

**1114138 [2012] RRTA 404 (5 June 2012)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1114138
<b>DIAC REFERENCE(S):</b>	CLF2011/153162
<b>COUNTRY OF REFERENCE:</b>	India
<b>TRIBUNAL MEMBER:</b>	Margret Holmes
<b>DATE:</b>	5 June 2012
<b>PLACE OF DECISION:</b>	Melbourne
<b>DECISION:</b>	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 is a citizen of India, applied to the Department of Immigration and Citizenship for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] September 2011.
3. The delegate refused to grant the visa [in] November 2011, and the applicant applied to the Tribunal for review of that decision.

### RELEVANT LAW

4. 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 s36(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

5. 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.
6. 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.
7. 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 *SZF DV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition.
10. First, an applicant must be outside his or her country.
11. 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 although 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.
12. 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.
13. 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 but 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.
14. 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.
15. 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.
16. 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**

17. 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').
18. '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.
19. 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**

20. The Tribunal has before it the Department's file relating to the applicant's protection visa application. 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 applicant appeared before the Tribunal [in] April 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Telugu and English languages.
22. The applicant is a [age deleted: s.431(2)] man from Hyderabad where he completed his schooling in 2005. He later studied multimedia at a college. His mother and older [sibling] remain in India (his father has died, the applicant said at the Tribunal hearing that this was long ago and because of a health issue). He states in his protection visa application that he speaks and reads and writes [a number of languages]. He gives his religion as Hindu and his ethnicity as Telegu. The applicant arrived in Australia [in] July 2008 with a passport issued in Hyderabad [in] January 2006 and a student visa to study in Australia. A further student visa was issued [in] October 2010 valid until December 2011.
23. Movement records show that the applicant was outside Australia from [May] to [July] 2011.
24. A statement accompanied the application:
  1. Telanga is one of 23 districts in Andhra Pradesh. Earlier this was part of the Nizams region. India after achieving its independence in 1947 put an end to Nizams rule. Previously, Andhra Pradesh and Madras were together, but Andhra Pradesh was separated from Madras as a result of the agitation from Potti Sri

Ramulu in 1956. The Telangana people feared the Andhraites, as they were more educated than the Telangana people.

2. I was born in Andhra Pradesh and came to Hyderabad when I was [age] years old. My family settled in Hyderabad which is now a part of Telangana. My parents are from Andhra who settled in Hyderabad for business purposes. Our state has different political parties such as Congress, TDP and other small parties.
3. In 1969, the Telangana movement was elevated under the leadership of Marrichenna Reddy and by Telangana Praja Samith which led to the death of many protesters, as a result of massive violence and shooting of protesters.
4. After that time the movement lost its importance, as Marri Chenna Reddy went on and merged the party with the Congress party. And he was made Chief Minister by Indira Gandhi. However, it was Mr. Kalvakuntala Chandra Sekhar who initiated this movement, who eventually quit from the Telugu Desam party and formed the Telangana Rashtra Samithi in 2001.
5. In 2004, the All India National Congress Party promised Mr. K.G. Rao a separate Telangana party, but later changed its mind.
6. Late in 2007 KCR criticised the then CM Mr. Konizeti Rosaiah and demanding a separate Telangana state, despite the ill health of the President of the Congress Party, Sonia Gandhi. He addressed the Telangana people stating that they could not stop the Telangana agitation for any reason despite the deaths of thousands of Telangana youth.
7. A famous protégé, Mr. Jayasankar led the Telangana movement stating that Telangana must be achieved under any circumstances. However, the sudden death of Mr. Jayashankar touched the hearts of many Telangana people, but the desperate attempts by many Andhra Pradesh people to stop this movement as they feared that jobs and investment would be ruined, after the Telangana leaders stood by their oath to bring a separate Telangana state.
8. It was Mr. Chandrasekhar who put the pressure on the movement after the Union Home Minister Mr. P. Chidambaram announced a separate Telangana state in the parliament, but later withdrawing his statement despite the pressure from his fellow ministers and the supreme commander Mrs Sonia Gandhi who worked against the movement because of the investments from Andhra Pradesh leaders on Hyderabad, the capital of Andhra Pradesh which was in the Telangana region. Later on many situations arose in Telangana for a separate state.
9. Even they created awareness among the people by doing some films that favoured Telangana. Many people started protesting for a separate Telangana. This gave a chance to the leaders of Andhra Pradesh to create some problems so as to protect their investments in Hyderabad. Those leaders started rioting and creating violence by inspiring the common people to stick together and that was the best way to save their money.
10. Many Telangana people died because of the greediness of the Andhra Pradesh leaders who created violence, despite what the people wanted. The majority of the leaders were in favour of a separate Telangana, but the Andhra Pradesh leaders opposed the movement.

11. Even the Government which was the Congress party put a committee called Sri Krishna committee which constitutes eminent Supreme Court judges, but even they could not come up with an answer.
12. I joined as a [senior youth officer] with the Congress Party when I was [age deleted: s.431(2)] years old and continued with the party until 2008 (from 2000 - 2008). I participated in several activities as the [senior youth officer]. Now, the ruling party Congress is against Telangana. As the Telangana agitation reaches its peak, the Telangana leaders and supporters forced me to leave my home, as I was from the Andhra region. I worked with the Congress party which was opposed to the Telangana agitation. There is no chance of living in the Andhra region as there is left over there. The chances of living in Hyderabad (Telangana) became worse because of this Telangana agitation. Also working with the Congress party as a [senior youth officer] worsened my condition to lead a stable and peaceful life which I never expected in my life.
13. I am in fear of those Telangana members and supporters who threatened me and my family. I was threatened that I should leave my house, leave my job and leave the area. I supported the Congress & Andhra party and the Telangana party or Telangana Rashtra Samiti (TRS), who want a separate state were violently opposed to my party. The Congress party was the party in power of our state.
14. My mother was the owner of a [contracting business] and I was employed in that family business. Our business was constantly attacked by these Telangana supporters who damaged the factory by breaking windows and burning vehicles.
15. The Andhra party was led by Chandra Babu Naidu and we supported the party because we are Andhra people who came to the Telangana district. However, when living in my homeland, we were harassed and threatened by Telangana supporters who wanted me to fly a Telangana flag on my car and if I did not do it, my car would be damaged and I would be beaten up. I refused to follow their threats and as a result my car was damaged and I was assaulted. My mother was also threatened, harassed and assaulted and our factory was damaged as was the machinery in the factory.
16. We made numerous complaints to the police, but they took no action, as they said we cannot identify the people who assaulted us. These problems continued and after suffering persistent problems with these Telangana supporters, I came to Australia in July 2008.
17. The violence is still going on today and I was given a shock when I returned to India in May 2011 for my vacation. Because of these issues, I was stabbed by some of the Telangana supporters where the violence is continuing and I was severely injured during my visit to my hometown to see my family. It was there where I was seriously injured and my vehicle was completely damaged.
18. The recent stabbings and life threatening situation when I went back to my place three months ago made me feel much more about my safety concerns. My mother was in shock after seeing the above mentioned incidents and she was hospitalised for depression. But all her efforts for my better future went in vain after these incidents. Even if I go back to my country I won't be able to save my life as things will get worse. This was proved during my last visit to my country. I don't even have faith with my party members, as they even did not try and save me from the situation which happened earlier. I even lost faith with the authorities as they are not interested in protecting people because of the influence and pressure of the

political leaders, who want to save their own political leadership. Hence I request the Australian authorities to save me and my life because of the conditions which prevail in my country.

19. After recovering from my injury, I returned to Australia, but I have still not recovered from the incident. My mother spent several lakhs of rupees for my treatment and she was worried about my future prospects.
20. I say that I am in fear of persecution if I am forced to return to my hometown and the government cannot guarantee my safety. There have been outbreaks of communal violence in Hyderabad in the past. There were riots in Hyderabad in March 2010 and the US State Department has reported that the riots in March 2010 were the worst communal violence in Hyderabad in two decades (US State Department, International Religious Freedom Report 2010 in relation to India, Section III. Status of Societal Respect for Religious Freedom).
21. The most recent US State Department, in its most recent report on India's human rights practices, draws attention to widespread problems within the country's police forces, including illegal conduct. Corruption in the police force was pervasive, which several government officials acknowledged, according to a May 4 HRW report on police abuse. Officers at all levels acted with impunity, and officials rarely held them accountable for illegal actions. When a court found an officer guilty of a crime, the punishment often was a transfer. Human rights activists and NGOs reported that citizens often had to pay bribes to receive police services.
25. The applicant states in his protection visa application that he will provide later a 'political party letter'; other supporting information described as Internet articles and photos; and a medical report.
26. Copies of eight photographs were provided by the applicant in support of the application: seven are described as 'photographs of the political situation' in his state (ff 40 – 46 of the Department's file). These show rioting. One photograph is of a vehicle, the applicant claims it was his, being attacked (f 47 of the Department's file).
27. [In] March 2012 the Tribunal received a five page statement:
  1. It is stated by the delegate that the fact my mother has not moved away from Hyderabad and the fact that I returned to India in May 2011 and stayed for 2 months is inconsistent with a fear of persecution and undermines my credibility.
  2. In response, I say that my mother was the owner of a [contracting business], a business which she had been involved in for a number of years and was the family's primary source of income and I was employed in that family business. It is rather simplistic to make a conclusion that the family after spending the majority of its life in that area, should just pack up and leave and then make a new start in life. Given the political problems in the area, it has just become a part of life and you live in hope that the problems will resolve and the government and its agencies such as the police will take action against these people.

I returned to India in May 2011 in belief that Telangana agitation has come to safer zone for Andhraites so I booked one way ticket to completely get back to my hometown I enclosed my proof ticket. I kept a very low profile, news still got out that I was in the area. The fact that I was able to maintain a low profile till [May]. [In] May] afternoon the activists attacked me and my mother whilst returning back to my

residence. Then in fear of prosecution I fled to a local lodge and stayed in the lodge for 24 days, [in] June at around 9pm two activists attacked me in the lodge and started abusing me and attacked me with all possible movable things. I luckily escaped this attack with small bruises and injuries. This life threatening situation made up my mind to leave the country as soon as possible and the following mid night [in] June at around 1 am I reached my house to collect my passport and my luggage. At around 5am in the morning the seven drunken anti activists entered my house and attacked with bottles and weapons till I felt unconscious which needed urgent attention, that early hours I was admitted in to a local hospital where I was treated for my [cuts].

3. I am happy to provide the delegate with further information and documentation that I was a member of the Congress party, the [senior youth officer] and the fact I was actively involved in politics. I am also happy to provide the delegate with all information about my duties and responsibilities as [senior youth officer]. Unfortunately, I never ever received such a letter from the delegate requesting I present myself for an interview. If I had received such a letter wanting more information about the above topics, I would have been more than happy to provide the required answers. That as to not providing specific dates, details of the various threats or attacks and support documentation from doctors and the police, I am not a migration expert, this is the first time that I have made an application for a protection visa and I have no knowledge of what to include and what not to include. The delegate concludes that there are a number of issues upon which it requires a good deal more detailed evidence and I am now happy to provide such information.

4. The delegate concludes that I was invited to contact the department to further discuss my claims and I did not do so and that I have been given ample opportunity to respond to the department and present my arguments and evidence. That in response I say that I never ever received such a letter, requesting that I attend for an interview. I have stayed at the same address for the last two years and I received the final decision of the delegate at this address.

5. The delegate also concludes that my fear cannot be well founded in that I was prepared to risk returning to which I claimed to fear for serious harm. In response, I say that it was not the country that I feared returning to, but the Telangana members and supporters who lived in the Hyderabad area. Likewise, earlier on in her reasons the delegate states that I was able to obtain an Indian passport in my correct name and I was permitted to leave India lawfully. The Indian authorities were not persecuting me and were not after me for any reason whatsoever, therefore I could enter and depart the country without any problems from the authorities. I was well aware of the previous problems that I had encountered with Telangana members/supporters in the past and I refer to and repeat the answer in paragraph 2.

6. The Delegate concludes that I arrived in Australia in July 2008 and lodged my application for a protection visa in September 2011. Therefore the fact I delayed my application for so long indicates serious concerns about the gravity and credibility of my claims.

7. In response I say that when I came to Australia in July 2008, the sole reason that I came to Australia was to study and subsequently arrived in Australia on a student visa. I had no knowledge about protection visas and how and when you could apply for one. Unfortunately, my study was affected by a number of factors and I was unable to complete my studies. It was only after my student visa was cancelled, that it was drawn to my attention that I could apply for a protection visa.



8. I say that the delegate is wrong when she concludes that I have not been threatened or attacked by Telangana members of supporters because I am a member of the Congress party or that I am at risk in the future of being persecuted.

9. That in response to the delegate's conclusion about state protection, the delegate again states that given I did not contact the department for an interview, she was unable to investigate further reasons why I had such a belief. I have already stated my reasons in previous paragraphs, but I now state that Indian authorities, such as the police are very reluctant to take action in areas where they are vulnerable to attacks by strong political forces. The police presence is lacking in certain areas and many of these police stations are undermanned. The police are open to corruption and this is well documented in various reports.

10. I also refer you to the Migration Amendment (Complementary Protection Act 2011) (the CP Act). The act is amended by the CP Act to:

a. Introduce complementary protection arrangements to allow all claims by visa applicants that may engage Australia's non refoulement obligations under the relevant human rights instruments.

b. Provide relevant tests and definitions for identifying whether a non citizen is eligible for a protection visa on the basis that there are substantial grounds for believing that as a necessary and foreseeable consequence of the non citizen being removed from Australia to a receiving country there is a real risk that the non citizen will suffer significant harm.

c. Provide for a criterion for the grant of a protection visa in circumstances where a non citizen has been found not to be owed protection obligations under the refugees convention, but the Minister has substantial grounds for believing that as a necessary and foreseeable consequence of the non citizen being removed from Australia to a receiving country, there is a real risk that the non citizen will suffer significant harm.

d. Ensure that only non citizens who engage Australia's non refoulement obligations will be eligible for a protection visa on complementary protection grounds, by specifying certain circumstances in which a non citizen will be taken not to face a real risk of suffering significant harm. These circumstances include where the Minister is satisfied that: it would be reasonable for the non citizen to relocate to an area of the country of which they are a national or habitual resident where there would not be a real risk that the non citizen will suffer significant harm or where the non citizen could obtain from an authority of the country, protection such that there would not be a real risk that the non citizen will suffer significant harm or where the real risk is one that is faced only by the population of the country generally and is not faced by the non citizen personally.

28. The applicant submitted four documents at the time of the Tribunal hearing:

- a medical certificate dated [June] 2011 from [a Hospital] in Hyderabad in which [the doctor] certifies that the applicant was under his 'treatment and was advised to bed rest for 15 days';
- a letter from [Mr A], [a senior official] of NSUI ('National Student's Union of India') which is not dated and which states that the applicant and 'his family are strong

supporters of the Congress Party in [Village 1]. He was appointed as a youth coordinator in May of the year 2000 for NSUI since then he actively involved in political activities like “public campaigning” for the Congress Party in and around [Village 1] and he is well known in the district as a huge supporter. I am aware that he was attacked by political opponents in 2008 and the sustained severe injuries’;

- an airline ticket showing that the applicant was booked to fly from Melbourne to Hyderabad [in] May 2011 returning to Melbourne [in] July 2011; and
- an article from Wikipedia about Dr Jayaprakash Narayan which describes his involvement as a member of the Andhra Pradesh Legislative Assembly and which reports that on 17 February 2011 he was attacked at the Assembly premises by members of the Telangan Rashtra Samithi (TRS) (the applicant explained that he was submitting this document to show that the TRS can attack people).

29. At the Tribunal hearing, the applicant said that after his father's death his mother had taken over the business. It had been successful and employed about 60 people. The applicant said that he had finished school in 2005 and had started his studies towards a degree but after two years stopped that and went to work with his mother in the business doing driving an administrative work. He worked there for about two years before he came to Australia in July 2008. Here he studied English and a [Certificate] but had stopped studying for his Diploma, he said because he was depressed and could not concentrate because of what his mother was telling him about her troubles. He works in a [kitchen] here on a casual basis.
30. The applicant confirmed that he supported the Congress Party. He said he had joined in 2001 when he was [age deleted: s.431(2)] and still at school. I asked the applicant about joining as the [senior youth officer]. He said that his family had a name in the area and that his father had been involved with the Party; his father's name helped the applicant to become the [senior youth officer] when he joined. Responding to my questions about joining and being the [senior youth officer] straight away, the applicant then said he had first worked under the Secretary for a few days over a month or two before being made the [senior youth officer]. He said his mother gave money to the party for him to become the [senior youth officer]. I asked the applicant what he had done when he was working under the Secretary and he said his work had involved distributing money to others, gathering people together and meetings and organising rallies. He said that, on the basis of his father's name and his mother's money, he soon took on the role of [senior youth officer], displacing another person who had had the role for about two years (the applicant said that this person then joined the TRS). The applicant said that the leaders had decided that person was not doing enough and so replaced him with the applicant. I asked the applicant how many members were in his branch and he said there were 400 people in the Youth Wing in his area.
31. The applicant confirmed that he had held the position of [senior youth officer] from 2001 (he also said 2000) until 2008. I asked the applicant what the role involved and he spoke about canvassing during local government elections and he said that a secretary and a vice president were working [with] him and he allocated tasks to them such as arranging the facilities and refreshments for meetings which he said could be attended by 1500 to 2000 people. He said that he would arrange for state politicians, MLAs, to come to his area to do things such as open or dedicate a temple and talk to the crowds during elections. The applicant was aware that there are local, state and national levels of government in India. He said there was a state assembly election in 2004 or 2005, won by the Congress Party, and a national election in 2007. I informed the applicant that I understood that in 2004 the national and state elections

were held at the same time; the applicant said that he may have forgotten and he had a bad memory.

32. I asked the applicant if there had been any challenges to his role as [senior youth officer] in the some seven years he claims to have held that position, having regard to the displacement of the previous [senior youth officer] and to the applicant's evidence about the nature and extent of his activities while he held the position. He said there had been and explained that after about two years he asked his mother for the money to get people to come to meetings and she was reluctant to do so. An MLA also said he would not fund the applicant and there were arguments about giving the role to somebody else. The Vice President and Secretary did not agree that that should occur and so the applicant stayed until 2008.
33. In view of the letter from [Mr A] submitted at the hearing, which the applicant said he received after being notified that his protection visa application had been refused by the Department, which stated that the applicant had been appointed a youth coordinator in May 2000 for the NSUI, I asked the applicant about his involvement in that organisation. He said that a youth leader means being a student leader and explained that the NSUI belonged to the Congress Party. He explained that the youth wing of the Congress Party is comprised not only of students.
34. I asked the applicant about what it was about the Congress Party which he believed made it the right party to govern. He explained that the party helped farmers, many of whom had suffered when the TDP was in power. It was also a party good for business. The applicant explained that the main reason he supported the party was because of his father's involvement; while his father had no official role, he had been in contact with party people, gave donations; and was known as the Congress Party man. The applicant said that the Congress Party was now in power in Andhra Pradesh.
35. The applicant confirmed that it was people from the party Telangan Rashtra Samithi (TRS) who he feared would harm him. I asked the applicant whether the TRS had been in an alliance with the Congress Party and he said it had been but after a year or two they split over the issue of whether there should be a separate state for Telengana which the Congress Party failed to deliver. The applicant said that the TRS had been getting stronger.
36. I asked the applicant when his problems started and he said it was in 2007. He said before then there had been small issues when TRS youths had said things like you should leave here, sometimes involving being held by the collar and spoken to in a vulgar way. The applicant said while these things sometimes happened to other people, he was the main target because he was [a senior youth officer] of the Congress Party in his area.
37. I asked the applicant what he thought prompted the harassment to become more serious in 2007. He said that there were local elections then. The applicant described an incident which occurred in February or March 2007 when he and others canvassing door-to-door for the Congress Party came across TRS supporters canvassing for that party. They swore at the applicant and his associates and hit them and called them nasty names; the applicant was hit and [Mr B] a Congress Party member elected to the local government of the area, who was also present, took the applicant to report what had occurred to the police. Even though the applicant was able to tell the police who had hurt him, the police did not catch them, the applicant said because of bribery.

38. The applicant said that [Mr B] suggested that the applicant keep a low profile and the applicant did so for a while although he still went to work. One evening his mother asked to go to the shop and while doing so the applicant came across a group of TRS people who approached the applicant and hit him hurting his legs and loosening a tooth. After this he went to stay with an aunt in a different area of Hyderabad for a week. He said that his presence at his aunt's place was noticed and somebody told his mother that people were coming for him. The applicant therefore left and went to his grandparents' village where he stayed for a week before returning home to his mother's. The applicant said that he had not written about this before, that he did not have an interview with the Department, and that he did not have a lawyer but had been assisted by a friend.
39. The applicant said that nothing much else happened to him in 2007 because [Mr B] had gathered the two groups and it had been agreed there would be no more fighting. Things were quiet for a while. The applicant said he was continuously attacked during 2008 before coming to Australia in July. He said that [in] January 2008 people surrounded his car while he was in it and said there had been so many incidents but still the applicant had not resigned as [a senior youth officer] and that he had to leave the area or they would kill him. The applicant said that he told the people that he was born there too and they said they would not leave him alone and they hit him and stabbed him. His mother became afraid for the applicant's safety.
40. The applicant said that it was in March 2008 that TRS people came to his home to attack him; he said they broke flowerpots and tried to kick the applicant but missed and broke a window; and that they kicked the applicant. He said he went to hospital for a couple of days. He said that the people also told his mother that they were going to kill the applicant. He said that every day there were threats against him. I said to the applicant that I found it difficult to believe that threats were made every day. He said the TRS people wanted him to leave and they wanted their party to be stronger in the area. He said that the former [senior youth officer], displaced from office when the applicant took over in 2000 or 2001 when he was [age deleted: s.431(2)], was a TRS youth leader and wanted his party to be strong in the area.
41. The applicant said that TRS people came again to his house and once, while he was on the road, they took him to a barbershop and shaved his head. He said he was attacked on another occasion.
42. I asked the applicant if he had gone to the police about any of the incidents which occurred in 2007 and 2008. He said that his mother had complained to the police after he was stabbed and hospitalised, in January 2008. No police reports were lodged in respect of the later incidents which the applicant claims occurred at his home and I asked him why that was so. He said because they had already been to the police many times and that an inspector at the police station was a supporter of the TRS and related to its [senior youth officer]. The applicant provided no police reports in support of his protection claims.
43. I asked the applicant about his return to Hyderabad for some two months from mid-May 2011. He confirmed that the photograph of the people bashing a car was a photograph of his car. I asked the applicant if he had been afraid to return and he said he thought the fights would be over. I said to the applicant that it was hard to see that TRS people would still be interested in him after three years especially given that he was no longer [a senior youth officer] of the Congress Party in the area. He said that is what he had thought and that he had for 15 days stayed at home and kept a low profile. He went out [in] May 2011 with his mother and claims that he was attacked by a TRS leader and three associates. I asked the

applicant if he had come across these people by accident and he said they had information that he was in India. The applicant was pulled by his shirt collar, kicked and hit in the attack and he went to stay in a hotel where they again attacked him after 15 days, this time by hitting him with pipes. He went home that night but they came again, this time injuring his wrist.

44. The applicant said that he feared that he would be kidnapped killed and harassed if he were to return to India; that there was nowhere to which could relocate; that anything could happen to him; and that he would live be living in fear if he were to return. He said that his mother was successful and that his family had money and a good name and there was no reason for him to come to Australia as a refugee unless his fears were genuine.
45. I asked the applicant about what he had written in his statement about communal violence in Hyderabad. He explained that the conflict had been between Hindus and Muslims and between political parties.
46. I advised the applicant that it was difficult for me to see that the political profile he had was so potent so as to prompt the continuing threats and harassment he claims to have experienced. He said that he was targeted and would be again. I also said to the applicant that what he had described seem to me to be essentially local and that he had been able to avoid trouble by living away from the area where his mother lived, including in his grandparents' village and at hotel. I said that Hyderabad was a very big city and it seemed to me that he could live in another part of it or in another city in Andhra Pradesh. The applicant said that if he moved, he said for example to Maharashtra, where is the evidence that TRS people would not trace him and he believed that the people who had threatened and harassed him in Andhra Pradesh regarded him with enmity.
47. I raised with the applicant whether it would be reasonable in his circumstances for him to move to live in an area other than that where his mother lived. He asked how could he leave his mother and that to do so would be very hard for him; he said that if he lived elsewhere they would attack his mother and that they were not doing anything to his mother because he was overseas. I asked the applicant what they had done to his mother and he said that after he came to Australia, they went to her home and harassed her and pressed her to tell them where the applicant was. The applicant said they kicked her and she was helped by neighbours. He said she did not go to the police. I said to the applicant that I found this account difficult to accept: on his own evidence, his mother was a professional businesswoman and it was hard to see that she would not seek the assistance of the police in such circumstances. He said that they had gone to the police in the past and nothing was done and the police can do anything they like and want bribes. He said that the police are subject to political influence in determining how to respond to reports.
48. I note that the applicant did not attend an interview and he said he had not received the invitation to do so. At the hearing, I showed the applicant the letter and he appeared to recognise it. The Department's file includes a copy of the six page letter dated [September] 2011 which was sent to the applicant by the Department. There were apparently eight attachments to that letter; one is headed 'Request for Information – Detailed Information' and at the very end of that two-page document is a heading 'Invitation to interview' which advises the applicant to contact the Department within seven days of receiving the letter if he wishes to attend an interview. The placement of this invitation in the correspondence to the applicant does not seem to me to reflect the importance of the opportunity to attend an

interview and it is not surprising that an applicant may not notice and appreciate its significance.

49. I advised the applicant that he could have a further two weeks to provide documentary evidence in support of his claims, in particular evidence that reports were given to the police and more detailed information about the injuries the applicant claims to have sustained when he was attacked. I said that if it was unable to obtain them within two weeks he could seek a short extension. No material has been received from the applicant, nor any request for an extension of time for him to do so. I have therefore proceeded to decide on the review application on the basis of the material before me.
50. The Congress Party won a second consecutive term in office at the 2009 election for the Andhra Pradesh legislature ('Congress returned in Andhra Pradesh' *Thaindian News* 16 May 2009). The Indian Youth Congress is the party's youth wing, has more than 2 million members and has branches all over the country ('Indian Youth Congress' Wikipedia).
51. Andhra Pradesh is one of the largest states in India. The main ethnic group is Telegu and the main religion is Hindu ('Andhra Pradesh' Wikipedia). State boundaries can be redrawn and new states have been formed from time to time in India. The government announced in 2009 that a new state of Telangana would be created with Hyderabad as its capital ('India to create new southern state of Telengana' BBC News 10 December 2009) but progress has stalled and marked political divisions are apparent ('India report lists options over 'Telangana state'' BBC News 6 January 2011).

#### **FINDINGS AND REASONS**

52. I accept the applicant is a supporter of the Congress Party and may have attended gatherings and rallies from time to time. I also accept the applicant's account of the circumstances of his family and that his father, who died a long time ago, was a strong Congress Party supporter as is his mother.
53. I have considered the applicant's evidence about the nature and extent of his activities in support of the Congress Party. He claims to have been [a senior youth officer] of the Congress Party in his area from very soon after he joined at aged [age deleted: s.431(2)] until he came to Australia in 2008, so for some seven years. He said a vice president and a secretary worked [with] him; that he canvassed for the Party during elections; that he was involved in organising meetings and rallies which could be attended by up to 2000 people; and that the leaders decided to install the applicant in the role of [senior youth officer] because the previous incumbent had not been doing enough. The applicant said he was able to become [a senior youth officer]Wing in his area almost immediately because of the name of his father and because his mother gave money to the party for the applicant to [get this position]. He worked under the Secretary for a short period and was then [given the position of senior youth officer]. He said there had been challenges to his role and he described one such episode which followed his mother being reluctant to give money for people to come to meetings.
54. There are difficulties with the credibility of this account. The Indian Youth Congress, the youth wing of the Congress Party, is large and organised political entity. The applicant said that there were 400 members in his area. I do not accept that such an organisation would have removed a person who may not have been doing very well in the role and replaced that person with a [age deleted: s.431(2)] year old, as was the applicant, just because of his

father's name and money his mother provided. The applicant's account of what the Congress Party stood for was very superficial for a person who had been the leader for some seven years of a 400-strong branch of a major political party, in a major city in a state where it is in power.

55. As well, the applicant claimed to the Tribunal, initially through a letter he submitted to the Tribunal from [Mr A], that he had also been involved in the National Student's Union of India (NSUI) having been appointed a youth coordinator with that organisation in May 2000 (the applicant would have been [age deleted: s.431(2)]). At the hearing, the applicant said that being a youth leader means being a student leader and appeared to not to distinguish between the two organisations although he recognised that the Indian Youth Congress included a broader membership than just students. The applicant is correct in saying that the NSUI is affiliated with the Congress Party but the Indian Youth Congress and the NSUI are separate organisations. The applicant made no claims in his protection visa application of having any involvement with the NSUI and there was nothing in his evidence at the Tribunal hearing that he did apart from [Mr A]'s letter. I do not accept that the applicant was involved in NSUI as a youth coordinator and I give what is said about this in the letter from [Mr A] little weight.
56. As already stated, I accept that the applicant supports the Congress Party and he may have attended gatherings and rallies from time to time. I accept that the main reason for supporting the party was because his father had done so as does his mother. I consider that the applicant has fabricated the evidence about the nature and extent of his own involvement in the Party and being [a senior youth officer] in his area.
57. I note that the question of whether Telangana should be a separate state in India has been a continuing issue in Andhra Pradesh politics. Over the years, political parties have formed around the issue and it has attracted significant popular support as well as strong opposition. Major parties have made promises which had not been kept. There have been violent conflicts as advocates for a separate state have pursued their cause. The question of whether Telangana should be a separate state remains a live political issue.
58. It is against this background, and the evidence about the nature and extent of the applicant's role with the Congress Party, that I have considered the applicant's claims of being targeted by TRS people.
59. The applicant claimed that before the trouble he claimed occurred in 2007 there had been small issues when TRS youths had said things like he should leave, sometimes involving the applicant being held by the collar and spoken to in vulgar way. I understand that politics in India, particularly when young people are involved and about an issue as divisive as the creation of a separate state of Telangana, can be conducted in a robust manner and involve verbal and physical harassment of the kind described by the applicant. The applicant has said that he was a particular target for such treatment because he was [a senior youth officer] of the Congress Party in his area, a claim I have not accepted as credible. However, even if the applicant, as a supporter of the Congress Party, was treated in the way described, such conduct falls short of that necessary to show persecution as the term is applied in Australia's refugee law. The evidence does not indicate that the applicant came to serious harm on this account.
60. After careful consideration of all of the evidence, I have come to the view that there are difficulties with the credibility of the applicant's account of the more serious harm,

harassment and threats which he has claimed occurred in 2007, 2008, when he returned home in 2011, and when he has been in Australia.

61. The applicant told me at the Tribunal hearing that his problems became more serious in 2007 when local elections were held. The applicant described verbal abuse and an assault in February or March 2007 and demands by TRS people that he resign as [a senior youth officer] and leave the area or he would be killed. Later, the applicant was assaulted by TRS people. He said he went to stay with an aunt but someone told his mother people were coming for him and he then went to stay at his grandparents' village; altogether at this time, he was away for two weeks before returning home to his mother's place. What the applicant described relies on his evidence of being targeted as [a senior youth officer] of the Congress Party, a claim I find wholly not credible. It follows that I do not accept that TRS people demanded that he resign from this role.
62. After a period of peace between the TRS and Congress Party people apparently brokered by a Congress Party leader, the applicant said at the hearing that he was continuously attacked in 2008 before he came to Australia which was in July that year. The applicant claims that he was threatened in January 2008 and was also hit and stabbed. In March 2008 TRS people came to his home and damaged things and kicked the applicant which led him to go to hospital for a couple of days. No evidence of this period in hospital has been provided. The applicant said that every day there were threats against him. Once they had his head shaved and he was on another occasion attacked.
63. The applicant's evidence about reporting to the police about what happened to him and to his mother and to their property has been in my mind as I have considered whether he has been truthful in what he has submitted in support of his claim for Australia's protection. The applicant said that the assault of February or March 2007 was reported to the police, with the name of the culprit, but the police did not catch the person, the applicant thinks because of bribery. He said his mother reported the assault which he claims occurred in January 2008 but that other incidents, some very nasty if true, were not reported. No evidence of police reports has been submitted by the applicant. The applicant claims that his family is prominent in the area of Hyderabad where he lives, that his father's name is well known and that his mother runs a successful business. They are, he says, known supporters of the party in government in the state. In this context, I do not consider that such a family would have been reluctant to seek police help when the applicant and his mother were physically attacked and harassed and their property damaged. In his statement to the Tribunal, the applicant states that the police are reluctant to take action where they are 'vulnerable to attacks by strong political forces' and he has said that one inspector at the police station had connections to the TRS. I accept that the police in India are not always adequately resourced and that corruption and the inappropriate use of political influence is far from unknown. But I do not consider it at all likely that only two incidents among so many, involving serious violence and property damage, would not have led the applicant and his mother to call or go to the police had the incidents in fact occurred.
64. I have considered the applicant's account of being stabbed and his vehicle damaged when he returned to India in May 2011 for a vacation. The applicant said that [in] May he and his mother were attacked on their way home by people who he said had learned he was back in India. He went to stay elsewhere for 24 days, he said in a lodge or hotel, but [in] June 2011 the applicant claims that 'two activists' attacked him there. The following night he went home to collect his things but seven activists came to his home early the next morning and attacked the applicant leading him to be unconscious and hospitalised. I note the certificate



from the [Hospital] provided to the Tribunal but it says nothing about what the applicant was being treated for. In the context of all of the evidence, I give it little weight. I also note the photo of a car being damaged but the only evidence that it is the applicant's car is that the applicant says it is. Having regard to his credibility on other matters, the photograph of the car being hit has little weight.

65. In the context of talking with the applicant about whether he could relocate away from the area where he had lived and where he had claimed to have been targeted by TRS supporters, the applicant said that if he lived elsewhere the TRS people would attack his mother and they were not doing anything to her at present because he was overseas. He said that TRS people had gone to her home and pressed her to tell them where the applicant was and that they had kicked her.
66. I do not accept that the nature and extent of the applicant's political activity, nor his connection to the Congress Party through his father's past involvement, was of a character to have prompted the sustained threats and harassment he has described occurred since 2007. I do not accept the applicant's claims about being threatened, harassed and physically harmed prior to coming to Australia in 2008 nor when he returned in 2011. And I do not accept that TRS people have harassed and harmed his mother as they pressed her to tell them of the applicant's whereabouts. On the evidence before me, I do not accept that the applicant experienced serious harm, of the kind exemplified in s.91R(2) of the Act, on account of his political opinion in support of the Congress Party or for any other Convention reason.
67. Considering claims of an applicant's past experiences is only part of the Tribunal's task and relevant primarily to assist it in looking forward to consider what would happen to the applicant if he were to return to his country and to determine, on the basis of all of the evidence, whether there is a real chance that he would face persecution for a Convention reason upon return now or in the reasonably foreseeable future. If the Tribunal comes to the view that there is not such a chance, then the Tribunal must look to see if there are substantial grounds for believing that there is a real risk that he will suffer significant harm in the event that he returns to India.
68. The applicant has claimed that he fears that he would be kidnapped, killed and harassed if he were to return to India on account of his involvement with the Congress Party and that he feared TRS people would do this to him. Having considered all of the evidence before me, I consider that the chance of the applicant experiencing any such treatment for the reasons he has given in his protection claims to be very remote and insubstantial. The nature and extent of the applicant's political activity and his association with the Congress Party has not been of a character to have prompted the sustained threats and harassment he has described and I have found that he has not experienced any adverse consequences for reasons political in the past.
69. The applicant may seek to take part in activities in support of the Congress Party if he returns to Hyderabad, or if he lives elsewhere in India. India is a robust democracy with regular elections to various levels of government and large and organised political parties. There is a high level of participation in political debate and in elections. There can be scuffles and fights at rallies and in the conduct of political activity but such treatment does not mean that what a person experiences is of a seriousness so as to constitute persecution. The applicant submitted an article which reported on TRS people attacking an MLA at the Andhra Pradesh Legislative Assembly premises in February 2011 and I am aware of other incidents of politically motivated violence which have been reported. The applicant's political profile,

however, is nothing like that of an MLA or of a person with a leadership role; he is not more than an ordinary supporter of one of the largest and most successful parties in India. I do not consider that there is anything more than a remote chance that he could come to serious harm while taking part in activities in support of the Congress Party upon return to India, now or in the reasonably foreseeable future.

70. In his statement lodged in support of the protection visa application, the applicant referred to outbreaks of communal violence in Hyderabad and he said that this meant between Hindus and Muslims and between political parties. I do not consider that there is a real chance that the applicant would be caught up in such violence: he has not claimed that he fears harm on account of his religion and I have rejected his claims to have been harmed on account of his political activity. The chance that the applicant would be caught up in outbreaks of generalised violence of the kind he mentioned is remote.
71. The applicant has described himself as an Adhraite and claimed that his family moved to Hyderabad, part of what may become Telangana, when he was a child. I have considered whether the applicant's non-Telangana origin has implications for him in the event that he would return to Hyderabad. The applicant was plainly aware of the demands for a separate state of Telangana, an issue long on the agenda for Andhra Pradesh and the national government of India although there are differing policy positions among the major parties on the matter. On the evidence before me, what happens in relation to this matter in the reasonably foreseeable future does not give rise to a real chance that the applicant would face treatment of a kind which could amount to persecution for a Convention reason. Notwithstanding the views of many people in Andhra Pradesh, and it appears the applicant, on the issue, a claim that it would lead a person such as the applicant to face treatment amounting to persecution is highly speculative and far-fetched.
72. I have concluded that the applicant does not have a well-founded fear of persecution for a Convention reason upon return to India now or in the reasonably foreseeable future. He does not satisfy the refugee criterion for the grant of a protection visa.
73. In his statement to the Tribunal in support of the review application, the applicant drew attention to the complementary protection criterion for the grant of a protection visa and I have also considered whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to India, there is a real risk that he will suffer significant harm, having regard to the definition of a significant harm in s.36(2A) of the Act as set out earlier in the outline of the relevant law. As well, I have had in mind the evidence before me, and my findings, about the applicant's experiences in India and what he fears might happen if he were to return in particular in connection with political activity he may undertake upon return. The material before me does not indicate that what the applicant might face on account of his political support for the Congress Party and its policy positions in relation to Telangana, or for any other reason, will involve a real risk of him being arbitrarily deprived of his life; having the death penalty carried out on him; or being subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment.
74. I have concluded that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to India, there is a real risk that the applicant will suffer significant harm. He does not satisfy the complementary protection criterion for the grant of a protection visa.

## **CONCLUSIONS**

75. 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).
76. 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).
77. 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**

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