about almost every aspect of his account. He was evasive about the dates at which key events are alleged to have occurred, and when challenged about the lapse of time between the end of the relationship with the girl in 2004 or 2005 and the claimed retaliation against him by the girl's family, and the girl's suicide in 2007, in the Tribunal's view he fabricated events (he was doing painting work in various places) to account for this two to three year gap. He was vague and unconvincing in his account of his abduction by the girl's supporters. He was vague and confused about his alleged arrest by the police following the girl's suicide. He was unable to explain why he should have been arrested at all in the circumstances he described, beyond vaguely alleging that the girl's supporters had Muslim connections in the police force. In any event, according to the applicant's somewhat confused explanation, the police backed down when challenged by the applicant's brother. The applicant changed the dates at which key events occurred in the course of the hearing when challenged about their plausibility, and was unable to explain why his allegedly unequivocal refusal of the girl's proposals should have resulted in harm to him some years later

57. While the applicant had stated in his Protection Visa application that his brother had left India because of the applicant's problems, this claim was not repeated at the Tribunal hearing, and in fact the applicant gave evidence that his brother had worked overseas, in Dubai, for extended periods in the past, suggesting that he was accustomed to find employment overseas. There is no evidence beyond the applicant's assertion in his application that the brother left the country because of a risk to him from the applicant's adversaries. The applicant stated at his Tribunal hearing that while he had been in contact with his family in India since he arrived in Australia, no statements had been made which were relevant to his claims, such as, for example, threats made to his family by the applicant's adversaries or other incidents of a similar kind. The Tribunal rejects the applicant's claims that his family were harmed, or threatened with harm by his adversaries, the family and supporters of his Muslim fellow student, or by the authorities.
58. While the Tribunal rejects the applicant's claims that he was harmed in the past by connections of a Muslim girl whom he refused to marry, and that he was also harmed by police who arrested him after the girl committed suicide, it has considered whether there is a real chance that he will be persecuted in a Convention sense if he returns to India in the foreseeable future. In particular, the Tribunal has considered whether the applicant's religion as a Christian, and his activities as a Christian might put him at risk of serious harm in India, even though this is not a claim put forward directly by the applicant.
59. The Tribunal finds that the applicant has not been harmed because of his religion in the past. It has rejected the applicant's claims concerning harm he suffered because of a friendship with a Muslim fellow student, his religion constituting at least some of the reason for hostility towards him by the family and supporters of the Muslim girl. The Tribunal has considered the country information regarding the situation in India, and in particular in the applicant's home state of Kerala. While there have been incidents of communal tension in Kerala, a State with a reputation as relatively liberal, with an avowedly secular government, these have mainly related to hostility between the majority Hindu community and Muslims or Christians (see pages 14-15). The Catholic Church is well-established in Kerala, and there is no evidence that restrictions have been placed on its activities. In these circumstances, the Tribunal is not satisfied that the applicant will face Convention-related persecution for reason of his religion, or for any other reason, if he returns to India in the foreseeable future. It is not satisfied that

the applicant has a well-founded fear of persecution, within the meaning of the Convention, in India.

CONCLUSIONS

60. 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

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

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

Sealing Officer's I.D. prrt44