

**0800223 [2008] RRTA 93 (14 April 2008)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0800223

**DIAC REFERENCE(S):** CLF2007/153666

**COUNTRY OF REFERENCE:** India

**TRIBUNAL MEMBER:** Louise Nicholls

**DATE DECISION SIGNED:** 14 April 2008

**PLACE OF DECISION:** Sydney

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

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of India, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa on and notified the applicant of the decision and his review rights by letter dated.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of 'refugee'**

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

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

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

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

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

## **CLAIMS AND EVIDENCE**

19. I have before me the Department's file, which includes the application for a protection visa and the delegate's decision record. I have also had regard to the material referred to in the delegate's decision, and other material available to me from a range of sources.

### **Information given to the Department by the applicant**

#### *Application for Protection Visa*

20. The following personal details of the applicant and the written claims are contained in the protection visa application and accompanying statement lodged [date].
21. The applicant claims he is a citizen of India and was born and educated in Town A, State 01, India. He is in his twenties, speaks Hindi and English, is of Indian ethnicity and is a Muslim. The applicant has never married and his family live in India. Prior to his arrival in Australia he lived at an address in Town A.
22. The applicant arrived in Australia travelling on an Indian passport and entered Australia on a [type of] visa granted in Town B on [date]
23. In the statement accompanying the application for a protection visa the applicant claimed that;
  - He was born on [date] in the district C, State 01 and is a Muslim.
  - He has suffered oppression and discrimination by Hindus from his early childhood.
  - He attended high school and senior secondary college in district C.
  - On [date] when a close family member was returning home from work they were attacked and beaten by a mob of Hindus who left them injured on the street. They were taken to hospital for several days before they died. The applicant could not open a file against the attackers due to his financial inability to pay bribes to police.
  - After the death of this close family member the family was targeted by fanatical Hindus who belonged to Political Group. His siblings suffered at the hands of their Hindu relatives and two family members were "kicked out" of their home by their Hindu relative.
  - On a number of occasions the applicant was attacked by fanatical Hindus. On [date] he was returning from a local shop and was attacked by a fanatical

group of Hindu men in Town A. He was beaten by them and warned that if he was found they would kill him.

- After the incident he was seriously shocked and planned to leave India. He did a number of jobs in the hospitality industry and received poor treatment from some employers due to his religion. He obtained a job with a company that is owned by an Australian company and believes if he returns to India he will be persecuted for reasons of his religion.

#### **24. Information given to the Tribunal by the applicant**

##### *Application for Review*

25. Following the primary decision to refuse the protection visa an application for review was lodged on [date].

##### *Evidence at Hearing*

26. The applicant appeared at a hearing before the Tribunal on [date] to give evidence and present arguments.
27. At hearing the applicant submitted copies of a number of press reports regarding the treatment of Muslims in India and I have read and considered that material.
28. After I gave a general introduction explaining the purpose and conduct of the hearing I asked the applicant a series of questions about his personal background and claims. I emphasised that as I was taking a fresh look at the application he should give me a detailed and accurate account of those matters.
29. The applicant gave evidence that he was born and grew up in Town A in the District C of India and he is in his twenties. A close family member was beaten and died of the injuries and his family continue live together in Town A. He explained that after he left India he arranged for members of his family to stay overnight at a holy place in Town A for their own protection. The family has an apartment in Town A and they stay in that apartment during the day but return to the holy place in the evenings.
30. The applicant attended Religious School until the late 1990s and then he started senior college studies but had to abandon his studies when his close family member died.
31. He gave evidence that in [month, year] his close family member had been returning from work when they were attacked by a mob of Hindus and were seriously injured in that attack. Some Muslim neighbours of the applicant came to tell his family that their close family member had been attacked and had been taken to hospital. The applicant went to the hospital and then to the police station and told police about the attack. He was told to return the next morning and file an application. When he returned the next day he filed a written complaint with police. After some investigation the police told him that it appeared that his close family member had been injured in a mob attack, that there was no evidence as to the identity of the attackers and in these circumstances they could not take the complaint any further. The applicant stated that the police did not appear to be concerned about his close family member's situation and he believed that if his close family member had been a Hindu or if

the applicant had been able to pay a large bribe they might have taken further and more vigorous steps to arrest and charge the perpetrators.

32. After the attack his close family member was in a government hospital for several days. He believed the treatment he received in hospital was very poor and his close family member died in hospital.
33. After the death of his close family member he could not afford to continue with his tertiary education and decided to get a full-time job in the hospitality industry. He had a series of jobs and he told me about significant harassment and discrimination he experienced in those jobs due to his religion. Later he found a job and he worked there for a few years. The owner was foreign and many of the workers were Christians and he did not suffer any harassment or poor treatment during that time.
34. Later he decided to apply for a year of apprenticeship in hospitality industry in Town D and he financed this apprenticeship by working part time somewhere else. He was doing very well in the apprenticeship until he was harassed during his prayers in the change room one morning before work. He became involved in a fight and was dismissed from the apprenticeship training for the reason of "lack of discipline".
35. On [date] his family had bought him some sweets for his birthday and he was walking home when he was approached by a group of Hindu men who had taunted him in the past because he was a Muslim. They from time to time thrown objects at him some things and shouted insults at him from a terrace in his local area. On this occasion they stopped him as he was walking home and beat him and threw him on the ground. He suffered some injury from the attack.
36. He went to the police station and made a written complaint which set out the details of the attack including the date of the attack as [date]. When the police officer took his written complaint and entered it in the police records he wrote it down a different year and it was put aside as an older case with little priority. The applicant believed that the misstating of the date was deliberate because he was a Muslim and also because he had not paid them a large bribe.
37. The men who had attacked him did not live in his area but visited the area during each day. The police went to the area where he had been attacked and looked for the men however stated that they could not find them. After a few weeks he returned to the police station and the police officers told him that they could not find the perpetrators. He felt that they did not take effective steps to investigate and relegated the case to a low priority.
38. The applicant told me that he felt that some family members had been mistreated by their Hindu partners they had married. Two family members were cruelly treated and abandoned by their Hindu relative. They now lived with his family in Town A. One other sibling is married to a Hindu and is not happy.
39. After the attack in [month, year] the applicant continued to suffer harassment from the group of people who had taunted him and attacked him. He would find dead animals on his doorstep and suffered similar harassment on a regular basis.
40. In [month, year] the applicant saw an advertisement for jobs with a company as [occupations]. He thought this would be a good opportunity to obtain work and live outside

India and to also to improve his financial situation. He was sent by the company to obtain a County X visa so that he could work [type of work] When he attended for an interview the first question he was asked was whether he was a Muslim He was subsequently refused a visa on the basis that he did not have enough work experience however he believes he was refused due to his religion. He pointed out that he had many years experience in the hospitality industry.

41. The company asked him to apply for a job [type of work in] Australia and he received a visa for Australia. He worked hard but found that he was working too many hours a day for a small amount of money. A close family member became ill and he wanted to make sure that they could get reasonable medical treatment in India.
42. [On arrival in Australia he decided to] apply for a protection visa. He did not have much money and lived on the streets for 2 days and then stayed at a backpacker's hostel until he was able to apply for a work visa He asked around and found out the name of a migration advisor who helped him complete and lodge his application.
43. I put it to the applicant that the latest International Religious Freedom Report 2007 noted that there was a large population of Muslims in India and that they enjoyed freedom of religion. I put it to him that there were a number of institutions in India which operated to investigate and protect the rights of minorities such as, the National Human Rights Commission and the National Commission for Minorities. He stated that there were a number of problems with these bodies. Firstly they asked for evidence of harassment and discrimination and often took a long time to investigate complaints. Secondly these bodies employed a large number of civil servants who are often allied to political groups or other like the BJP. If he complained to these bodies he feared that his complaints could be leaked to those people who had caused him harm and he feared they might harm his mother or sister. As his family members were vulnerable at the moment he was very concerned for their safety.
44. I put it to him that if he did not wish to return to his home in Town A because he feared further harm at the hands of his attackers there were many other states and cities which had large Muslim communities. He stated that each state had a small percentage Muslim population and that there were problems with religion discrimination and harassment throughout India. He also stated that it was not always easy to move to other communities as there were differences in languages and problems in other areas.
45. He stated that the police discriminated against Muslims and would often arrests Muslims on the slightest suspicion. Muslims were taken into police custody and interrogated for no justifiable reason. He had heard of Muslims being interrogated for crimes which they did not commit and forced under torture to confess to those crimes.
46. With respect to the report of the International Religious Freedom Report he stated that the government states that they provide freedom of religion, tolerance and protection of minorities but they do not take any action to ensure that people enjoy those freedoms. Most Hindus want to be associated with political parties and the BJP and often these parties promote religious hatred. For example, Bal Thackeray's son was taken into custody for a short time and the local community rioted, smashed shops and caused a large amount of violence even though he was released soon after his arrest. These groups try to promote violence between Muslims and Hindus.

47. As an example of the tension he experienced in his home town, he stated that Muslims could not celebrate their festivals openly and could not walk to each other's homes on festival days for fear of attack. When attending the mosque for prayers a number of worshippers would have to stand on duty outside to make sure that they were not attacked during prayers.
48. He fears returning to India because of his specific fear of the group of men who assaulted him and also because of the general discrimination and harassment faced by Muslims in his own area of State 01 and in India generally.
49. He claimed that his family had suffered brutal abuses. A close family member had been killed by a mob of Hindus and other members of the family had suffered at the hands of Hindu relatives. He wanted to give his family a peaceful life so that they would not continue to suffer as they had in the past.

### *Independent Information*

#### Background

50. The latest US Department of State report on human rights in India, released in March 2008, states that:

The law provides for secular government and the protection of religious freedom, and the central government generally respected these provisions in practice; however, occasionally the government did not act effectively to counter societal attacks against religious minorities and attempts by state and local governments to limit religious freedom. This failure resulted in part from legal constraints inherent in the country's federal structure and in part from shortcomings in the law enforcement and judicial systems. There is no state religion, although the fact that the majority of citizens are Hindus adversely affected on occasion the religious freedom of others. Some Hindu hardliners interpreted ineffective investigation and prosecution of their attacks on religious minorities as evidence that they could commit such violence with impunity.

(US Department of State 2008, *Country Reports on Human Rights Practices for 2007 – India*, March, Section 2. c).

51. The judicial system is regarded as independent and impartial however is subject to delays and lack of resources. Trials are conducted in public (except for matters concerning national security) and sentences are announced publicly. Defendants have the right to choose counsel and there are effective channels of appeal and the state provides free legal assistance to the indigent. Defendants have access to government held evidence in most civil and criminal cases except for cases involving national security. Witness protection is available to witnesses. (USSD 2008)
52. There are a number of institutions which have been established for the purpose of investigating human rights abuses including the National Human Rights Commission and Human Rights Commissions set up in the majority of states. The National Human Rights Commission website notes that State Human Rights Commissions exist in: Andhra Pradesh, Assam, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal, Chhattisgarh, Karnataka and Gujarat.

53. In a Human Rights Watch (HRW) letter to the European Union dated 8 November 2004, with regard to monitoring mechanisms, HRW identified the NHRC as having emerged as one of the best such institutions and as a powerful means of protecting human rights.

“However its capacity is limited because it is only allowed funding through government and is severely short-staffed. In addition, the Commission is not allowed to investigate abuses committed by the armed forces.”

54. The United States International Religious Freedom Report 2007 reported:

“The Ministry for Minority Affairs, the National Human Rights Commission (NHRC) and the National Commission for Minorities (NCM) are governmental bodies created to investigate allegations of discrimination and make recommendations for redress to the relevant local or national government authorities. Although NHRC recommendations do not have the force of law, central and local authorities generally follow them. The NCM and NHRC intervened in several high profile cases, including the 2002 anti-Muslim violence in Gujarat and other instances of communal tension, the enactment of anti-conversion legislation in several states, and incidents of harassment and violence against minorities.”

### Freedom of Religion

55. The USIRF 2007 Report noted:

“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.

...Large Muslim populations are found in the states of Uttar Pradesh, Bihar, Maharashtra, West Bengal, Andhra Pradesh, Karnataka, and Kerala, and Muslims are the majority in Jammu and Kashmir.

...There were instances of societal discrimination and violence based in whole or in part on religion. Many such incidents were linked to politics, conversion, retaliation and/or revenge. Economic competition between different religious communities also played an important role in such conflicts. According to the Ministry of Home Affairs' 2006 Annual Report, there were 698 instances of communal violence or violence along religious lines in which 133 persons were killed and 2,170 injured.

...There are different personal status laws for the various religious communities, and the legal system accommodates religion-specific laws in matters of marriage, divorce, adoption, and inheritance. The Government grants a significant amount of autonomy to personal status law boards in crafting these laws. There is a Hindu law, a Christian law, a Parsi law, and a Muslim law - all legally recognized and judicially enforceable. None of these are exempt from national and state level legislative powers and social reform obligations as laid down in the Constitution.

56. A 1997 report of the Special Rapporteur states that “Muslims constitute India’s largest minority as well as the second largest Muslim community in the world after Indonesia, and before that of Pakistan. The report noted that the Indian authorities do not restrict the religious activities of Muslims, who have freedom of religious practice and freedom to organise their services according to their codes, religious teachings and customs. Muslims in India have their own educational establishments, including the madrasa religious schools responsible for disseminating the teachings of Islam. Muslims possess a large number of

places of worship as well as the Waqf Board, which is responsible for the management of property belonging to religious communities and charitable institutions (United Nations Economic and Social Council, Commission on Human Rights, Report of the Special Rapporteur on Religious Intolerance, E/CN.4/1997/91/Add.1 14 February 1997)

57. The Annual Report of The United States Commission on International Religious Freedom, May 2007, noted that despite India's democracy and tradition of secular governance religious minorities have been the victims of communal violence. In the late 1990's there was an increase in violence against religious minorities which coincided with the rise in the profile of the pro Hindu groups which encouraged a Hindu nationalist agenda and which were not actively suppressed by the previous BJP led national government. The report noted

“[that] the current Congress-led government continued its efforts to redress a number of aspects of the Hindu nationalist agenda of the previous [BJP] government. . . [and] has also continued to act decisively to prevent communal violence in situations where it has erupted in the past. (p243)”

58. The USIFR 2007 noted that

“Efforts at ecumenical understanding brought religious leaders together to defuse religious tensions. Prominent secularists of all religions make public efforts to show respect for other religion groups by celebrating their holidays and attending social events such as weddings. Muslim groups protested against the mistreatment of Christians by Hindu extremists. Christian clergy and spokespersons for Christian organizations issued public statements condemning anti-Muslim violence in places such as Gujarat.”

59. The current ruling UPA Government continued in its efforts to improve religious tolerance and build communal harmony. The National Human Rights Commission and the National Commission for Minorities continued to promote freedom of religion and focused on human rights problems in their annual reports, encouraging judicial resolution where possible. (USIRF 2007 Report)

60. The USIRF 2007 Report noted that during the previous reporting period:

“..the UPA introduced legislation to give New Delhi the power to intervene in states in which the Government refuses to take strong measures to end communal outbreaks. The UPA also acted to increase the powers of the human rights commission to investigate abuse cases. After its introduction in Parliament, the legislation was moved to a standing committee, where it remained throughout the reporting period

#### Police Corruption

61. As noted by the Immigration and Refugee Board (IRB) of Canada on 14 December 2005, various sources consulted such as media articles; non-governmental organization publications and academic literature describe widespread, growing, all-pervasive and endemic corruption. It noted that corruption is commonplace and routinely tolerated. (IND100769.EX Incidence of corruption in the police service, judiciary, civil service, immigration authorities; government response to corruption in these areas (January 2003 - 2005))
62. Recent press reports that some sections of the Maharashtra police are involved in extortion practices and in other instances are incompetent.(Janwalker, M. 2008, 'HC hauls up

“insensitive” Thane police’, *DNA*, 19 March ; ‘Maharashtra to probe “encounter fame” cop for graft’ 2008, *Thainidian News*, 10 April)

## Maharashtra

63. Maharashtra is an important financial centre in India and has been the target of terrorist related attacks in recent years. The large Muslim community is viewed with some suspicion by police and the Hindu community and some members have faced harassment and discrimination. The Muslim community alleges that young Muslim males have been subject to intimidation and torture to extract confessions to terrorist linked activities. Local politicians and members of the pro Hindu groups such as Shiv Sena continue to use divisive tactics to maintain their power base. (‘India risk: Security risk’ 2008, *Economist Intelligence Unit*, 3 April; Rajput, R. 2008, ‘SIMI arrests: Maharashtra connection’, *NDTV*, 1 April; ‘Anger at minorities commission hearing’ 2007, *The Hindu*, 6 September; ‘India Muslim body criticizes “unsubstantiated” police statements on terror’ 2008, *BBC Monitoring South Asia*, source: The Asian Age website, 9 March; ‘And the loser is... Mumbai’ 2004, *Times of India*, 11 November: A. ‘Has Shiv Sena a future?’ 2003, *Frontline*, 1 March, ‘Anger at minorities commission hearing’ 2007, *The Hindu*, 6 September).
64. In February 2008 Khwaja Hasan Gafoor became the first Muslim police commissioner of Mumbai since the 1960s. A March 2008 article includes an interview with the new police chief regarding the “growing threat of terrorism in Mumbai” in which he emphasises that terrorists come from all communities and not just the Muslim community. He also discusses improving the police force in Mumbai. (‘Mumbai gets new top cops’ 2008, *The Times of India*, 1 March)
65. A [month, year] article reports that a large police presence was deployed near Town C to ensure security as Hindus and Muslims celebrated respective festivals at the same time. According to this information, the events passed peacefully [newspaper details and article information quoted].
66. On the 12 January 2008, the All India Muslim Majlis-e Mushawarat (AIMMM) central council included the following in its resolutions:

MMM notes with satisfaction that the Maharashtra state government has decided to establish a cabinet portfolio for Muslim welfare in the state government. This is in the framework of implementing Sachar Committee recommendations in the state. The MMM also welcomes Chief Minister Vilasrao Deshmukh’s announcement that the state government would also consider if Muslims could be given reservation in housing societies and residential premises built by the state housing corporation, that the state government would consider to provide jobs to Muslims. (‘Resolutions of Markazi Majlis, 12 Jan. 2008’ 2008, All India Muslim Majlis-e-Mushawarat website, 12 January)

## FINDINGS AND REASONS

67. The applicant claims to fear persecution for reasons of his religion. He claims that he is a Muslim and that he has suffered discrimination and harassment from members of the majority Hindu community. A close family member was beaten and died as a result of an attack by a Hindu mob and the applicant was attacked by a group of Hindu men and sustained some minor injuries during that attack. The applicant decided to leave India to escape further harassment and discrimination and joined a company [nature of work described]

68. I accept that the applicant is a citizen of India.
69. I accept that the applicant is a Muslim, that he is in his twenties and that his family are living in Town A in India.
70. I accept that the applicant has suffered insults and harassment by some members of the Hindu community during his childhood and adulthood and that he has been hurt and oppressed by insults and threats made against him. He described taunts and insults made by others during his working life and the difficulties he has had because of his religion.
71. I accept that the applicant's close family member died as a result of a mob attack and that it appeared from the applicant's evidence that the predominantly Hindu mob was motivated by hostility to Muslims. The applicant claimed and I accept that the police did not take vigorous steps to identify the perpetrators because they expected to receive a bribe from members of the applicant's family. I do not accept that their failure to investigate arose because the applicant or his close family member were Muslims.
72. I accept that the applicant had to leave college before completion of his course after his close family member's death. He held a series of jobs in the hospitality industry and I accept that he encountered hostility and insults due to his religion. He stated that he often got into fights, however, he never instigated the fights but was often hurt or insulted by prejudiced comments made by others in his workplace.
73. I accept the applicant's evidence that he was attacked and injured by a group of young Hindu men on [date]. I accept that this group of young men had previously targeted the applicant because he was a young Muslim male and that they had thrown objects at him and made insulting comments to him before the attack. They did not live in his area but often spent time in the area. After the attack the applicant immediately complained to police about their conduct however he claimed and I accept that the police did not take effective steps to protect him from further harm or to investigate the attack on him. He claimed that the failure to properly investigate was partly motivated because of his religion and partly because he was unable to provide them with a bribe. He stated and I accept that the police falsified the date that he claimed that the incident took place so that his complaint would receive a low priority for further action.
74. I have considered whether the failure to investigate in both incidents may have been due to corruption, incompetence or may have been motivated by religious intolerance as claimed by the applicant. If I accepted that the failure to investigate and pursue the matter was due to religious intolerance then I must also consider whether the failure was part of a systematic and discriminatory practice by state authorities.
75. In determining whether the failure to investigate was indicative of systematic conduct motivated by religious intolerance by police I have considered the country information on the current situation in State 01 and in India generally. I have also considered the information on police corruption. I find that the police have a poor reputation in State 01 and are affected by a culture of bribery and corruption. The information suggests that the national and state authorities do not condone corruption in government or the police force but their actions in preventing such corruption have not been highly effective. However the evidence does not suggest that police corruption or their attitude to bribes is motivated by discrimination against Muslims. It suggests that corruption is fairly pervasive affecting all members of the general public particularly those without the resources to provide money for bribes.

76. As I put to the applicant at hearing there are a number of institutions which receive and investigate complaints of human rights abuses particularly in relation to minorities. The country information indicates that the National Human Rights Commission and state commission are accessible to members of the public and those bodies investigate complaints made against police. The applicant claimed that he was concerned that if he complained to one of the commissions there might be a leak from that body which could jeopardise the interests of his remaining family members in India. I consider that this is speculation on his part I accept that he is apprehensive about taking further action in relation to those incidents in which he felt he did not receive an adequate response, however, the information indicates that there are complaint mechanisms which may have been effective in assisting him in obtaining adequate protection.
77. With respect to police protection of the Muslim community in State 01, I accept that there have been instances in the past where police have not provided adequate protection to Muslim communities during particular incidents of communal violence such as the [description and timing of a particular incident] However the information also indicates that the ruling UPA national government has taken steps to ensure that police protection of minorities is effective and that state governments are held to account if they do not ensure that non discriminatory police protection is available to all members of the Indian population. A recent example of police action taken to suppress violence against minorities in State 01 is set out in paragraph 65 of this decision
78. India is a longstanding democracy with a secular constitution. The judiciary is independent and citizens have significant rights to fair and impartial treatment before the courts. The police are affected by problems relating to corruption however this is problem which arises from accountability and systemic failures and I am satisfied that the national government is taking steps to improve accountability. There are many organisations which have been established to investigate and remedy complaints regarding the human rights of minorities, there are non government organisations which operate freely and advocate for the rights of minorities.
79. The applicant claims that if he returns he will face serious discrimination because he is a Muslim and I accept that he has suffered incidents of social discrimination. There are reports of incidents of discrimination and violence against members of the Muslim minority from time to time however I do not accept that the state authorities engage in discriminatory conduct nor do they condone violence and discrimination. Further I consider that the applicant is able to access a reasonable level of effective and non discriminatory state protection according to international standards as set out in the independent information set out in this decision.
80. In these circumstances I am not satisfied that the applicant faces a real chance of persecution should he return to India now or in the foreseeable future. Accordingly I am not satisfied that the applicant has a well founded fear of persecution for reasons of his religion or for any other Convention related reasons.

#### *Humanitarian Consideration*

81. The applicant is in his twenties whose life has been badly affected by the sudden and violent death of a close family member during an incident of sectarian violence in State 01. As he told me at hearing, his close family member ensured that he and his siblings had a good school education and had intended that they would each be able to attend tertiary courses to

ensure their advancement in life. This was not possible due to a lack of financial resources after the death of the close family member.

82. The applicant spoke articulate, clear English and was able to express his evidence in a rational and intelligent manner He told me that he would love to train as [occupation] in Australia and believes that he has the capacity, drive and intelligence to follow such a path.
83. He gave evidence that he was not able to complete his studies due to his close family member's death and had to take on the role of the family breadwinner and head of the family at a very young age. He has worked hard in difficult jobs to maintain his family's security. He is responsible for the safety and financial well-being of one family member, who is in poor health as well as for one sibling and their child. He claims that his family have vulnerabilities without him there to support and protect them.
84. I found that the applicant did not attempt to exaggerate or embellish his evidence and I consider that he gave an entirely truthful account of his circumstances. I accept that he suffered taunts, insults and injustices in his life as a result of his Muslim religion; however I have not accepted that he has a well founded fear within the Convention definition for the reasons set out earlier in this decision.
85. I do not have the power to take into account humanitarian considerations in determining whether the applicant falls within the definition of refugee My role is limited to determining whether the applicant satisfies the criteria for the grant of a protection visa and I must consider that application in accordance with principle and the rule of law. Even though I have considerable sympathy with the applicant's situation a consideration of his circumstances on other grounds is a matter solely within the Minister's discretion.

## **CONCLUSIONS**

86. Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

## **DECISION**

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

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

Sealing Officers ID: PRRTIR