

1114221 [2012] RRTA 371 (1 June 2012)

DECISION RECORD

RRT CASE NUMBER:	1114221
DIAC REFERENCE(S):	CLF2011/168499
COUNTRY OF REFERENCE:	India
TRIBUNAL MEMBER:	Christopher Smolicz
DATE:	1 June 2012
PLACE OF DECISION:	Adelaide
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of India, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] October 2011. The delegate refused to grant the visa [in] November 2011, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

3. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

4. Section 36(2)(a) 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 Refugees Convention.
5. 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.
6. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

7. 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.
8. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
9. 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.
10. 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.
11. 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.
12. 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 being persecuted 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.
13. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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

Complementary protection criterion

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

CLAIMS AND EVIDENCE

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

Background

19. According to information contained on the Departmental file, the applicant arrived in Australia [in] October 2008 on an Indian passport as the holder of a Class TU subclass 573 Higher Education Sector visa which was valid [until] December 2010. He has not departed Australia since his arrival.
20. [In] October 2010 the applicant lodged an application for a Class TU subclass 572 Vocational Education Sector visa which was refused by the Department [in] November 2010.
21. [In] December 2010 the applicant lodged an application with the Migration Review Tribunal (MRT) to review the Department's decision. [In] May 2011 the MRT affirmed the Department's decision not to grant the applicant a student visa.

22. [In] June 2011 the applicant lodged with the Department an application seeking Ministerial intervention. [In] September 2011 the applicant was advised that the Minister had personally considered the applicant's case and had decided it was not in the public interest to intervene.

Protection visa application

23. [In] October 2011 the applicant lodged a protection visa application which is the subject of the review application. The applicant declared that he was born on [date deleted: s.431(2)] in [Town 1], [District 2], south west India, he is single and has no children. The applicant declared his ethnic group to be "Catholic" and his religion to be "Christian" and that he is able to speak, read and write in English and Malayalam.
24. The Applicant's substantive claims for a protection visa can be summarised as follows:
- Prior to his arrival in Australia he was an active member of the Democratic Youth Federation of India (DYFI). The DYFI is a subsidiary of Marxist Communist Party India (Marxist) (CPI(M)) and does not believe in any particular religion, rather the party believes in socialism.
 - The principles of the DYFI influenced him from year 10 onwards and he became involved and worked for the party. When he finished year 12 he was elected to the position of "Local Area Secretary" During this time he had received consistent threats to his life from the opposition "Bharathiya Janthadal Party" (BJP) because the DYFI was against this party due to their religious influence.
 - Even though the BJP was a political party, the group always tried to put religion as the issue rather than politics and tried to convert people to Hinduism. As "a local leader" in his village the applicant led protests against the BJP's religious conversion. The BJP targeted the applicant due to his activities and he was attacked on several occasions and hospitalised with severe injuries.
 - His family and friends suggested that he move away from Kerela to Bangalore in the State of Karnataka. While in Bangalore the applicant successfully completed a [course] and started working but members of the BJP were able to locate him and attacked him. The applicant states that he had no option but to run away from India and travelled to Australia.
 - Members of the BJP have attacked the applicant, his brother and his father on several times. There have been no inquiries or support from the government authorities because of influence and money.
 - His brother [died] in 2007 . He could not return to India for the funeral due to his fear. Since his brother's death his parents have suffered depression and his father has undergone [treatment].
 - Once during the night in August 2010, strangers attacked the applicant's house. The applicant was not home. His brother sustained severe injuries from the attack. The applicant is scared to return to India.
25. The applicant did not attend an interview with the delegate to further discuss his claims.

26. [In] November 2011 the delegate found that based on the lack of details in the applicant's claim she was not satisfied that the applicant was threatened or targeted in India. The delegate was not satisfied that the applicant ever suffered any persecution based on the Convention reason of his imputed or actual political opinion.
27. [In] December 2011 the applicant applied to the Tribunal to review the delegate's decision.
28. [In] March 2012 the applicant submitted the following documents to the Tribunal:
 - Correspondence purporting to be signed by the Secretary of the DYFI, [Town 1] East Village Committee, claiming that the applicant is an active member and spokes-person of the DYFI since 1995.
 - Various online media reports regarding violent conflicts between members of the Communist Part of India (Marxist) (CPI(M)) and the Rashtra Swayem Sevak (RSS) and Bharatiya Janata Party in India in 2008.

Review hearing

29. The applicant appeared before the Tribunal [in] May 2012 to give evidence and present arguments.
30. On the morning of the hearing the applicant submitted the following documents:
 - Correspondence [dated] June 2011 sent by [Deacon 1] to the Honourable Chris Bowen MP, requesting Ministerial intervention to enable the applicant to stay in Australia in regard to his student visa application.
 - Correspondence [dated] December 2010 sent to the Department by [Father 2] on behalf of the applicant in support of his student visa application.
 - Online media reports regarding the murder of the Indian Marxist Party leader TP Chandrasekharan dated 6 May 2012.
 - Medical certificate from [the Dr] certifying that [in] October 2011 the applicant was suffering from a major depressive disorder.
 - Pathology results [dated] February 2012 stating that the applicant has a vitamin D "insufficiency".
 - Various medical certificates and receipts from India stating that the applicant's [father] was treated for psychosis and is in receipt of medication.
 - Death Certificate issued by the government of Kerala certifying that the applicant's brother [died in] 2007.

Applicant's oral evidence

31. At the commencement of the hearing the Tribunal advised the applicant that the hearing would be conducted with the assistance of an interpreter in the Malayalam and English languages. The Tribunal advised the applicant that if he had any problems with the

interpreter he should raise the issues with the Tribunal. The Tribunal notes that the applicant spoke throughout the hearing in both English and Malayalam and apart from some initial comments regarding the interpreting the applicant did not raise any issues regarding the quality of the interpreting during the course of the hearing.

32. The Tribunal asked the applicant if he had received any assistance in completing his protection visa application. In response the applicant said that he arrived in Australia in October 2008 on a student visa. At the time he arrived he was not aware that he could apply for a protection visa and did not realise he had any options. He said that he had heard of the United Nations Convention and had shared his concerns about returning to India with people in his community and a migration agent but was not told he could apply for a protection visa.
33. The Tribunal repeated its question and asked the applicant whether the contents of the application were accurate. The applicant said that he completed the application himself and he did not have sufficient funds to obtain migration advice. He said that he may have further submissions to put to the Tribunal which he did not raise in his application. The Tribunal asked the applicant why he did not submit all relevant material in his protection visa application lodged with the Department. The applicant confirmed that what he stated in the application was accurate but, at the time he could not concentrate and was not satisfied that all relevant information had been disclosed.
34. The Tribunal asked the applicant what he had done since he had come to Australia. The applicant said that he commenced studying a [Diploma] but could not complete the course because he could not concentrate on his studies due to his depression and the issues affecting his parents and brother in India.
35. The applicant said he came to Australia because he had a well-founded fear in India and sought to apply for a student visa to escape.
36. The Tribunal asked the applicant what problems his parents and brother were experiencing in India. The applicant said that his parents were being threatened by the opposition political parties who were seeking their conversion from Christianity to Hinduism. The applicant said that he was a member of the DYFI which was the youth movement of the CPI(M). He said that when he was younger he was a member of the of the Student's Federation of India (SFI).
37. The Tribunal asked the applicant how he became a member of the DYFI. The applicant answered the question by telling the Tribunal that he lived in fear in [Town 3] and that there were many Hindus and few Christians. He said that he believed that the DYFI disciplines and doctirnes were good and would protect him from his troubles with the Hindus. The applicant said that he attended seminars and classes and proved himself to be skilled leader. The Tribunal asked the applicant to explain what classes he attended. The applicant said that there were no formal classes but 2 to 3 people meeting to discuss any problems people were having in the community.
38. The Tribunal asked the applicant what role he played in the DYFI. The applicant said that he was an active member who organised other members and was a spokes-person. The Tribunal asked the applicant to explain what he did in his role. The applicant said that Christians were in the minority and were pressured to convert to Hinduism. He said

that his family were abused because of their Christian beliefs. The Tribunal notes that the applicant was unable to provide an explanation of his role and duties.

39. The applicant said that his brother and his father could not withstand the trouble and suffered. The Tribunal asked the applicant to explain what he meant by trouble. The applicant said that people used to come to his house and force his parents to convert to Hinduism. He said that they took brutal measure. The Tribunal asked the applicant to explain who came to his house and what they did. The applicant said that he did not know who they were but they were sent by the Hindu community leaders. The Tribunal asked he applicant why they would target his family. The applicant said that all Christian families were persecuted but he was unable to provide more detail.
40. The Tribunal referred the applicant to his written claims where he stated that he was a “local village leader” and the “Local Area Secretary” of the DYFI. The Tribunal told the applicant that given the high profile he claimed to have in the party it would expect that he could provide more information about his duties and role in the organisation. The applicant said that he was Local Area Secretary for only few days. He said that he was known to the BJP and RSS and had to resign and go into hiding very soon after he started in the role because of threats to his life.
41. The Tribunal asked the applicant to explain what threats he was referring too. The applicant said that his brother was beaten and assaulted but he was not injured. The applicant said that his father got phone calls that he would be killed and his family would be destroyed. He said that his only option was to leave the party and go into hiding. The Tribunal asked the applicant when this occurred. The applicant was unsure and thought it was in 2000.
42. The applicant said that he went into hiding in the neighbouring state of Karnataka. The Tribunal referred the applicant to his claim form in which he stated that he completed a [Diploma] at Karnataka in the period 2001 to 2004. The applicant said that he completed his degree in secret. The Tribunal asked the applicant to explain how he could complete a degree in secret and remain in hiding at the same time. The applicant said that since he resigned as secretary he did not play an active political role. The applicant said that when he was studying in Bangalore, he had problems and was recognised by members of the CPI(M) and interrogated. The Tribunal asked the applicant to clarify why the CPI(M) would be interrogating him. The applicant said that he was not interrogated but questioned. The Tribunal again asked the applicant why he would be questioned by CPI(M) when they are affiliated with the DYFI. The applicant said that he was having trouble recalling his evidence and that he meant to say that he was questioned by the BJP not the CPI(M).
43. The Tribunal asked the applicant to explain what happened to him in Bangalore. The applicant said that he was found by the BJP. The Tribunal asked the applicant if he could recall when this was. The applicant said that he could not recall dates. He said that members of the BJP who he knew from [Town 3] found him at a bus stop when he was travelling home after work. He said that the people came close to him and asked his name but he got away. The Tribunal asked the applicant whether any threats were made. The Tribunal notes that the applicant was evasive and unable to provide detail of what threats were made towards him.

44. The Tribunal asked the applicant what harm he feared if he returned to India. The applicant said that he fears death. The Tribunal asked the applicant to explain why he feared for his life. The applicant said that he cannot go back to his home town and cannot live in any other place in India because he did not have any support. The Tribunal asked the applicant why he feared for his life. He said that all the members of the BJP are targeting him and his father is unable to help him because he is unwell. The applicant referred the Tribunal to the internet media articles which referred to the recent murder to the Marxist party leader T P Chankrasekharan. The Tribunal asked the applicant why he would be targeted in the same way as a high profile leader of the Marxist party. The applicant said that [it] is a very violent place and anything could happen.
45. The Tribunal asked the applicant to explain why he believed his life would be in danger if he returned to India. The applicant said that his brother was a member of the Kerala Catholic Youth Movement (KCYM) and wanted to become a priest. The applicant said that on two occasions his brother was tortured and his brother is now dead. The Tribunal asked the applicant if he could state when his occurred. The Tribunal notes that the applicant was evasive in his answer and said he could not recall dates but thinks it was 2006. The Tribunal asked the applicant why he did not disclose this information to the Department. The applicant said that he wanted to but was unable to get assistance with his claim. The Tribunal asked the applicant what was the cause of his brother's death. The applicant said that his brother died from a "panic attack" He said that when his brother was returning home from school he was attacked by members of the RSS. That evening his brother came home and complained of chest pains and died. The Tribunal put the applicant that it had concerns regarding the credibility of his explanation regarding the torture and death of his brother. The Tribunal referred the applicant to a letter he provided to the Tribunal, [dated] June 2011, written by [Deacon 1] seeking Ministerial intervention in his student visa cancellation. The Tribunal specifically referred the applicant to the part of the letter which states that the applicant's brother died of [a highly contagious illness] which he caught from the applicant. The Tribunal asked the applicant to comment on the inconsistent evidence he provided regarding the death of his brother. The applicant provided various answers about how he did not have any assistance with his student visa application and his brother did have [a highly contagious illness] which may have also been the cause of his death.
46. The Tribunal referred the applicant to his written claim where he referred to an incident which occurred in August 2010 when strangers attacked his house in India and his brother sustained severe injuries from the attack. The Tribunal asked the applicant to comment on this evidence having regard to the evidence that his brother died [in] 2007. The applicant stated that the reference to 'his brother' was in fact a reference to his aunty's son.
47. Pursuant to s.424AA of the Act the Tribunal formally put to the applicant following adverse information.
48. Firstly, the Tribunal put to the applicant that when he applied to the MRT to review his student visa cancellation he provided information which was inconsistent with the information he provided to the Tribunal in his oral evidence. Specifically, the Tribunal referred the applicant to his written submissions to the MRT [dated] November 2011 in which the applicant stated: "*When I embarked on my studies to Australia in October*

2008, I was looking forward to graduating and returning to India with an Australian Qualification [sic]" The Tribunal referred the applicant to his oral evidence in which he now claims he escaped to Australia because he feared for his life and feared that he would be killed if he returned to India.

49. Secondly, the Tribunal asked the applicant to comment on the submissions prepared, by [Deacon 1] [dated] June 2011, which were sent to the Minister seeking his personal intervention in the applicant's student visa cancellation. The Tribunal asked the applicant why the submissions made no reference to his involvement with the DYFI and his fear of persecution in India.
50. After taking an adjournment to consider his response, the applicant advised the Tribunal that what was said in his MRT submissions and the submission to the Minister was correct. He said that India was not a signatory to the United Nations Convention and he did not know he could apply for protection visa until he spoke to the Department after his student visa was cancelled. He said he escaped from India on a student visa and when he came to Australia he did not know he could apply for a protection visa. He said that when he applied to the MRT he still had ambitions of completing his studies and remaining in Australia. He said that it was not his fault that his student visa was cancelled. The applicant said that he was assisted by an experienced lawyer with his MRT application but there was a miscommunication and he did not attend the hearing and was given incorrect advice when he applied for Ministerial intervention.
51. The applicant said that he did not advise [Deacon 1] about his membership and involvement with the DYFI and the CPI(M) and his fear of persecution in India because he was ashamed.
52. The Tribunal asked the applicant to comment on the letter from the DYFI secretary [dated] March 2012 which he submitted to the Tribunal. The applicant said that he asked his parents in India to obtain confirmation of his membership in the DYFI and they sent him the letter. The Tribunal asked the applicant to comment on country information obtained from the Department that suggests that it is very easy to obtain false documentation in India. The applicant told the Tribunal that he could not comment because the document was provided by his parents.
53. Tribunal noted that the applicant provided a medical certificate [dated] October 2011 claiming that he was suffering from depression. The Tribunal asked the applicant about his current medical condition and whether he had updated medical evidence. The applicant said that he was on medication but could not recall the name. He said that he did not see a psychiatrist because he did not have any money. At the conclusion of the hearing the Tribunal agreed to provide the applicant more time to provide further medical evidence.

Post hearing evidence

54. [In] May 2012 the applicant provided an updated medical certificate from [a Dr], certifying that the applicant still suffers from a major depressive disorder, he is being treated with medication and there has been moderate improvement in his condition.

FINDINGS AND REASONS

The applicant's claims

55. The applicant entered Australia on a valid and legally issued Indian passport in his own name. The Tribunal accepts that the applicant is a national of India and assesses his claims against India as his country of nationality.
56. The applicant claims to fear serious harm if he returns to India due his political opinion, membership of the DFYI and CPI(M) and his Christian religious beliefs. He claims to fear harm from the opposing political party members of the BJP and RSS.
57. The Tribunal accepts that the applicant was born in [District 2] and that he is a Christian. Beyond this issue, however, the Tribunal does not believe any of the claims made by the applicant or that he genuinely holds fear of any harm should he return to India.
58. Tribunal does not accept that the applicant has suffered harm in the past or will suffer harm in the future because of his;
 - His Christian religious beliefs
 - His political opinion
 - His membership of the DYFI or CPI(M).
59. The Tribunal has a number of concerns about the applicant's evidence, which cause the Tribunal to find that the applicant is not a credible witness and has not been truthful in relation to his experiences in India, his reasons for leaving India and his fears about returning to India.
60. In reaching this view, the Tribunal has had regard to the applicant's inability to recall dates, inconsistencies within the applicant's evidence regarding crucial events relevant to his claims and inconsistencies between the applicant's oral evidence and written claims, as well as other reasons detailed below. In assessing the applicant's evidence, the Tribunal has had regard to the medical certificate stating that the applicant is suffering from depressive disorder. The Tribunal notes that the applicant is on medication and his condition has improved since he was first examined in October 2011.
61. The Tribunal found the applicant's evidence regarding this involvement in the DYFI to be vague and lacking in detail. In his written claim the applicant stated that he was an "active member" of the DYFI which was a subsidiary of the CPI(M). He described himself as a "local village leader" and "Local Area Secretary" The applicant said that he arranged meetings, demonstrations and was a local spokes person and as a result of these activities his life was in danger. However, when asked to provide details of his activities and duties the Tribunal found the applicant's answers vague and evasive. The Tribunal found the applicant was only able to make general statements about the DYFI and the activities of the BJP. The Tribunal found the applicant's answers were not

consistent with someone who claims to have played an active role in the DYFI since becoming involved at as a young man in year 10. For example, when questioned about his duties as “Local Area Secretary”, the applicant was unable to provide an answer and stated that he was only in the role for a few days.

62. The Tribunal did not accept the applicant’s evidence regarding the persecution he and his family experienced in India as a result of his membership of the DYFI because of their Christian faith. The Tribunal found the applicant’s answers were inconsistent vague and not credible. For example, the applicant claimed that his brother was assaulted and tortured because he was member of the KCYM. The applicant claimed that his brother was severely beaten and died as a result of a “panic attack” and chest pains. The Tribunal notes that the applicant did not mention this information in his protection visa application. The Tribunal notes this evidence is inconsistent with submissions made in support of his student visa application where it was claimed the cause of his brother’s death was [a highly contagious illness].
63. The Tribunal notes that in his written claim the applicant referred to an incident which occurred in August 2010 when stranger’s attacked his house and his brother sustained severe injuries from the attack. The Tribunal notes that applicant provided a death certificate claiming his brother died [in] February 2007. When questioned about the inconsistency the applicant claims that the reference to ‘his brother’ in his written claim was in fact a reference to his aunty’s son.
64. The Tribunal note that in the applicant’s written statement he claims that members of the BJP threatened his life on several occasions and that he was attacked at his home and hospitalized with severe injuries. The Tribunal finds that the applicant made no reference to being injured or hospitalized in his oral evidence.
65. The applicant claimed in his oral evidence that in order to save his life he had to escape to the neighboring state of Karnataka where he had to live in secret. The Tribunal finds this claim inconsistent with the applicant’s evidence that in the period 2001 to 2004 he was able to study in the capital Bangalore and successful complete a [Diploma].
66. Tribunal finds that significant time elapsed from the applicant’s arrival in Australia on [in] October 2008 until the lodgment of his protection visa application [in] October 2011. The Tribunal finds this evidence relevant in assessing the seriousness with which the applicant viewed risk of persecution in India. The Tribunal notes that the applicant waited for 3 years before lodging a claim for a protection visa. The Tribunal notes that the protection visa application was made after the applicant’s student visa was cancelled and he had exhausted other avenues of remaining in Australia. The Tribunal considers that if the applicant genuinely feared returning to India he would have taken action sooner and put his claims forward when he applied for Ministerial intervention to avoid returning to India.
67. At the Tribunal hearing the applicant explained that this delay was due to the fact he had been unaware that he apply for a protection visa in Australia. He claimed that he did not know anyone in Australia that could assist him with his claim and it was costly to get advice from migration agents and his financial circumstances meant he could not afford to do so. However, the applicant also claimed that his purpose in coming to Australia was to escape the threats and persecution he had faced in India and that he could not return there because he faced a death.

68. The Tribunal has some difficulty accepting the applicant's explanation.
69. The Tribunal does not accept that the applicant was so isolated in Australia that he did not know anyone who could assist him to obtain appropriate advice until late 2011, after being in Australia for more than 3 years.
70. The Tribunal notes that the applicant was represented during the MRT proceedings by a migration agent and showed initiative in obtaining assistance from senior community leaders such as [Deacon 1] and [Father 2] when dealing with the Department over his student visa cancellation.
71. This is particularly so, having regard to the applicant's claimed reasons for coming to Australia. The Tribunal does not accept that the applicant could not have approached the Department shortly after his arrival in Australia, even without the assistance of a migration agent, or a friend, to ascertain what options he had to remain in Australia once his student visa was cancelled. The Tribunal finds that the submissions which were presented to the MRT and the Minister in fact stated that the applicant was looking forward to returning to India after he completed his studies.
72. As a result, the Tribunal does not accept the applicant's claim that it was not possible for him to lodge a protection visa application soon after his arrival in Australia and well before October 2011.
73. The combination of these matters causes the Tribunal to find that the applicant has been untruthful in his evidence concerning the events in India and to reject his evidence. The Tribunal does not accept the applicant was a member of a DFYI or a member of the CPI(M). It follows that the Tribunal does not accept he or his family were targeted or harmed by any other person for his involvement in the DFYI or CPI(M). The Tribunal further finds the applicant would not be targeted by the BJP and the RSS or any other person for his political opinion or his religious beliefs should he return to India now or in the foreseeable future.
74. In summary, the Tribunal finds that the unsatisfactory aspects of the applicant's evidence leads it to find that the applicant does not have a well-founded fear of persecution in India for the reason of his political opinion or religious beliefs or any other Convention reason.
75. The Tribunal finds that there is not a real chance that the applicant will be persecuted, for a Convention reason or any other reason, if he were to return to India now or in the reasonably foreseeable future. Therefore he does not satisfy the requirements of s.36(2)(a) of the Act.
76. The Tribunal has also considered the application of s.36(2)(aa) to the applicant's circumstances. In this regard, the Tribunal has considered whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk he will suffer significant harm.
77. For the same reasons as stated above, the Tribunal does not accept that the applicant meets the complementary protection criterion in s.36(2)(aa). The Tribunal has rejected the applicant's claims that he was a member of the DYFI or the CPI(M). As a

consequence the Tribunal has not accepted that the applicant or his family were targeted or harmed by the BJP and RSS based on his political opinion or religious beliefs in the past or should he return to India now or in the foreseeable future. The Tribunal notes that the applicant has not advanced any other grounds upon which he would suffer serious harm.

78. The Tribunal is not satisfied that it has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to another country, that there is a real risk he will suffer significant harm. The applicant does not satisfy the requirements of s.36(2)(aa) of the Act.

CONCLUSIONS

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

DECISION

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