

0808830 [2009] RRTA 848 (8 September, 2009)

DECISION RECORD

RRT CASE NUMBER: 0808830

DIAC REFERENCE(S): CLF2008/132761

COUNTRY OF REFERENCE: India

TRIBUNAL MEMBER: Mary-Anne Ford

DATE: 8 September, 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of India, arrived in Australia [in] August 2008 and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] September 2008. The delegate decided to refuse to grant the visas [in] December 2008 and notified the applicants of the decision and their review rights by letter dated [in] December 2008.
3. The delegate refused the visa application on the basis that the first named applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] December 2008 for review of the delegate's decisions.
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 applicants have 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. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.
9. 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'

10. 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.

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

18. 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.
19. 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

20. The Tribunal has before it the Department’s file relating to the applicants 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.
21. The following evidence is on the Department’s file:
 - Application to the Department for a Protection visa received [in] September, 2008.
 - Application for a member of the family unit in the name of [Mrs A] (the visa applicant’s wife) received [in] September, 2008.
 - A photocopy of the primary applicant’s passport details from the Republic of India, he was born on [date deleted: s.431(2)]. The passport was issued [in] February, 2001 and is due to expire [in] February, 2011.
 - A photocopy of [Mrs A’s] (the visa applicant’s wife) passport details, from the Republic of India, she was born [date deleted: s.431(2)]. The passport was issued [in] June, 2008 and is due to expire [in] June, 2018.
 - Notification dated [in] July, 2008 of the grant of Subclass 676 Tourist visa for the primary applicant and his wife from Department of Immigration and Citizenship.
 - An untranslated article dated [in] September, 2008 from www.sandesh.com
 - A photocopy of a Photo Card, New South Wales, Australia for [Mr. B], due to expire [in] January, 2013.
 - Folio35 is an untranslated document signed by the primary applicant. Folio 36 is a photocopy of the same document.
 - The applicant’s undated statement received [in] September, 2008 in which he states:

I, [the applicant], age 41 and my wife [Mrs A], 35 have been residing in Australia as a visitor on visiting visa.

I was a follower of a guru, commonly known as Asa Ram Bapu, in India I had the opportunity to work very closely with him for last 4-5 years. I was an active member of his core group.

Due to the recent deaths of little children in his Gurukul (a schooling concept very similar to the convents), his doubtful activities in the school came into the limelight. There were huge scandals and I realised that he had a darker side. I felt cheated and betrayed. Out of sheer disappointment, I withdrew myself from his group and ceased to be his follower.

His other followers who were close to him did not like my decision. In their opinion I was an insider and since I knew the group so well as I worked closely with them, they fear that I might expose them or assist the authorities in exposing them.

These followers came to my shop and physically assaulted me. They also destroyed some property in the shop and threatened that they would kill me. I was very scared. I am quite aware that these people are well connected politically and have friends in mafia and local gangsters.

I was greatly relieved when I got the visitor's visa to Australia.

Today on the Internet I came to know through a local Indian leading daily newspaper, Sandesh that terrorists have issued a threat of bombing the bus stop that is right in front of my shop. My shop number is [address].

I would like to mention that very recently the city of Ahemadabad that is near to my small town, was rocked by 18 simultaneous bomb blasts.

After reading the news, I am now very scared to go back to my town. My life is in danger too, as a result me and my wife can't go back.

- An invitation dated [in] October, 2008 from the Department inviting the applicant to an interview scheduled [in] November 2008. The invitation was returned to the Department [in] November, 2008 marked “unclaimed”.
- A Departmental email dated [in] November, 2008 noting that the applicant telephoned to advise he could not make the interview scheduled [in] November, 2008.
- A change of address and/or passport details form, advising a change of address, received by the Department [in] October, 2008. A copy of the letter inviting the applicant to the interview scheduled [in] November, 2008 was sent to the applicant’s new address.
- An invitation dated [in] November, 2008 from the Department inviting the applicant to an interview scheduled [in] December, 2008.
- The delegate’s decision dated [in] December, 2008. The delegate states:

...Reasons

I am not satisfied that the applicant has substantiated a claim of well-founded fear of persecution.

The applicant's claims are generalised and provided no detail or evidence to substantiate them. It is reasonable to expect that the applicant would provide a full and frank account of his circumstances in his refugee application.

The applicant was first scheduled to attend an interview for [date]/11/2008 but asked for a postponement. The interview was then rescheduled for [date]/12/2008 to discuss his claims. The letter informed him that it was in his interest to attend the interview, and that if he did not attend or cancel the interview without an acceptable reason, his Protection visa application may be decided without any further delay based on the information already held at the time. The invitation letter was sent by registered post to the applicant's new home address provided on his Departmental file (folio 51). He did not appoint a migration agent or authorised recipient at time the invitation was sent out hence the invitation letter was addressed and sent to the applicant. A check of Departmental systems (ICSE) confirmed that this is his most recent address advised to the Department.

The applicant did not attend the interview to discuss and substantiate his claims. He did not provide any reason for his non-attendance. As he did not attend the scheduled interview, I am unable to obtain further essential details regarding his refugee claims. For example, the applicant does not provide any details or documentary evidence regarding:

- his membership as a follower of the guru known as Asa Ram Bapu and of being an "active member of his core group"
- when, where and what happened when his shop was attacked and he was assaulted or even if he sustained any injuries
- whether or not the incident was reported to the authorities and what action was taken, if any
- how he knows that the attackers may be connected political or have mafia and local gangster friends

In addition, he claims that:

- recent bombings in the district have made him scared to go back. In particular he notes that there was a threat to bomb "the bus stop that is right in front of my shop". His shop is opposite the bus stand. (folio 37).

Country Information indicates that there were 17 back-to-back explosions which struck shoppers and strollers in Ahmedabad. Then two blasts hit the hospitals where the wounded and their relatives rushed to help, killing 49 people and wounding more than 200. The police said two additional bombs had been found and defused in Ahmedabad and in nearby [town], where the applicant lives (folio 32). The bombings were carried out by a group called the Indian Mujahedin. [5.9] The Gujarat police have added the Indian Mujahedin to its list of "recognised" terror outfits [5.10].

I accept the applicant's claim that there were bomb attacks. However, I do not accept the idea that they have anything to do with him. These attacks were of a wider "terrorist" nature and directed at the general public as retaliation for an incident that occurred in 2002 [5.9]. They are not directed at the applicant personally and therefore cannot be considered persecutory and relevant to the applicant's protection visa claims.

For the reasons given above, I find that I am not satisfied that the applicant has had his shop attacked and that he was physically assaulted and threatened to be killed for ceasing to be a follower of the guru Asa Ram Bapu. Consequently, I am not able to be satisfied that he has a fear of Convention-related persecution in India as claimed, or that he is a person to whom Australia has protection obligations.

Finding

I find that the applicant does not have a genuine fear of harm and that there is not a real chance of persecution occurring. I therefore find that the applicant's fear of persecution, as defined under the Refugees Convention, is not well founded.

22. The following information is on the Tribunal's file:

- The application for review by the Tribunal received [in] December, 2008.
- The Department's movement records for the applicant accessed [in] December, 2008. The record confirms the applicant arrived in Australia [in] August, 2008.

23. Evidence from other sources:

The following information relates to the guru Bapu and Ashrams.

An *India Times* undated article on the guru has the following information:

Param Pujya Sant Shri Asaramji Maharaj (endearingly called 'Bapu') is a Self-Realised Soul. Bapuji was born in Sindh (now in Pakistan) in 1942. His father, Seth Thaumal, was a *Nagar Seth* (a wealthy and respected nobleman of the town) and his mother, Mehangi-ba, was a pious lady.

Young Asumal (name given to Bapuji by his parents) was different from other children of his age. Even as a child he was driven by the desire to realise the ultimate truth. This zeal to attain self-realisation amplified with time and even his marriage to the noble and pious Laxmidevi, could not draw him towards a mundane existence.

He performed intense penance and thereby attained many yogic powers. However he soon embarked on a journey all over India in his quest of a *Sat Guru* who could show him the way of self-realisation. Finally, it was at Nainital, in the Himalayas, that Bapuji met Swami Lilashahji Maharaj, by whose grace and guidance Bapuji's spiritual journey culminated in self-realisation, at the young age of twenty-three.

He remained in complete seclusion for seven years and was engaged in Yoga Sadhna even after achieving the ultimate goal. Later on Bapuji took upon his shoulders Lilashahji Maharaj's task of uplifting the society by spreading the message of *Vedanta*, divine love, patience, simplicity, compassion and humility. In 1993, at the Parliament of World Religions, Swamiji was elected as a committee member of the assembly of Global Religions.

Today he wishes to share his spiritual experiences with others so that they too may attain bliss within. The young and the old, the rich and the poor, the atheist and the ardent, all find Bapuji approachable. He easily conquers the hearts of even the most cynical people with his simple, welcoming and unassuming nature ('Sant Shri Asaramji Ashram' (undated), *India Times*, [<http://spirituality.indiatimes.com/articleshow/1666784884.cms>], accessed 2 April, 2009).

The following information relates to the deaths of two young boys belonging to an Ashram in Ahmedabad.

Express India 8 July 2008 headline reads,

Faith shaken after mysterious death of 2 children at Asaram Babu ashram

Ahmedabad, July 07 Organs of deceased children were found to be missing: exorcism suspected

It was not just the loss of two lives, but also a case of a shaken faith in spiritual guru Ashram Babu for Praful Vaghela and his brother Shantilal Vaghela. The two lost their children, who were enrolled in the Babu's ashram in Motera village under mysterious circumstances.

To add to the mystery are the missing organs of the children, with many believing they could have been targets of exorcism....([http://www.expressindia.com/latest-news/faith-shaken-after-mysterious-death-of-2-chil...], accessed 17 March, 2009)

The deaths of two children at the Gujarat ashram in 2008 is quite well documented, although some of the facts differ in various media reports. Sources concur that the incident involved two cousins who attended the *gurukul* (residential religious school) at the ashram in Motera village, which borders Gandhinagar and Ahmedabad in Gujarat. The two boys, aged around 10, went missing and their bodies reportedly turned up some days later on the banks of the nearby river. One or both allegedly had some of their organs missing. A *Times of India* article written at the time states: "According to the post-mortem report, the cause of death was drowning. Police said one of the bodies was preyed on by some animals" The man who found the bodies, Sunil Banerji, allegedly went missing for several days, but turned up in Ahmedabad almost 8 days after the children's bodies were recovered (*It's IndiaTime*, 17 July 2008). Media articles report subsequent violent clashes between members of the ashram and local residents who were unhappy with police handling of the case. According to a 10 August 2008 *Express India* article, following the widespread agitation, the case was handed over to the Criminal Investigation Department (CID). The fathers of the boys continue to allege that "black magic" practices were involved (*United News of India*, 3 March 2009). Recent reports, such as a March 2009 *Times of India* article, indicate that there has still not been much progress in solving the case, although some ashram employees have been questioned ('Missing boys found dead' 2008, *Times of India*, 7 July, [http://timesofindia.indiatimes.com/Ahmedabad/Missing_boys_found_dead/articleshow/3204519.cms] accessed 2 April, 2009; 'Murder mystery in the Asaram Babu ashram' 2008, *It's IndiaTime*, 17 July, [http://www.indiatime.com/2008/07/17/murder-mystery-in-the-asaram-babu-ashram/] accessed 2 April, 2009; 'Violence after Asaram "war" cry' 2008, *The Telegraph*, 19 July, [http://www.telegraphindia.com/1080719/jsp/nation/story_9571183.jsp] accessed 2 April, 2009; 'Boys' deaths: Asaram's son under CID scanner' 2008, *Express India*, 10 August, [http://www.expressindia.com/latest-news/boys-deaths-asarams-son-under-cid-scanner/347069/] accessed 3 April, 2009; 'Application moved to summon Asaram Babu for examination' 2009, *United News of India*, 3 March,; 'CID seeks narco tests in Motera gurukul deaths case' 2009, *Times of India*, 14 March, [http://timesofindia.indiatimes.com/Ahmedabad/CID-seeks-narco-tests-in-Motera-gurukul-deaths-case/articleshow/4262303.cms], accessed 2 April, 2009).

An August 2008 article in *It's India Times* reports on the deaths of the four children:

Yet another child has now died at yet another Asaram Babu ashram. This is the 4th such death at the Asaram Babu Ashram in less than a month. Second such death in less than 2 days at the Chhindwara (Madhya Pradesh) ashram. Earlier this month, Dipesh and Abhishek Vaghela, two boys who studied at Asaram Babu's *gurukul* in Gujarat, were found dead along the banks of the Sabarmati river. Day before, 4-year old Ram Krishna Yadav was found dead in a

bathroom at the Chhindwara ashram. Yesterday, 5-year old Vedant was found dead in an adjoining bathroom, with his head in a bucketful of water.

Weeks ago, Asaram Babu and his spokesmen tried to explain away the tragic deaths of the Vaghela brothers as accidents, washing their hands away of any responsibility or accountability. Day before, the Chhindwara ashram explained away Ram Krishna Yadav's death as an accident, contending that the 4-year old had slipped in the bathroom. Now, Asaram Babu and his spokesmen are at it again, explaining away a 4th mysterious death in their ashram as an accident.

What is most astonishing is that the authorities seem to be giving Asaram Babu and his ashram an extraordinarily generous benefit of doubt. The ashram doctors seem to be bending backwards to explain how the deaths in all 4 cases, were mere accidents. In the meantime, Asaram Babu's website has completely ignored the tragedies, the deaths of their own 4 young innocent disciples. The latest news section of the ashram website shows six updates in the month of July, but not a single mention of any of the tragedies. So much for showing affection to you own dead disciples.

When 4 little children die mysteriously in a secretive religious outfit that has been going way overboard to protect its establishment than offer justice to 4 young victims, one can be sure that something fishy is going on here. Little kids don't slip as old people do. Little kids don't get heart attacks or cardiac arrests as old people do. Little kids don't venture alone in the middle of the night for a stroll along the banks of nearby rivers.

Something's going on in these ashrams and unless one of the residents soon comes forward and blows a whistle on the dark and abhorrent practices going on inside the closed doors, some more innocent kids may lose their lives in the next few days or weeks. For a man who calls himself a self-realized and god-realized saint, it is time to realize that little kids cannot continue to die under his roof. Only time will tell whether all these deaths were just incredibly coincidental or if they were part of a series of child sacrifices in the name of one of humanity's oldest religions. Until then, somebody needs to make sure that every child in the confines of these so-called ashrams is safe and out of harm's way ('Asaram Babu ashram deaths – child sacrifices or an incredible coincidence?' 2008, *It's India Time*, 1 August [<http://www.indiatime.com/2008/08/01/asaram-babu-ashram-deaths-child-sacrifices-or-incredible-coincidence/>] accessed 2 April, 2009).

Rationalist International also reports on the deaths of the four children:

A five-year-old boy was found dead – his head in a bucket with water – in a toilet of an ashram school run by godman Asaram Babu in Chhindwara, Madhya Pradesh. Just three days before, another boy had died under similar circumstances. And in early July, the bodies of two boys, 9 and 10, studying in the godman's ashram school in Ahmedabad, Gujarat, were found in a dried up river bed. From one, liver and sternum were missing; the other had no more ears – a fact that seemed to indicate that they had become victims of a human sacrifice. When the police tried to hush up the cases and supporters of the godman started violent agitation in his defense, attacking investigating journalists, infuriated people of the neighborhood went on a rampage.

...

('Indian Godmen Under the Scanner: Asaram Babu' 2008, *Rationalist International Bulletin*, no. 178, 27 September [http://www.rationalistinternational.net/archive/en/rationalist_2008/20080927.html#3] accessed 2 April, 2009).

More recent articles indicate that there is still no evidence in the case.

According to an *Express India* article, dated 25 March 2009, the Congress party are using the issue as part of their pre-election campaign in Gujarat, criticizing “the Modi government for not taking concrete step against Asaram Babu following the mysterious deaths of two gurukul students” (Ahmed, S. 2009, ‘It’s time now to pack a punch’, *Express India*, 25 March [<http://www.expressindia.com/latest-news/its-time-now-to-pack-a-punch/438781/>] accessed 3 April, 2009).

A 14 March 2009 *Times of India* article states that: “Even after eight months of investigation, CID (crime) seems to have no evidence in the mysterious death of two kids Dipesh and Abhishek at Asaram Babu’s Gurukul in Motera”. Further:

The investigating agency has sought the court’s permission to perform narco analysis on three other ashram employees to probe the case. Chief metropolitan magistrate DM Patel, on Friday, issued notices to Vikas Khemka, Meen Patra and Uday Sanghani asking them to remain present in court on March 27, as investigating agency wanted to conduct truth serum test on them.

...

In such circumstances, CID (crime) sleuths have come up with three other potential witnesses, and with almost similar arguments they had forwarded in Bhati’s and Saxena’s cases a few months ago. In its application, the IO contended that while recording their statements and conducting lie detection tests on them at Gandhinagar FSL, it was found out that they were trying to hide facts and were lying to the investigating agency with regards to the crime. Hence, to find out truth about the death of the kids and black magic being practised on the Ashram campus, narco test was required.

...

Times of India, 14 March [<http://timesofindia.indiatimes.com/Ahmedabad/CID-seeks-narco-tests-in-Motera-gurukul-deaths-case/articleshow/4262303.cms>] accessed 2 April, 2009).

A 3 March 2009 *United News of India* article reports demands by the boys’ parents that Asaram Babu be summoned for examination:

The parents of Dipesh Vaghela and Abhishek Vaghela, the two minor children who were found dead in mysterious circumstances in the ashram school run by **Asaram Babu**, today demanded to summon the spiritual leader for examination. The boys were found dead in the Sabarmati river bed near ashram on July 5 last year after they went missing from the ashram on the night of July 3. The parents of the children have maintained that the two had fallen prey to sorcery practised by the ashram authorities. In a joint application filed before Justice D K Trivedi, who is leading a Commission of Enquiry into the mysterious deaths of the two children, Prafulbhai Vaghela and Shantilal Vaghela, through their advocate S H Iyer, have demanded to summon **Asaram Babu** before the Commission in connection with their children’s death. The Commission has reserved its decision for further hearing on the matter to March 9.

A January 2009 article states:

After recording the statement of **Asaram Babu** in the case pertaining to the mysterious deaths of two boys at his ashram in Motera, the CID has recorded the statement of PH Parmar who has filed a public interest litigation (PIL) in the Gujarat high court claiming that two boys were murdered.

The CID recorded Parmar's statement on Wednesday. In his statement, Parmar, who is the managing trustee of Vishwakarma Vidyapeeth, has claimed that the deaths of the two boys were not accidental.

In his PIL in the high court, Parmar has claimed that Dipesh and Abhishek Vagehla were killed by Ashram sadhaks as part of tantrik rituals.

In a statement, Parmar also said that the saffron party may bring political pressure to save the Asaram Ashram sadhaks who may be involved in the killing. He also claimed that the inquiry committee set up to look into the matter was "a drama to hush up the matter."

The two boys who studied at the gurukul died in July last year.

The following information relates to followers of Guru Bapu who have left and whether they have been threatened or harmed as a result of leaving.

In mainstream media a few articles were found of allegations against Asaram by ex-members of his ashrams. One article was found alleging that he had organised to have a number of people killed (through black magic), including former ashram members. A number of "web-logs" were found detailing allegations against Asaram of violence against numerous people, including ex-followers. Some of the information on these web-logs is somewhat incoherent.

Mainstream media

A *Times of India* article reports allegations that Asaram contracted an "aghoris sadhu"¹ to have a number of people killed (through black magic), including former ashram members:

In a startling development, an aghori sadhu from Madhya Pradesh, Oghad Sukharam, has alleged that Asaram had allegedly contracted him to kill at least six persons through black magic, including managing director of Sandesh group Parthiv Falgun Patel and managing editor of Gujarat Samachar, Shreyans Shah.

Oghad, who is from the Mahakali temple of Dewas near Indore, made the allegation in the Sandesh office on Monday before many witnesses. He also filed an affidavit before a notary, listing all his allegations. Among other names that Oghad claims on the hitlist, are ayurved practitioner from Vadodara Amrut Prajapati, who was once a member of Asaram's ashram in Surat, former companion of Asaram from Delhi Chandrashekhar, Asaram's former secretary Kaushik Patel and Asaram's former driver Dinesh.

Oghad alleged that Asaram asked him to kill these people in a telephone call made on his cell phone on August 10. He claimed to have recorded the conversation and was ready to provide all details to police or state government. He was also ready for a forensic test. Oghad claimed that Asaram asked him to forget the rest of the persons on his hitlist for the time being and concentrate on Parthiv.

According to Oghad, he was offered Rs 1.5 lakh and the management of any one of 300 of Asaram's ashrams in the country if he completed the job. He claimed that the first call was made by a man named Mishra from Asaram's ashram in Delhi on August 7, followed by a number of calls on August 10. During one of these calls on August 10, Asaram spoke to him.

He also alleged that he was given Rs 5,000 by one of Asaram's sadhaks to buy the necessary material to perform the rites, which was apparently taped by a national TV channel.

The aghori sadhu said that he was impressed by Asaram's speeches and had come to know both him and his son Narayan Sai five months ago, while on the way to Kota from Madhya Pradesh. He claimed they talked to each other frequently ('Aghori sadhu alleges Asaram asked him to kill 6 persons' 2008, *Times of India*, 26 August, [<http://timesofindia.indiatimes.com/articleshow/3405352.cms>] accessed 2 April, 2009).

A *Times of India* article reports on allegations against Asaram's son, Narayan Sai, by ex-inmates of the ashram:

The Virar police have registered a case against Narayan Sai, the son of spiritual guru Asaram Bapu, on Friday, for forgery and criminal intimidation.

At present, 35-year-old Narayan lives at Sabarmati in Gujarat. No arrests have been made so far.

The case is three years old. The complainant, Mahendra Chawla, is an insurance advisor. He used to live at Asaram Bapu's ashram in Virar between May 1998 and August 2005.

Chawla told the police that in July 2005, he along with other inmates had objected to Narayan's activities at the ashram. Consequently, Narayan had allegedly forced him to sign on five blank documents.

"After receiving threats, I decided to leave the ashram," Chawla told TOI. But when asked why it took him three years to file an FIR, Chawla could not come up with an answer.

The FIR also includes the names of two other men Kaushalya Thakur and Rajendra Singh who work with Narayan. Sections 323, 465, 468, 504, 506, 507 and 34 of the Indian Penal Code have been applied to him for forgery and criminal intimidation ('Asaram Bapu's son booked for forgery' 2008, *Times of India*, 20 August [<http://timesofindia.indiatimes.com/articleshow/3382495.cms>] accessed 3 April, 2009).

An *Express India* article reports that the "Asaram Ashram has strongly refuted charges levelled against Sant Asaram by former inmates and said that the accusations are fabricated and baseless and have been done with monetary motives".

Ashram authorities said it was really surprising that they had kept mum for all these years and had witnessed the alleged misdeeds and come out with the allegations only now. It was also difficult to fathom how persons making such allegations could live at the Ashram if they indeed had such a bad experience there, they said.

Ashram authorities said ex-inmate Mahendra Chawla was coercing and inciting inmates to supply the letterheads and speak against the Ashram. Once Chawla abused an Ashram inmate, Hanuman, over the phone. "Only Hanuman was presented before the media," the Ashram said in a release.

The Ashram authorities also refuted Chawla's allegations that the Ashram people had forced him to sign on blank papers. "Did the papers ever exist at all and if they were kept for so long, why were they not misused till now?" the release said, adding that Chawla had also threatened a devotee Krishna, who had started an Ashram at Harda, in a similar manner for not being keen to rebel against the Ashram. The Ashram also attributed a shady past to Rajesh Solanki, another former inmate. The release said that Solanki had been convicted of impersonating as the collector of Godhra district and had tried to extort Rs 70,000 from residents of a nearby village.

The Ashram alleged that Solanki used to torture his wife Bakula. The statement by the Ashram also denied the charge that Asaram's son Narayan Swami alias Narayan Sai had brainwashed Bakula to sacrifice Dipesh and Abhishek Vaghela, the two young devotees at the Ashram run gurukul in Ahmedabad the previous month.

The Ashram also produced an affidavit by one Vinod Jethanand Harpalani, purported to be the nephew of Asaram Bapu, who claimed that the outburst against his uncle on TV channels were made under the influence of liquor that miscreants had forced him to consume. The Ashram also produced an affidavit by Vinod's sister Nirmala alias Pooja Magnani, a resident of Godhra, refuting earlier charges that Narayan Sai had caused the death of her father Jethanand Harpalani by removing the oxygen mask when he was being taken to the Ashram to fulfil his wish to be with his brother.

On Avin Varma, who had lived in the Gambhoi Ashram, the statement said that she had left because the disciplined environment of the Ashram did not suit her independent and carefree attitude.

On Veena Chauhan, the statement said the ashram at Vasai near Mumbai was built on unauthorised land meant for pasture at Shirgao village on survey number 354. The Maharashtra government had ordered its demolition and the local residents were up in arms against the activities going on at the premises. As such, the "allegations by such persons cannot be accepted as trustworthy," it said ('Bugged by "ex" factor, Asaram Ashram goes on an offensive against former inmates' 2008, *Express India*, 18 August [<http://www.expressindia.com/latest-news/bugged-by-ex-factor-asaram-ashram-goes-on-an-offensive-against-former-inmates/350519/>] accessed 2 April, 2009).

Other media

Rationalist International states that Asaram:

...reigns with terror and violence. Devotees are scared and beaten into absolute submission. Equalling himself with Shiva, the Hindu god of destruction, he threatens to destroy anybody with his curse who would question and criticize him. In his book *Gurubhakti*, he orders his devotees to use violence against critics, even to cut out their tongues!" ('Indian Godmen Under the Scanner: Asaram Bapu' 2008, *Rationalist International Bulletin*, no. 178, 27 September [http://www.rationalistinternational.net/archive/en/rationalist_2008/20080927.html#3], accessed 2 April, 2009).

An article in *People's Democracy* states:

One who refuses to be a timid disciple is considered as a person of obstruction and is dealt with accordingly. The government machinery eagerly comes forward to teach such a person a good lesson ('Killings At Asaram Ashram Expose Corporate Baba Badal Saroj' 2008, *People's Democracy*, vol. 32, no. 33, 24 August [http://pd.cpim.org/2008/0824_pd/08242008_13.htm], accessed 3 April, 2009).

The following information relates to links between Guru Bapu and politicians.

According to the sources found, Asaram is politically connected. A *Telegraph* article calls Asaram "the spiritual guru of Narendra Modi [Gujarat Chief Minister] and L.K. Advani [BJP's Prime Ministerial candidate]" ('Violence after Asaram "war" cry' 2008, *The Telegraph*, 19 July [http://www.telegraphindia.com/1080719/jsp/nation/story_9571183.jsp] accessed 2 April, 2009).

A *Hard News* article also calls Asaram the “spiritual guru” of LK Advani. According to this article, Asaram enjoys state patronage in Gujarat and therefore the Modi government allegedly delayed the investigation into the boys deaths. The article further states that “[t]hree elected candidates from Ward No 6 of Motera Nagar Palika are ashram inmates. All three got elected on a BJP ticket”:

Like LK Advani, he was born in Sindh before Partition. Predictably, both share a warm rapport. Asaram, though 13 years younger to Advani, happens to be his ‘spiritual guru’. He also is a ‘sympathiser’ of the BJP. This explains the State patronage that Asaram enjoys in Gujarat.

This also explains why the Narendra Modi government took 17 days to order an inquiry into the mysterious death of two boys.

...Asaram understands the importance of cultivating good relations with ministers and bureaucrats in the revenue and home department. Using the VHP, Asaram has always ensured that the home minister or the revenue minister pays obeisance to him in the presence of his devotees. Former home minister, the late Haren Pandya of BJP, dared to defy him, but Asaram, bragging about his popularity, publicly warned him not to underestimate his power. In a similar incident in Surat, Asaram reportedly encroached upon farmers’ land that the state government had acquired. Farmers who wanted their land back were thrashed by ashram inmates -- even local reporters were beaten up as in Motera in July. The case is pending in the Gujarat High court since 1998.

DIG Vanzara, the suspended IPS officer accused of killing Sohrabuddin Shaikh in a fake encounter, now in jail, is among his high-profile disciples.

... Asaram’s political strength is transparent. Motera’s ashram has over 800 registered voters. Three elected candidates from Ward No 6 of Motera Nagar Palika are ashram inmates. All three got elected on a BJP ticket (‘A prophecy for Asaram Babu’ 2008, *Hard News*, August [<http://www.hardnewsmedia.com/2008/08/2302>], accessed 2 April, 2009).

An *Indo-Asian News Service* article states that Asaram “is reported to wield strong political clout and the Bhartiya Janata Party (BJP) is one of his prime supporters” (‘Violent protests in Ahmedabad over deaths in Asaram Babu school’ 2008, *Indo-Asian News Service*, 20 July).

There are devotees of Asaram from other parties as well. A March 2009 article reports that “Mumbai Regional Congress chief Kripa Shankar Singh is known to be a devotee of Asaram Babu” (‘Of politicians, superstitions and elections’ 2009, *Times of India*, 13 March [<http://timesofindia.indiatimes.com/Cities/Of-politicians-superstitions-and-elections/articleshow/4257700.cms>] accessed 3 April, 2009).

The following information provides demographics related to India:

1.02 The population of India (2007 estimate) is 1.12 billion, of which the urban population accounts for 27.8 per cent. Although India occupies only 2.4 per cent of the world’s land area, it supports over 15 per cent of the world’s population. The population growth rate is 1.4 per cent per annum. The capital is New Delhi (pop.12.8 million, 2001 census). Other major cities are Mumbai, formerly Bombay (16.4 million); Kolkata, formerly Calcutta (13.2 million); Chennai, formerly Madras (6.4 million); Bangalore (5.7 million); Hyderabad (5.5 million); Ahmedabad (5 million) and Pune (4 million). (US State Department’s Background Note for India, updated June 2008).

1.03 There are 28 states and seven Union Territories. The states are: Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana,

Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, Uttaranchal, and West Bengal. (Government of India website, undated)

1.04 The Union Territories are: Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, Delhi, Lakshadweep, and Pondicherry. (Government of India, States and Union Territories, undated)

1.05 The national language of India is Hindi, and the first language of 30 per cent of the population. English has “associate status” but is the most important language for national, political and commercial communication. (CIA World Factbook, 19 June 2008). The Foreign & Commonwealth Office (FCO) India Country Profile, updated 22 February 2008 states: “The official language of India is Hindi written in the Devanagari script... In addition there are 18 main and regional languages recognised for adoption as official state languages.”

1.06 Estimates for 2000 recorded in the CIA World Factbook, updated 19 June 2008, stated that the biggest ethnic group in India is the Indo Aryans (72 per cent), followed by the Dravidians (25 per cent), Mongoloid and others (3 per cent). 81.3 per cent of the population is Hindu, 12 per cent Muslim, 23 per cent Christian, 1.9 per cent Sikh. Other religious groups include Buddhist, Jain and Parsi totalling 2.5 per cent. (Home Office UK Border Agency, Country of origin Information report, India, 12 August 2008, 7)

20.05 The USIRF 2007 Report stated that:

1.07 “According to the 2001 Government census, Hindus constitute 80.5 percent of the population, Muslims 13.4 percent, Christians 2.3 percent, Sikhs 1.8 percent, and others, including Buddhists, Jains, Parsis (Zoroastrians), Jews, and Baha’is, 1.1 percent. Slightly more than 90 percent of Muslims are Sunni; the rest are Shi’a. Tribal groups (members of indigenous groups historically outside the caste system), which are generally included among Hindus in government statistics, often practiced traditional indigenous religions (animism). (Home Office UK Border Agency, Country of origin Information report, India, 12 August 2008, 51)

The following information relates to relocation within India.

Advice from DFAT, dated 13 October 2003, provides the following information on freedom of movement in India:

Indian citizens have the freedom to relocate from one area of India to another, with two exceptions: in the state of Jammu and Kashmir, Indian citizens from other states are not allowed to buy property, but can stay in any part of the state without seeking official permission. Indian citizens who are not residents of the particular area are required to obtain a permit to visit some border areas of Jammu and Kashmir, and border areas in the north-eastern states of India. The permits are valid for six months. Indian citizens who have been arrested and released on bail are required to report regularly to local police authorities. In these instances judicial permission is required to relocate to another part of the country (Department of Foreign Affairs and Trade 2003, *DFAT Report No. 519 – India: RRT Information Request: IND16042*, [13 October, 2003])

The following information relates to the languages of India:

“India has a diverse list of spoken languages among different groups of people. At least 30 different languages and around 2000 dialects have been identified. The Constitution of India has stipulated the usage of Hindi and English to be the two languages of official communication for the national government. Additionally, it classifies a set of 18 scheduled languages which are languages that can be officially adopted by different states for administrative purposes, and also as a medium of communication between the national and the state governments, as also for examinations conducted for national government service.

“As drafted, English ceased to exist as an *official language (on par with Hindi)* in 1965, after which it was intended to continue as an ‘associate additional official language’ until such time that a duly appointed committee can decide on a full-scale transition to Hindi, based on a periodic review. However, due to resentment and protests in certain non-Hindi speaking states, the “twin language” system is still in vogue. Due to rapid industrialization, and a bustling multinational influence in the economy, English continues to be a popular and influential means of communication in the government and day-to-day business, and moves to replace it have effectively been shelved” (‘List of National Languages of India’ Undated, Word IQ website http://www.wordiq.com/definition/List_of_national_languages_of_India – Accessed 11 August 2004 – [Link](#)).

“The constitution’s Eighth Schedule, as amended by Parliament in 1992, lists eighteen official or Scheduled Languages. They are Assamese, Bengali, Gujarati, Hindi, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Sindhi, Tamil, Telugu, and Urdu. (Precise numbers of speakers of these languages are not known. They were not reported in the 1991 census, and estimates are subject to considerable variation because of the use of multiple languages by individual speakers.) Of the official languages, approximately 403 million people, or about 43 percent of the estimated total 1995 population, speak Hindi as their mother tongue. Telugu, Bengali, Marathi, and Tamil rank next, each the mother tongue of about 4 to 5 percent (about 37 million to 47 million people); Urdu, Gujarati, Malayalam, Kannada, and Oriya are claimed by between 2 and 3 percent (roughly 19 million to 28 million people); Bhojpuri, Punjabi, and Assamese by 1 to 2 percent (9 million to 19 million people); and all other languages by less than 1 percent (less than 9 million speakers) each. (The Republic & States of India at a Glance (Updated: January 2009, [\[//\ntssyd\refer\Research\Response\ACKAGE\India\TheStatesofIndia.htm\]](#)).

The following information relates to states and territories in India where Hindi and Gujarati are spoken.

Gujarat and Maharashtra are the two states which have significant populations of both Hindi and Gujarati speakers, while Madhya Pradesh, Rajasthan, and Delhi have large Hindi-speaking and small Gujarati-speaking populations.

Hindi is the most widely-spoken language in India, with 422,048,642 speakers across the country, according to the Census of India website. The following states and territories have more than five million Hindi speakers:

Uttar Pradesh: 151,770,131

Bihar: 60,635,284

Madhya Pradesh: 52,658,687

Rajasthan: 51,407,216

Haryana: 18,460,843

Chhattisgarh: 17,210,481

Delhi: 11,210,843

Maharashtra: 10,681,641

Uttaranchal: 7,466,413

West Bengal: 5,747,099

Himachal Pradesh: 5,409,758

(‘Part A: Distribution of the 22 Scheduled Languages- India/ States/ Union Territories – 2001 Census’ (undated), Census of India website

[http://censusindia.gov.in/Census_Data_2001/Census_Data_Online/Language/parta.htm]
accessed 1 May, 2009)

In addition, Jammu & Kashmir, Punjab, Assam, Orissa, Gujarat, Andhra Pradesh, Karnataka all have between one and three million Hindi speakers.

The Census of India website provides extensive details, source from its 2001 census, on the number of language speakers of all the major language groups in each of India’s states and territories. According to the table titled, ‘Part A: Distribution of the 22 Scheduled Languages- India/ States/ Union Territories – 2001 Census’, there were 46,091,617 Gujarati speakers in India in 2001 with the vast majority, 42,768,386, in Gujarat. Nonetheless, there are also over two million Gujarati speakers in neighbouring Maharashtra (2,315,409), while Tamil Nadu (202,621), Madhya Pradesh (198,140), Rajasthan (57,048), Delhi (45,145) and West Bengal (46,926) are also home to speakers of Gujarati (‘Part A: Distribution of the 22 Scheduled Languages- India/ States/ Union Territories – 2001 Census’ (undated), Census of India website

[http://censusindia.gov.in/Census_Data_2001/Census_Data_Online/Language/parta.htm]
accessed 1 May, 2009).

The hearing

24. The primary visa applicant appeared before the Tribunal [in] March, 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Hindi (Indian) and English languages.
25. The applicant, is a 42 year old man, and his wife, 36 years of age, are from Ahmedabad in India and they arrived in Australia on a tourist visa [in] August, 2008. They have no children. Currently they are both fruit picking in [town deleted: s431(2)] working three to four days per week and they earn between \$300 to \$400 dollars per week, living in shared accommodation.
26. The Tribunal asked the applicant to the following effect:
What date did you arrive in Thailand? What were you doing there?

The applicant responded to the following effect:

It was a tour.
27. The Tribunal asked the applicant to the following effect:
Today you have presented documents already on your file. They are a copy of a web page dated 9 October, 2008 and your statement Both are already on your file and were submitted with your application. (The documents were returned to the applicant.)

28. The Tribunal asked the applicant a series of questions related to his shop in India and the following are his responses to the following effect:

I had a business of garments; It was small; I was trading; a retail shop; no employees, I was the only one; kids clothes.

29. The applicant provided his permission for the interpreter to translate and read the details from the article on the applicant's file. The interpreter read to the following effect:

This is about the bus station. There was a bomb at a bus depot. A serial bomb blast took place in the city, Kerala, he got a letter that there was a bomb in Kerala bus station on 28 August, 2008, they got a letter of threat by Ghard In that letter it was written that you should leave this bus stop because there is a bomb. The people were so scared. And all the people came to the bus stop and police went there to search the bus stop to look for the bomb. They did not find a bomb. The police came and they found nothing.

There was a rumour about a bomb They declared that there was no damage to the bus stop or the property A lot of hassle. They declared there was nothing.

And people were scared, the people on the bus depot and the people watching people thinking to see something but they did not see. There was a hassle in delaying the bus.

30. The Tribunal asked the applicant to the following effect:

What dates did you work for the guru?

The applicant responded to the following effect:

About four to five years.

31. The Tribunal asked the applicant to the following effect:

When did you start and when did you finish?

The applicant responded to the following effect:

I started 4 years ago in 2004 and left in July 2008.

32. The Tribunal asked the applicant a series of questions related to his activities at the ashram and he responded to the following effect:

My wife and I were providing service in an ashram; we were providing service to people who were visiting the Ashram; I was serving food to people who were visiting the guru on Sundays. They were followers of the guru and parents of the children; we worked there one day a week, on Sundays for seven to eight hours serving meals to the visitors; the visitors were followers of the guru; the ashram housed 300 to 400 children.

33. The Tribunal asked the applicant to the following effect:

In your statement you say that due to the recent deaths of little children in his gurukul, his doubtful activities in the school came into the limelight. You stated, I felt threatened and betrayed. I withdrew myself from his group and stopped being a follower. Tell me a little bit more about those events?

The applicant responded to the following effect:

When both the children were killed we came to know there was something wrong with the gurukul. Then we decide to leave the ashram and to stop following the guru; the children died at the same time in June and were seven and eight years of age; Their dead bodies were found near the river near the ashram; they declared they did not have anything to do with it; People came to know that those children were killed by the ashram, or in the ashram, and people came to know there was a darker side and that something was wrong with the ashram.

34. The Tribunal asked the applicant to the following effect:

Then you ceased to be a follower after that. You advise in your statement: They did not like my decision, in their opinion I was an insider and I worked closely with them, they feared that I might expose them or assist the authorities in exposing them.

What was it that you could expose to the authorities?

The applicant responded to the following effect:

They were afraid that I might say something to someone or expose something to people.

35. The Tribunal asked the applicant to the following effect:

What was it that you could expose?

The applicant responded to the following effect:

They were experimenting with some drugs on children. They were trying to kill children. It was a letter to evil spirit.

36. The Tribunal asked the applicant to the following effect:

Using drugs on children, what sort of drugs?

The applicant responded to the following effect:

Opium.

37. The Tribunal asked the applicant to the following effect:

Were they doing this while you worked there?

The applicant responded to the following effect:

N, I hadn't seen anything, but I had heard.

38. The Tribunal asked the applicant to the following effect:

Were they doing anything else other than using opium, that you felt would expose them?

The applicant responded to the following effect:

They have a lot of ashrams in different cities in India each and every place they had a secret place where they were doing evil spirit activities.

39. The Tribunal asked the applicant to the following effect:

What do you mean by evil spirit?

The applicant responded to the following effect:

There are some tricks of mesmerising or hypnotism they were trying on children.

40. The Tribunal asked the applicant to the following effect:

For what purpose?

The applicant responded to the following effect:

There wasn't any purpose they were just experimenting, he was thinking that he has a lot of money and fame and he could do anything.

41. The Tribunal asked the applicant to the following effect:

Is there any thing else?

The applicant responded to the following effect:

I was scared and I left my city because they were threatening, but they have other ashrams in other cities and I was threatened by other followers in a different city.

42. The Tribunal asked the applicant to the following effect:

So they were giving the children opium in a secret place and conducting evil spirit activities. Were they doing anything else that you are aware of?

The applicant responded to the following effect:

No, I cannot say. They were doing very bad things but I don't want to tell.

43. The Tribunal asked the applicant to the following effect:

I noticed there was an article on the internet, I was trying to look for a reliable source, and the one that I looked at may not be that reliable. It stated there were two children found dead and their organs missing and implying the organs were for evil offerings or something.

The applicant responded to the following effect:

Yes, that's right.

44. The Tribunal asked the applicant to the following effect:

Is that the thing you could not tell me? Is there anything else that you are aware of?

The applicant responded to the following effect:

They were thinking that by offering these organs to some spirits they might become more powerful.

45. The Tribunal asked the applicant to the following effect:

The leader of the ashrams endorsed these activities?

The applicant responded to the following effect:

Yes, all are run on his name.

46. The Tribunal asked the applicant to the following effect:

When I read about him he was stated to be a well educated man, more about inner well-being and goodness.

The applicant responded to the following effect:

Yes, he is doing all these activities, but the other side is like these activities. His son is also engaging in these activities.

47. The Tribunal asked the applicant to the following effect:

So these are the things you could not reveal, children having died; they were giving the children opium; they were experimenting with opium on children.

The applicant responded to the following effect:

Yes.

48. The Tribunal asked the applicant a series of questions related to the applicant being threatened and assaulted and he responded to the following effect:

Yes. In my city also there is an ashram. Yes, some people from my city, these followers of the ashram, they came to my shop and they threatened me. These followers came to my shop and physically assaulted me They also destroyed some property in the shop and threatened that they would kill me, I was very scared.

Initially they threatened me. But I ignored them. The second time they came and assaulted me physically.

This happened on about 18 July.

First, three people came and they threatened me. I ignored them and then after three to four days four persons came and two of them physically assaulted me.

When threatening me they said if I left the ashram I would be killed.

They came at 4pm in the evening and I was on my own. They told me that I should continue to work with them I should continue what is going on and I should not say anything to any one, and I should not expose them and I should stay, mum. I told them I was leaving the organisation, that's all and they told me to continue. This lasted five minutes.

Four people came back three or four days later at 2pm and assaulted me. Yes they talked to me. They asked, what did I think about them and then I told them I do not want to continue with the ashram and they said no, I have to continue I said to them no, I will not and then the two started attacking me. Two held me two people punched me on the arm for three to four minutes until the other two said that's enough, if he is not following us I we will see him later. I suffered no injuries and I did not go to the doctor. I did not go to the police because I was scared and the police might ask me a lot of things, so to prevent those things I did not go to the police.

49. The Tribunal asked the applicant to the following effect:

In your statement you advise that the attackers may be connected politically or have mafia or local gangster friends?

The applicant responded to the following effect:

When those two children were killed, when people they opposed this activity of the Bapu and the Bapu made a public statement that if you people are opposing me then we are capable and we will fight you. That was the statement of Bapu.

50. The Tribunal asked the applicant to the following effect:

Yes, but how does that relate to political or mafia or gangster friends?

The applicant responded to the following effect:

These type of people have relationship with mafia or gangs also, if something is wrong with them those people can save them and if it goes to the police then they have relations with politicians and those politics can save them.

51. The Tribunal asked the applicant to the following effect:

Now I want to go back to the bomb blasts (the detail from the internet the applicant included with his application).

The delegate states in his decision:

“Country information indicates that there were 17 back-to-back explosions which struck shoppers in Ahmedabad. The two blasts hit the hospitals where the wounded and their relatives rushed to help, killing 49 people and wounding more than 200. The police said two additional bombs had been found and defused in Ahmedabad and in nearby [town] where the applicant lives. The bombings were carried out by a group called the Indian Mujahedin. The Gujarat police have added the Indian Mujahedin to its list of “recognised” terror outfits.

I accept the applicant’s claims that there were bomb attacks. However, I do not accept the idea that they have anything to do with him. These attacks were of a wider “terrorist” nature and directed at the general public as retaliation for an incident in 2002. They were not directed at the applicant personally and therefore cannot be considered persecutory and relevant to the applicant’s protection visa claims.”

The Tribunal stated to the following effect:

I agree with what the delegate says. What do you say?

The applicant responded to the following effect:

Yes, serial bomb blasts took place in Ahmedabad in my city so I was scared I would be killed.

52. The Tribunal asked the applicant to the following effect:

But not because of Bapu, because of these terrorists?

The applicant responded to the following effect:

Yes.

53. The Tribunal asked the applicant to the following effect:

Does your claim for protection revolve around persecution as a result of your association with the ashram and the leader Bapu, or around these terrorist activities from the Mujahedeen?

The applicant responded to the following effect:

Yes, that is right. I was scared because of what happened in the Ashram. After that the terrorists attacked that place so I was scared I would be killed.

54. The Tribunal asked the applicant to the following effect:

You are talking about the terrorist attack by the Mujahedeen. Is that correct? An attack like that is not personal to you?

The applicant responded to the following effect:

Yes, that was not personal. But what ever happened to the public I was scared.

55. The Tribunal asked the applicant to the following effect:

So am I correct in saying that, that is a side issue to your claims for a protection visa which is based on your experiences of what the ashram has done to you since you left it?

The applicant responded to the following effect:

Yes, that's not related. After coming here I saw on internet this news and the bomb blast at the bus depot near my shop.

56. The Tribunal asked the applicant to the following effect:

So you decided to apply for a Protection visa?

The applicant responded to the following effect:

Yes.

57. The Tribunal asked the applicant to the following effect:

Is you shop open or shut? Did you sell your shop when you left?

The applicant responded to the following effect:

Shut. No, I have not sold the shop.

58. The applicant advised the Tribunal that he had no evidence with him of his shop ownership or involvement with guru Bapu.

59. The applicant advised that he came to Australia on a tourist visa for a holiday.

60. The Tribunal asked the applicant to the following effect:

How long were you going to stay in Australia?

The applicant responded to the following effect:

I thought that after coming to Australia I will wait for everything to stop.

61. The Tribunal asked the applicant to the following effect:

For what to stop?

The applicant responded to the following effect:

The threats of killing me and if those people stop everything. I thought that if those people assured me that they will not do anything wrong to me then I would go back, but nothing happened.

62. The Tribunal asked the applicant to the following effect:

How were they going to assure you that nothing was going to happen to you when you are here in Australia?

The applicant responded to the following effect:

But my friends were there and they have been asking my friends my about whereabouts. My friends are telling me about their activities. There are still people searching for me, my friends have informed me. My (two) friends, we studied together, and these are my close friends.

63. The applicant responded to a series of the Tribunal's questions regarding contact with his friends to the following effect:

No, I call them once in a month. I last called them in February. I have called them three to four times. And each time they have told me they are still looking for me. My friends tell them they don't know where I am.

The hearing was adjourned for 10 minutes.

64. The Tribunal asked the applicant to the following effect:

The main part of your application appears to relate to your association with and leaving the ashram. What do the bombs have to do with you seeking a Protection visa?

The applicant responded to the following effect:

The relation between those two is that I was already scared by the threat of the followers of Bapu. I was more scared about what happened by the terrorists, that's the only relation.

65. The Tribunal asked the applicant to the following effect:

Many people were affected by those bomb blasts How many people live where you lived?

The applicant responded to the following effect:

50 to 70 thousand people.

66. The Tribunal asked the applicant to the following effect:

This is not a basis to apply for refugee status a Protection visa. Because if it was all those people could apply, it may never happen again. All of these people would not have been targets. Do you understand? I can appreciate that a bomb blast in very close proximity to your home or your shop would be frightening but it is not the basis

to apply for refugee status a Protection visa. So let's talk about your time at the ashram.

Did you say that when you heard about the bombs that you decided to apply for a protection visa?

The applicant responded to the following effect:

No, no it wasn't like that. Because when this bomb blast took place I was already here.

67. The Tribunal asked the applicant to the following effect:

When did you decide you were going to leave India?

The applicant responded to the following effect:

In the seventh month when everything came to the public, everything came into light, and when they heard about me I was threatened and physically assaulted.

68. The Tribunal asked the applicant to the following effect:

Why don't you go back to India and move to a place where you will be safe and you and your wife will still have access to your family and friends or where they could come and visit you?

The applicant responded to the following effect:

They have 500 ashrams, where should I go and live? There is no where safe.

69. The Tribunal asked the applicant to the following effect:

How do you know that they will follow you and find you?

The applicant responded to the following effect:

They know every thing about me about my relatives.

70. The Tribunal asked the applicant to the following effect:

Why do you think that they will follow you?

The applicant responded to the following effect:

When they threatened me they said that anywhere I went in India they would find me and they will kill me.

71. The Tribunal asked the applicant to the following effect:

So if this application is refused and you and your wife are returned to India, what do you think will happen?

The applicant responded to the following effect:

They will kill me and my wife.

72. The Tribunal asked the applicant to the following effect:

Why will they kill your wife?

The applicant responded to the following effect:

Because she was with me. She used to come with me to the ashram every Sunday.

73. The Tribunal asked the applicant to the following effect:

Did they threaten your wife?

The applicant responded to the following effect:

No, they had said they would kill both of us.

74. The Tribunal asked the applicant to the following effect:

When did they tell you they would kill both of you?

The applicant responded to the following effect:

The first time I was threatened.

75. The Tribunal asked the applicant questions asked earlier in the hearing and the applicant responded to the following effect:

I was threatened on 15 or 16 July. The news about the scandal came on 13 or 14 and after three or four days it took place, so maybe around those days. Three men came and threatened me at 4pm. Three or four days later four men came and assaulted me at 2pm.

76. The Tribunal asked the applicant to the following effect:

We are reaching the end of the hearing. We discussed several issues here today. Perhaps I have not asked you about something very important that will help your application. Is there anything you want to tell me?

The applicant responded to the following effect.

I would like to inform you that if I go back to India I will not be safe and if something goes wrong with me, my wife will be alone and there will be no one to look after her. So in Australia I feel safe and we want to live in Australia.

77. The Tribunal advised the applicant to the following effect:

I will make a decision based on the information that is on your file and the information you have provided here today.

I might need to resume the hearing at a later date if I need to discuss any information with you that might be a reason for refusing your application. So I have to give the opportunity to read my reasons and provide a response and I must considerer your response alternatively. I will write to you. If any time if you have any more information to assist your claims you can submit that information for my consideration however once the decision is made, additional evidence will not be considered. And you will be notified once the decision has been made.

The hearing ended.

The second hearing

78. The primary visa applicant appeared at a second hearing before the Tribunal [in] July, 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Hindi (Indian) and English languages.

79. The applicant and interpreter were advised that they remained under oath.

80. The Tribunal asked the applicant to the following effect:

After you left the ashram did you stay living at your home?

The applicant responded to the following effect:

Yes.

81. The Tribunal asked the applicant to the following effect:

In your evidence at the last hearing you said you moved, that you relocated.

The applicant responded to the following effect:

After they stated harassing we moved to my relatives place in Gujarat state; about 150 kilometres away.

82. The Tribunal asked the applicant to the following effect:

When did that happen?

The applicant responded to the following effect:

Until that time at my home, but when the people started harassing us we had to move and we stayed there for 25 days and did not return to our home. After that we moved to Mumbai for four to five days and then we came to Australia.

83. The Tribunal asked the applicant to the following effect:

Tell me why they came and threatened and assaulted you again?

The applicant responded to the following effect:

Actually we were their disciples, then we saw some wrong activities and we left.

84. The Tribunal asked the applicant to the following effect:

Now why do you think they started threatening you?

The applicant responded to the following effect:

They were insisting we join the ashram again and enquiring as to why were we not there.

85. The Tribunal asked the applicant to the following effect:

Just because you wouldn't go back they threatened you?

The applicant responded to the following effect:

Yes.

86. The Tribunal asked the applicant to the following effect:

Were there any other reasons?

The applicant responded to the following effect:

There were no other reasons, they were just frightened that I might expose them if I made a statement.

87. The Tribunal asked the applicant to the following effect:

So tell me what it was that you knew about them?

The applicant responded to the following effect:

It wasn't only me who knew, but I was the only person who left the Ashram.

88. The Tribunal asked the applicant to the following effect:

Were those things you are talking about, hypnotism, the death of two children the removal of their organs and occult type practises?

The applicant responded to the following effect:

Yes.

89. The Tribunal asked the applicant to the following effect:

I just want to say to you that evidence is out there on the internet including that information, so why would they come out after you when all that information is already published?

The applicant responded to the following effect:

I was serving that organisation and some higher authoritative people were insisting that I rejoin the ashram otherwise they informed me and they threatened me that they would harm me.

90. The Tribunal asked the applicant to the following effect:

How many of the men that came to your shop actually beat you?

The applicant responded to the following effect:

Three to four people came and threatened me. The second time they physically assaulted me there were four.

91. The Tribunal asked the applicant to the following effect:

I am about to read to you some information that tells me that you could move to another place in India and be safe. And this might be the reason for refusing your application. We will discuss it if you don't understand it and you can discuss it with me now or you can stay I want to think about it and respond in writing or come back another day. Just before I do tell me the languages you speak?

The applicant responded to the following effect:

Three languages, Gujarati, Hindi and Punjabi and I read and write English.

92. The Tribunal asked the applicant to the following effect:

What about your wife?

The applicant responded to the following effect:

My wife speaks Punjabi and Hindi.

93. The Tribunal asked the applicant to the following effect:

Firstly information from reliable sources such as the US State Department and the Australian Department of Foreign Affairs state that in India its citizens can move freely throughout the country except for Kashmir or Jammu. So there are no restrictions, you are free to go to wherever you want and there are many states across India where Gujarati and Hindi are spoken. Now it says that Maharashtra is one of the states where there is a significant population of Hindi and Gujarati speakers, Madhya Pradesh and Rajasthan and Delhi have large Hindi speaking and small Gujarati speaking populations. And therefore you could move you could pack up, take your wife and leave and move to another place and live there You are no longer associated with an Ashram; Guru Babu is out of your life you are not active. Would you like to comment?

The applicant responded to the following effect:

Actually when it happened we were so scared and this Ashram is not only local to Gujarat they are all over India.

94. The Tribunal asked the applicant to the following effect:

Yes I understand that there are 500 is that correct?

The applicant responded to the following effect:

Yes.

95. The Tribunal asked the applicant to the following effect:

I understand that. In India there are 1.2 billion people You could move to another state even another city within Gujarat to a big city with a significant population where you would not be engaging in activities with the ashram or with Babu. How would they find you?

The applicant responded to the following effect:

If I move to any place in India and if I move in with anyone of my relatives or any other person, and if they come to know that I am at that place, I could have been attacked by them. So I was scared of that they can attack me anywhere if they become aware of my whereabouts, so that's why I moved here.

96. The Tribunal asked the applicant to the following effect:

I acknowledge that people who have left the ashram have been subjected to threats and intimidation by Babu's group. I have that evidence. And I accept your evidence, but the part of your evidence that I am unable to accept is that you cannot move to another part of India and live safely there.

The applicant responded to the following effect:

If I had moved to another place I wouldn't have any relatives or any known people and then there would not be anyone who can save me from these threats and these things, and how long could I save myself, just for six months or a year, sooner or later they would find me.

97. The Tribunal asked the applicant to the following effect:

But I think you would save yourself by relocating I acknowledge that you will be away from your relatives and the community in which you have lived. Maybe that's the decision you have to make because there are safe places in India. You can still be in contact with your relatives.

The applicant responded to the following effect:

That's true. But when the situation occurred it was so scary we had no option. I was badly beaten and assaulted and attacked and frightened so I had no option to think about anything else, I just thought to leave and go far from that country.

98. The Tribunal asked the applicant to the following effect:

Do you want any further time to respond to my comments?

The applicant responded to the following effect:

Yes. I want to produce some evidence I would like five to six weeks.

99. The Tribunal asked the applicant to the following effect:

Why is it going to take five to six weeks?

The applicant responded to the following effect:

I will have to speak to my relatives to collect the information and evidence, and they will send it to me and it will take three to four weeks.

100. The Tribunal asked the applicant to the following effect:

I wonder whether you understand what I am saying. I accept your claims that you were a member working on Sundays at the ashram. I accept your claim that they came and threatened you and physically assaulted you. I accept your claims that you know about the activities that were occurring in the ashram. I accept your claim that you stayed with your relative and that you stayed in Mumbai for five days before coming to Australia. What I don't accept is that you cannot move to another place in India and be safe.

The applicant responded to the following effect:

The situation was so terrifying I couldn't think about moving to somewhere within India. The other thing is that if I moved then even for some time I realised I would not have been safe. And I was aware that they have ashrams all over India, they could get my information from anywhere.

101. The Tribunal asked the applicant to the following effect:

How?

The applicant responded to the following effect:

They could have collected my information from my relatives, my friends, or from anywhere and then attack me.

102. The Tribunal asked the applicant to the following effect:

It is possible in India to change your identity, that is to change your name and your details?

The applicant responded to the following effect:

You are right, I could have done that. If I change my identity that would be wrong and sooner or later they might have come to know from my friends or relatives by mistake they might tell them where I am.

103. The Tribunal asked the applicant to the following effect:

Now we are coming to the end of the hearing. My comments related to you being able to relocate, perhaps change your identity and be safe. There are millions and millions of people living in India and living in cities wher not everybody is involved with an ashram. Researched information tells me you can move and be safe.

The applicant responded to the following effect:

Right now you can think that I can go somewhere and be safe but the situation at that time was critical, but at that time I didn't think I would be safe.

104. The Tribunal asked the applicant to the following effect:

Do you want any more time to comment to submit any information?

The applicant responded to the following effect:

I want to produce some documents in three to four weeks, I have to contact India.

105. The Tribunal asked the applicant to the following effect:

Tell me what the evidence is about again.

The applicant responded to the following effect:

The thing what happened with me, the ashram, what happened to me.

106. The Tribunal asked the applicant to the following effect:

I accept that information. That is just costing you money and inconveniencing your family I accept your claims. You don't need to give me any information. I have looked at the research, it says that Bapu exists, it says that children have died, it says that they come after people that leave. Now do you still want more time?

The applicant responded to the following effect:

Only for that reason according to you that I could have moved somewhere, but I couldn't.

107. The Tribunal asked the applicant to the following effect:

How long do you need to present that information?

The applicant responded to the following effect:

I want to prove that I cannot move. I need three to four weeks. If I can't produce any documents you can make your decision.

108. The Tribunal asked the applicant to the following effect:

Do you think four weeks is reasonable, say from Monday. Monday the [date] is four weeks from Monday.

The hearing closed.

109. [In] August 2009 the Tribunal wrote to the applicant. The letter stated:

...

As you were advised at the hearing there is country information that you could move to another place in India and be safe. There is independent country information suggesting that relocation in the case of an Indian resident is feasible. There are no checks on newcomers to any part of India and there is no system of registration. However, if you were a high-profile Indian citizen relocation in India would be more difficult. The Tribunal finds that you are not a person in India with a high profile.

You responded to the above information and advised the Tribunal that there is nowhere in India that will be safe for you and that you could support this claim with evidence...As discussed at the hearing, your comments or response should be received at the Tribunal four weeks from Monday, [date] July 2009, that is by Monday [date] August, 2009.

110. To date the applicant has not provided a response to the above.

FINDINGS AND REASONS

111. There are photocopies of the primary and secondary applicants' passport details on the Department's file confirming they are citizens of the Republic of India. The Tribunal finds that the primary and secondary applicant's are citizens of India.
112. The Tribunal finds that the applicant's written statement and the evidence he provided at two hearings corresponded. Overall the Tribunal finds the applicant's evidence to be consistent and therefore finds the applicant to be a reliable witness.
113. The Tribunal accepts the applicant's claims that he and his wife between 2004, and July, 2008, worked at one of Guru Bapu's ashrams on Sundays distributing food to those visiting Guru Bapu and to those visiting the children living in the ashram.
114. The applicant claims that he believes that the ashram leader Guru Bapu, his son and others were engaged in experiments on children including the administration of opium to the children; mesmerizing and hypnotizing the children and engaging in evil cult activities. The Tribunal accepts the applicant's claims that he believes these events occurred and information provided above in evidence from other sources supports these claims.

115. The applicant claimed that in 2008, two children from the ashram had been found dead and their organs were missing from their bodies. The children's bodies were found on the river bed near the ashram. The Tribunal accepts the applicant's claims based on his evidence at the hearing and information above provided in evidence from other sources.
116. The applicant claimed that because of the death of the two children and the other activities, for example, the administration of opium to children, he left the ashram. After he left the ashram on approximately 20 July, 2008 three followers of the ashram came to his shop and threatened him that he and his wife would be killed if he did not return to the ashram and that where ever he goes in India that they will find him. They told him he should continue with his work at the ashram, he should not expose the ashram and that he should stay quiet. The applicant told them that he was not going to return to the ashram. This event lasted five minutes. The Tribunal accepts the applicant's claims based on his evidence and the information provided above in evidence from other sources related to those who have left the ashram being harassed by other followers of the ashram.
117. The applicant claimed that three or four days following the above event at 2pm, four people returned to his shop and told him he had to continue with the ashram and when he refused two of them restrained him while the other two punched him. The assault lasted for three to four minutes. The applicant claimed he suffered no injuries and that he did not go to a doctor. He also claimed that he did not go to the police because he was scared of the questions the police might ask him. The Tribunal accepts the applicant's claims based on his evidence and the information provided above in evidence from other sources related to those who have left the ashram being harassed by other followers of the ashram.
118. The applicant claimed that after the above events he moved 150 kilometers away from their home and stayed with relatives for the next 25 days. Thereafter they stayed in Mumbai for four to five days before traveling to Australia. The Tribunal accepts the applicant's claims.
119. The Tribunal accepts the applicant's claims that his friends in India have advised him in three or four telephone conversations that people from the ashram have made contact with them searching for the applicant.
120. The applicant claimed that he believes that Guru Bapu and the ashram have links with politicians, gangs and the mafia. The applicant claimed that if complaints are made to the police, the ashrams have connections with politicians and the politicians can save them. In information in evidence from other sources there is detail related to the guru's political connections. The Tribunal accepts the applicant's claims.
121. The applicant following his arrival in Australia discovered on the internet that there were bomb attacks close to his shop and after this event he decided to apply for a protection visa. The Tribunal confirmed with the applicant that the basis of his claim for protection was the events that occurred after he left the ashram. The Tribunal accepts the applicant's claim that he was frightened by the reports of the bomb blasts. The Tribunal finds that while it is possible the applicant could suffer serious harm in any future terrorist attack and any attack may be for reasons of the perpetrator's religious or political beliefs, such attacks would be directed indiscriminately at the public in general not at a particular group to which the applicant belongs or because of an attribute, opinion or anything else that the applicant has or that may be attributed to him. Therefore, any such terrorist attack

would not be discriminatory conduct and not meet s.91R(1)(c) of the Act. The Tribunal finds this harm would not constitute persecution.

122. The Tribunal confirmed with the applicant that his claim for a protection visa was based on the following. After leaving the ashram he was approached by followers of the ashram. On the first visit they threatened that they would kill the applicant and his wife if they did not return to the ashram and if they revealed any information to the authorities. On their second visit to the applicant's shop he refused once again to return to the ashram and two of the followers restrained him while the other two punched him. The applicant advised that the followers of the ashram were frightened that he might make a statement and expose them. Since leaving India three to four times followers from the ashram have made contact with friends of the applicant asking about his whereabouts. The Tribunal accepts the applicant's claims.
123. The applicant informed the Tribunal that he had not witnessed any of the claimed events occurring in Guru Babu's ashram such as administering opium to children, hypnotizing or mesmerizing children and engaging in evil spirit activities, but he that he had heard about them. Based on his evidence the Tribunal finds that when the two children were found dead on the river with organs missing, the applicant decided to leave the ashram. The Tribunal raised with the applicant that the evidence he provided at the hearing had already been published, it is available on the internet. The applicant confirmed with the Tribunal that these were the events that he knew of and that the followers of the ashram were concerned that he would reveal information to the authorities and therefore they were harassing him to return to the ashram.
124. The Tribunal acknowledges that the applicant revealed information at the hearing related to the ashram that has been widely published. See information provided in evidence from other sources above. The Tribunal finds that it is perplexing that the applicant claimed to be persecuted because of information that he had heard about and not witnessed and also because the information had been published extensively by the media in India. However, the Tribunal accepts the applicant's claims because overall the evidence he provided at two hearings and in his written statement corresponded, information provided in evidence from other sources confirms the applicant's claims and because the Tribunal found the applicant to be a reliable witness.
125. The Tribunal accepts that the applicant has a well founded fear of persecution for a Convention reason, his political opinions. The applicant opposes the activities Guru Babu his son and the ashram and they have political connections capable of providing them with protection. The Tribunal accepts that the applicant has been threatened and assaulted by followers of the ashram because he refuses to return to the ashram and because they fear he could reveal information about their activities to the authorities. The Tribunal finds that the persecution to which the applicant has been subjected is localized to the region where he lives and works. The applicant informed the Tribunal that the followers of the ashram have approached his friends seeking his whereabouts since his arrival in Australia. The Tribunal finds therefore that the threats and harm to which he has been subjected are likely to continue in the future. The Tribunal is satisfied any future harm the applicant fears is as a result of the events which occurred within his local area and it is satisfied that the harm he may fear in the future is localized to the region where he lived and worked. The Tribunal finds that it is reasonable for the visa applicant and his wife to relocate within India. The Tribunal accepts the applicant's claims that he has ceased his activities with Guru Babu and the ashram and is satisfied that the applicant will not

engage in any similar activities in the future on relocation, therefore the Tribunal finds there is no real chance that the applicant will experience harm in the future as claimed on relocation.

126. The Tribunal finds that it is reasonable for the applicant to seek refuge in another part of India. The applicant and his wife are citizens of India where there is a population of approximately 1.12 billion people (reported in 2007). The applicant is a Hindu and Hindus comprise approximately 80% of the population in India. The detail provided in evidence from other sources advises that citizens of India enjoy the freedom of movement in its 28 states and seven territories with the exception of Kashmir and Jammu. See details provided in evidence from other sources. The Tribunal finds the applicant's personal circumstances which include, he speaks more than one language and reads and writes English; his ability to manage a [description deleted: s431(2)] retail outlet on his own; his previous demonstrated ability to relocate within in India for 25 days; his previous tour of Thailand in April 2008; his and his wife's travel and relocation to Australia and his ability to raise the funds for his and his wife's travel and relocation expenses, that it is safe and reasonable for the applicant to relocate to another place in India.
127. The detail provided in evidence from other sources advises that citizens of India enjoy freedom of movement within its 28 states and seven territories with the exception of Kashmir and Jammu. See details provided above in evidence from other sources. The Tribunal finds the applicant's personal circumstances are such that he is able to relocate to a safer place in India where one of the languages he and his wife speak is spoken. The applicant informed the Tribunal that he speaks Hindi, Gujaiti, Punjabi and reads and writes English and that his wife speaks Hindi and Punjabi. The Tribunal notes that on his application form the applicant has recorded that he speaks Hindi, Gujarati and that he reads and writes English. On the secondary applicant's form it is recorded that she speaks Hindi and Gujarati. The Tribunal finds that the applicants speak more than one language and could relocate to a number of states in India where there is a significant proportion of the population speaking one of or both of their languages and where a significant proportion of the population's religion is Hindu. There are many places where the applicants could relocate and the applicants are not limited to the following examples. Because the information provided at the hearing conflicts with the information on the application forms the Tribunal has selected Hindi as their language because Hindi was identified both at the second hearing and on the application forms as one of their languages. The following are details of locations in India where there is a significant population, and a significant proportion of the population's religion is Hindu and their language is Hindi. Delhi where there is a population of 13,782,976. 84% of the population is Hindu and the main languages include Hindi. Goa where there is a population of 1,343,998. 64.5% of the population is Hindu and one of the main languages is Hindi. Haryana where there is a population of 21,082,989. 89.3% of the population is Hindu and languages include Hindi. Himachal Pradesh 6,077,248. 95% are Hindu and 89% speak Hindi. Punjab where there is a population of 24, 289,296. 34% are Hindus and 7.3% speak Hindi. Refer to information provided in above in evidence from other sources. Based on this evidence the Tribunal finds that it is safe and reasonable for the applicant to relocate to another place in India.
128. The Tribunal accepts the applicant's claim that he managed his own [description deleted: s431(2)] retail outlet, that there were no employees. The Tribunal finds that the applicant has the capacity to engage in all of the activities required to sustain such a business

including for example, locating and purchasing stock from manufacturers, stock control, sales, monitoring of changes in fashion; advertising, management of the business accounts, banking, management of the building and related equipment and the many other tasks associated with being a sole trader. Based on the applicant's employment experience the Tribunal finds that the applicant on relocation could once again run his own [description deleted: s431(2)] store or seek employment as the manager of an existing retail business.

129. The applicant and his wife were able to move 150 kilometers away from their home and resided there with relatives for 25 days, they then traveled to Mumbai for four to five days and after this they traveled to Australia where they have resided since [a date in] August, 2008 to date. The applicant traveled to Thailand, arriving [in] April, and left Thailand [in] April, 2008. The Tribunal finds based on this evidence that the applicant has the financial capacity and other attributes to relocate within India.
130. The applicant informed the Tribunal that he does not have any children and that his wife is a housewife. The detail provided in the secondary applicant's application form advises she is a housewife. The Tribunal finds that the visa applicant's wife could relocate within India with her husband as she has done in the past. The visa applicant's wife accompanied the applicant when he relocated 150 kilometers away from their home in Gujarat and she also accompanied him to and resides with the applicant in Australia.
131. The Tribunal has had regard to the fact that on relocation in India the applicant and his wife may have to live away from their relatives and friends. The applicants have demonstrated personal characteristics required to live away from their relatives and friends by relocating to Australia. Since arriving in Australia the applicant has maintained contact by phone with his friends in India. The Tribunal finds the applicant and his wife have the personal characteristics required to live away from their relatives and friends in India and that they could remain in contact with their relatives and friends.
132. The Tribunal does not accept the applicant's claims that if he goes back to India he will be killed. The Tribunal finds that the followers of the ashram accessed the applicant twice and they did not kill him. In addition the Tribunal finds that the harassment to which the applicant was subjected has been localized to his current place of residence in India and on relocation the applicant will be lost to those harassing him.
133. The Tribunal does not accept the applicant's claim that wherever he goes in India he will be located by associates of the ashram and he and his wife will be killed. The Tribunal does not accept that the followers of the ashram will be advised of his new location by his relatives or friends by accident. The applicant is a Hindu and Hindus comprise approximately 80% of the population in India. The applicant speaks Hindi and 30% of the population speaks Hindi. There are no restrictions placed on the movement of Indian citizens across the vast majority of its states and territories. In addition India is comprised of a population of approximately 1.12 billion (reported in 2007) people. Therefore the Tribunal finds that it would be possible for the applicant to relocate to a safer place and be lost with the vast population living within that safer place. The Tribunal finds that applicant must inform friends and relatives of his circumstances to ensure that they do not reveal his whereabouts to any persons seeking such information and therefore they will not reveal his whereabouts. The Tribunal finds that the applicant could safely relocate in India.

CONCLUSIONS

134. The Tribunal is not satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.
135. The other applicant applied on the basis of her membership of the first named applicant's family. The fate of her application depends on the outcome of the first named applicant's application. As the first named applicant does not satisfy the criterion set out in s.36(2)(a), it follows that the other applicant cannot satisfy the relevant criterion set out in s.36(2)(b) and cannot be granted the visa.
136. The Tribunal is not satisfied that the applicants are persons to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

137. The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas

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: PRMHSE