

071559619 [2008] RRTA 77 (25 March 2008)

DECISION RECORD

RRT CASE NUMBER: 071559619

DIAC REFERENCE(S): CLF2007/60008

COUNTRY OF REFERENCE: India

TRIBUNAL MEMBER: Suzanne Leal

DATE DECISION SIGNED: 25 March 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

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).

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 and notified the applicant of the decision and his review rights by letter.

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

The applicant applied to the Tribunal for review of the delegate's decision.

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

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.

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 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).

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'

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.

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.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

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

The Tribunal has before it the Department's file relating to the applicant in addition to material contained on the Tribunal's own file.

In his visa application form, the applicant stated that he left India 'because of race, political opinion and member of particular social group.' If he returns to India, he fears 'life in risk, fear of death, murder and persecution.' If he goes back, he fears being harmed or mistreated by 'anti-social elements, local mafia and politicians.'

Together with his visa application form, the visa applicant submitted the following statement of claim:

My name is *[name]* I was born in a small town called *[name]* in the Gujarat state situated in western part of India I got education up to secondary school certificate and after that I joined my family business.

I belong to lower caste of Hindu community our family business is *[nature of business]* we are the people whom other casts people consider as lower caste and we do not have good condition and status in society. Since long traditions we are lower so in day-to-day life also we have to suffer lot like our insult and bad social treatment from upper caste people. This situation of Indian society is well known by the world that still caste system and untouchability exists in India.

Politically congress party always support all lower castes and minority people and they all people favour congress party. That party has done lot of good and supportive activities to the lower level of the society I too believe in philosophy of congress. And ultimately due to the great support to the minority and lower people congress has become important and respected party in people like us.

I am also follower of congress party and do not prefer Bhartiya Janata Party that is call BJP which bear major hold of all upper castes people and they always discriminate minority and lower caste people. My business is *[nature of business]* so all type of people come to my business place and my behaviour was very good and friendly with all my customers whatever the caste they belong to. Because that is the same business policy or all people so my business was going on well.

Once up on a time one group of people came to my shop it was evening and I was just going to close my shop but suddenly they came so I thought to do that work before closing shop and I served them I finished my job and other *[services]* and I asked them for payment and they people refused. They said, they were influential people and no one should force them for money they quarreled with me, in that group few people were drunk and they started abusing and said lot of bad words about my caste and they hurt me physically and left my shop.

After some time I forgot that incident but they people again came at my shop and I simply refused to serve them and said there was no time. They again started to abuse

me, but this time there were presence of other customers and it was time of busy hours, I said them to leave my place, they felt insult and left shop but warned me to see me in future. Then I advised by some people that I should lodge a complain against those people. So I went to police station but police said this is very small incident related to your business and customers. We do not have time to investigate this type of small matters than they did not consider my complain seriously for the sake of writing just they wrote my complaint. I came to know that these people were belong to BJP and that is why they were behaving like king due to BJP government in state all these BJP people are behaving very badly with other common people and also they were linked with local mafia and thugs and all kind of notorious elements in the community, And that is why my complain was not taken seriously by police, after getting this information I got too much scared so I also thought to take help of political people I knew that in India if you want to get your work done you need some political pressure. So with the help of my friend I met one political activist of congress party and said him about my situation he assured me to help, meanwhile there was time of coming local district level elections and results of this elections leaves effect on state assembly politics, due to all this it was very serious atmosphere around the state. I started participating in party work and meetings and got support of congress people. After declaration of results unfortunately congress lost in elections.

These people came to know about my relation with congress party so we became enemy now they were attacking on me and abusing me they planned to close my business and broke me financially they were just harassing my customers and preventing them to visit my shop they prepared another person to broke my business. And harassed me by all ways I was in very bad situation my family was also disturbed. Those people mentally harassed me. And it was very difficult for me to live I did not have any other bread earner in my family my mother is widow she was very much worried about me my wife and my child. I was scared too. my life was at great risk in that situation.

In this situation I was not having any other way to survive they people broke my business I was not having proper income so I was in very much tension some of my friends advised me to leave country so those people would forget me I got help from my friends and came here. I left my [relatives] in India because some of my friends promised me to take care of them until everything will be good with me in my country. My family allowed me to come here alone to save my life and with the help of my friends anyhow I could arrange to reach here, now I am requesting the department to consider my application and provide me protection.

The delegate made a decision to refuse to grant the protection visa to the applicant. In her decision, the delegate accepted that the applicant was of a lower Hindu caste and that, before coming to Australia, he resided in the Indian state of Gujarat where he owned a business and where he was a supporter of the Congress Party. Whilst the delegate accepted that the applicant may have suffered some discrimination as a scheduled caste member and may, for this reason, have been targeted by local people from higher castes, the delegate was not satisfied that this correlated to the applicant having a well-founded fear of persecution as outlined by s91R(2) of the Act. The delegate did not accept that the applicant had suffered harm to the extent claimed nor that it amounted to persecution as noted in s91R(2) of the Act. The delegate also found that 'the central and state government is committed to eradicating caste based violence and discrimination and, despite rogue and criminal elements of society, the State is able and willing to offer adequate protection to the applicant... and that the harm the applicant claims to fear are the acts of a group of private agents on few occasions and is therefore not sanctioned or perpetrated by the State.' The delegate also found that the applicant would be in a position to re-locate to an area where 'he is away from the individual BJP members he has experienced problems with and can locate to an area where sporadic

political tension is less frequent.’ According to the delegate, ‘the applicant is a member of a country whose population is over 1 billion people. The applicant possesses approximately 10 years education and claims to have been a former business owner. Given the geography and population mass of India coupled with the skills of the applicant, I consider that relocation is a reasonable option for the applicant and I find that he has the personal attributes and capabilities of doing so.’

The applicant lodged an application for review to the Tribunal.

Tribunal hearing

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Gujarati and English languages. At hearing, the applicant confirmed that he understood the interpreter. The applicant confirmed that he also speaks and understands Hindi.

At hearing, the applicant confirmed that his friend had filled in his visa application form on his instructions and that he had written out his statement in Gujarati, which his friend had then translated for him.

The applicant told the Tribunal that he considered himself to be a refugee on the basis of problems he had experienced in his business in India. The applicant told the Tribunal that he owned a business which had earlier been his family's for some time.

Once, a group of people had come to the applicant's premises. After the applicant had provided his service, the group refused to pay him and then attacked him. The applicant was unclear when this incident had occurred, stating ‘[a number of] months ago: actually I can't remember the exact date.’

The applicant told the Tribunal that he belongs to a lower caste. It was his view that the group didn't want to pay him because he is a member of a lower caste.

He told the Tribunal that his attackers were all people belonging to the Bharatiya Janata Party (BJP). He was unable to describe his attackers, saying only that they were ‘strong men in height and body.’ According to the applicant, his attackers ‘used bad words and abused and pushed me.’ They threatened the applicant in relation to his family, telling him that if he were to demand money from them, they would attack him again. According to the applicant ‘they threatened me not to allow me to run business.’ The applicant told the Tribunal that he did not sustain any injuries from the attack although he collapsed after it.

He did not go to the police on that occasion. When asked why he didn't contact the police he told the Tribunal, ‘I didn't take it seriously, it happens sometimes.’

He complained to the police after the second attack, which he estimated to have taken place a number of months from the (first) hearing date.

The second attack was, according to the applicant, similar to the first attack and involved several attackers - some from the earlier attack and some different. The attackers

attacked me physically; threatened me that they wouldn't allow me to run my business. They said they will approach other people of my caste to open a business

near my shop. The first time [they came] I provided the service, the second time I refused. After this incident, I was thinking to leave that place. I was thinking to move and start work [somewhere else]. [Then] I decided to join the [Congress Party] so that I would get support of the party.

The applicant told the Tribunal that he had joined the Congress Party a number of months prior to the Tribunal hearing. He told the Tribunal that he joined the Congress Party because the party supported lower caste people. The applicant has friends who are members of the Congress Party and who promised to support him if he were to join the party. The applicant accordingly registered with the Party and received a certificate of membership, which is still in his home. He voted for the party in the [state] elections, but then they lost the elections.

The applicant told the Tribunal the name of the person in charge of the party at District Level.

The applicant told the Tribunal that he did not sustain physical injuries as a result of the second attack. When he alerted the police, they provided no assistance to him, telling him that it was a personal matter between him and his customers.

Following the second attack, the applicant left India.

The applicant told the Tribunal that he was first issued with a passport about a number of years ago. He told the Tribunal that some of his friends helped him to get a visitor visa to come to Australia and that these friends assisted him financially.

The applicant told the Tribunal that if he were to go back to India, his life would be at risk 'because I had a problem with these people, so I left.'

In response to the Tribunal's suggestion that he could move to a different town in India, the applicant said that BJP people are in each and every city.

The applicant told the Tribunal that he had been particularly targeted because he insulted people from the BJP party.

The applicant told the Tribunal that his older relative had started his business and that it has now been closed for a number of months.

In answer to the Tribunal's question as to whether the applicant had considered setting up a business in another town or state, he replied:

I was thinking to move somewhere, but I had friends who study and they said that the Australian government provides protection to some people if they have a problem in their country and they encouraged me to come here and spend some time here.

The Tribunal asked the applicant whether he would have moved elsewhere in India had he not received this advice from his friends. The applicant said yes, that he would have moved to another town although he expressed concern that it might not be safe for him there 'because BJP people know each other.'

He confirmed that he was in contact with his wife and child who are living there and that they are well and happy.

In accordance with s424AA of the Act, I gave to the applicant clear particulars of information which might be the reason or part of the reason for affirming the delegate's decision. This

included the information the applicant had given me in relation to issues arising as a result of his membership of a lower castes as well as apparently inconsistent evidence provided in relation to his membership of the BJP and information given outlining his possibilities of internal relocation. In any case, I explained the relevance of the information to the review and the consequences of the information being relied on in affirming the decision under review.

The applicant requested an adjournment of the hearing in order to obtain copies of documents providing evidence of his membership of the Congress Party.

The applicant forwarded to the Tribunal a letter from a local politician.

The letter reads as follows:

TO WHOM SOEVER IT MAY CONCERN

This is to certify that [name] live in [town] and he is a reputed citizen. He is an owner of shop in [town]. He joins our Congress-I Party. We have full confident on him. He support our party at his best and support party in its every program. He will work hard during election to be win our Congress-I party. Therefore party gives him this certificate. Therefore [name] is active member of our party from Today.

A further hearing was held. At hearing, the applicant said he had nothing more to add.

Independent evidence

The Tribunal has relied on the following information in making its decision

Article 15 of the Constitution of India

Article 15 of the Constitution of India, which prohibits discrimination on the grounds of religion, race, caste, sex or place of birth, provides as follows:

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

[Country information deleted in accordance with s431 of the Migration Act as this information could identify the applicant]. [Country information details on caste deleted]

The BJP perceived the crystallization of a [Dalit] caste-based movement as a threat to an undivided Hindu community and sought to avert this threat by dissolving this identity within a broader movement stamped with the seal of Hinduism. While the party aimed at attracting lower-caste voters by co-opting lower-caste leaders, its success was rather limited and it continues to appeal disproportionately to upper-caste voters. Interestingly, the BJP stood up to protect the upper castes against low caste mobilization, while the lower-caste parties were gaining momentum. Co-opted lower-caste leaders can deliver smaller numbers of supporters, but, as was evident in the 2001 breakaway of Kalyan Singh, an OBC leader from UP, the BJP cannot fully rely on the mechanisms of co-option.

...During recent years, caste mobilization has become an important factor in shaping Indian politics. The BJP and the Congress have followed different strategies of political mobilization. The BJP followed a path of sectional mobilization. The core of the BJP's support came from the upper caste, well-off Hindus. The Congress is a party that draws most of its support from the poor and socially disadvantaged groups. But the Congress faces a serious competition for the votes of these groups from regional parties that directly appeal to these communities. The BJP has been more successful in consolidating its smaller catchment area, while the Congress has a larger but more fragmented group of potential voters. At the regional levels, the Congress Party consolidated its social base by endorsing the power of the numerically strong and upwardly mobile dominant – but traditionally of lower status – castes of landowning peasants, i.e., the Marathas in Maharashtra, the Reddys in Andhra, the Patidars in Gujarat, the Jats in UP, and so on. In the process, it has created a patron-client type of relationship in electoral politics, a relationship of unequal but reliable exchanges between political patrons – the upper and dominant (intermediate) castes, and the numerous “client” castes at the bottom of the pile, popularly known as the Congress’ “vote-banks” Thus, in the initial two decades after independence, the hierarchical caste relations were processed politically through elections.

...The Bharatiya Janata Party has also showcased its Dalit and OBC leaders to prove that it is not an upper-caste party. Bangaru Laxman, the former BJP president (2001-2002) was a Dalit. Sanyasin Uma Bharati, former Chief Minister of Madhya Pradesh, belongs to an OBC caste and was a former BJP leader (Saeed, M.S. 2007, ‘Caste System in India and its Impact on Politics’, Institute Of Strategic Studies Islamabad website, *Strategic Studies*, vol.25, no.1, Spring http://www.issi.org.pk/journal/2007_files/no_1/article/a4.htm – Accessed 10 September 2007; see also, page 49 of: Harrison, T., *et al* 2007, *A political introduction to India*, UK Parliament website, International Affairs and Defence Section – House of Commons Library, 2 May <http://www.parliament.uk/commons/lib/research/rp2007/rp07-041.pdf> – Accessed 11 October 2007).

Attacks on lower caste communities in Gujarat

A December 2006 report published by the Communist Party of India (Marxist) provides information which suggests that Hindu nationalist organisations, like the BJP, VHP and RSS (the Sangh Parivar), have continued to organize attacks upon lower caste communities in Gujarat, though these attacks have been focused on lower caste Muslims and Christians rather than on Hindus.

In most cases attacks on dalits are open, caste attacks by upper caste men are often backed by village control over landed wealth.

...But in the case of Sangh Parivar organised violence, when the attacks on dalits are well organised and openly attributable to the organisations of the Sangh Parivar, such as the Bajrang Dal, new factors come into play. Sangh organised violence is never seen as or

reported by the media as attacks on dalits: they are seen as and reported as attacks on Christians.

In Gujarat most of the attacks on dalits belong to this category. Dalit Christians are branded as anti-Hindu, anti-national elements, much like Muslims are, and Christian missionaries are accused of “spreading Christianity through forced conversions”; and the converted are as much enemies of the people as those who convert them. Attacks on their congregations are represented as contestations with western dominance.

Therefore, also, in the recent decade anti-dalit violence can easily be shown to be on the decline, even as Christian dalits and the Muslim poor (often also of lower caste), bear the brunt of Sangh Parivar violence. The recorded number of cases regarding violence against dalits is much lower than in other states and convictions even lower: recorded number of cases is approximately 1300 and convictions are in one digit number, i.e., about two percent.

And precisely because attacks on Christian dalits are seen as attacks on Christians and not on dalits, it has become possible for the Sangh parivar to co-opt some sections of the non-Christian dalits into their scheme of the Hindu rashtra (Taneja, N. ‘Gujarat 2006: Life For Christians, Tribals And Dalits’, *People’s Democracy* website, vol.30, no.52, 24 December http://pd.cpim.org/2006/1224/12242006_nalini.htm – Accessed 12 October 2007; see also: Puniyani, R. 2006, ‘Adivasis: A Cultural Cooption’, countercurrents.org website, 6 April).

Nonetheless, it may be the case that Hindu nationalist forces in Gujarat have been guilty of continuing to encourage isolated instances of violence towards Hindu Dalits. A February 2007 Human Rights Watch report states that “a Dalit social worker in Gujarat, told Human Rights Watch in 2003 that the VHP had circulated pamphlets demonizing Dalit community members and calling on VHP members to attack Dalits”. A 2003 news report states that: “Dalits constitute 7.5 per cent of Gujarat’s population”; and that: “The state, according to the National Crime Record Bureau, ranks third in terms of atrocities committed against backward classes”. Further to this, the Indian National Human Rights Commission’s 2004 report provides information which suggests that police in Gujarat have recorded complaints in a manner that conceals the extent to which Gujarat’s Dalit communities are victims of caste violence; “One NGO in Gujarat, in a study covered 11 atrocities-prone districts for four years, showed that 36% of atrocities cases were not registered under Atrocities Act and 84.4% of the cases where the Act was applied, the cases were registered under wrong provisions with a view to concealing actual and violent nature of the incidents” (Human Rights Watch 2007, *Hidden Apartheid: Caste Discrimination against India’s “Untouchables”*, February, Vol. 19, No. 3(C), p.48; ‘Dalit threat to Gujarat conversion law’ 2003, [Countercurrents.org](http://www.countercurrents.org) website, source: *The Telegraph* website, 15 April <http://www.countercurrents.org/da-conversion16403.htm> – Accessed 19 September 2007 ; National Human Rights Commission 2004, ‘Report on Prevention of Atrocities against Scheduled Castes’, p.33 <http://nhrc.nic.in/Publications/reportKBSaxena.pdf> – Accessed 17 September 2007).

Relocation within India

A DFAT report of 13 October 2003 on freedom of movement within India states that:

Indian citizens have the freedom to relocate from one area of India to another, with two exceptions: in the state of Jammu and Kashmir, Indian citizens from other states are not allowed to buy property, but can stay in any part of the state without seeking official permission. Indian citizens who are not residents of the particular area are required to obtain a

permit to visit some border areas of Jammu and Kashmir, and border areas in the north-eastern states of India. The permits are valid for six months. Indian citizens who have been arrested and released on bail are required to report regularly to local police authorities. In these instances judicial permission is required to relocate to another part of the country (Department of Foreign Affairs and Trade, 2003, DFAT 254 *India RRT Information Request INDI6042*, 13 October)

FINDINGS AND REASONS

Applicant's citizenship

I have seen the applicant's passport and accept on this basis that he is a citizen of India.

Claims

In his application form, the applicant claims that he left India because of race, political opinion and membership of a particular social group. He fears threats, persecution and murder by anti-social elements, local mafia and politicians should he return to India.

The applicant states that he is a member of a lower caste. On the basis of applicant's oral evidence at hearing, I accept that he is a member of this caste. The country information confirms the applicant's evidence that the applicant's stated caste is a low caste.

The applicant claims to be a member of the Congress Party. In support of his claim, he has provided a letter from a Gujarat politician, confirming that the applicant has been a member of the party for some time. Despite some concerns about this letter, given its poor drafting, I am prepared to accept that the applicant joined the Congress Party after two separate attacks on him.

According to the applicant, each attack occurred when he was working at his business. The applicant was uncertain as to the exact timing of the attacks, stating at the hearing that the attacks had occurred a number of months earlier and had been a number of days apart. On each occasion, the attacks involved several unknown people who demanded that he provide them with free services. On both occasions the attackers threatened to stop the applicant from continuing to run his business. The attackers told the applicant that they had called some people belonging to the applicant's caste and had offered to assist them to open a business near the applicant's shop (thereby destroying the applicant's business.)

The applicant gave evidence that his shop was damaged during the attacks and that he was physically attacked, although he sustained no physical injuries. The applicant closed his shop after the second attack and was successful in obtaining a visitor's visa to Australia. The applicant told the Tribunal that he fears further attacks should he be forced to return to India.

[Information deleted under s.431]

No other claims were put forward by the applicant. Although the applicant claimed to have left India due to race, as well as because of membership of a particular social group and political opinion, none of his evidence disclosed any grounds of persecution on the grounds of race. In the specific examples given, the applicant referred only to his membership of the lower caste and his membership of the Congress Party.

Does the applicant have a well-founded fear of persecution?

The Tribunal must determine whether the applicant has a well-founded fear of persecution. Under s91R of the Migration Act, the persecution claimed must involve serious harm to the person, which includes a threat to the person's life or liberty or significant physical harassment of the person. The persecution claimed must also involve systematic and discriminatory conduct.

I accept the applicant's evidence that he was attacked by several unknown people on two occasions and that on each occasion he was threatened with physical harm and his shop was damaged. I accept this to be serious harm for the purposes of the Migration Act. I accept that due to his fear of further attack, the applicant closed his shop and planned to relocate his business, possibly to another town

I accept that the attacks targeted the applicant personally and that further attacks were threatened. I am satisfied that the attacks involved systematic and discriminatory conduct.

Is the persecution feared for reasons of a Convention ground?

The applicant claims that he was attacked either because of his membership of a low caste, because of his race or because of his political opinion, as a supporter and later as a member of the Congress Party. I am not satisfied that the applicant was persecuted for any of these reasons, or for any other Convention reason.

During the first incident, the applicant was attacked when he wouldn't provide his services free of charge.

During the second incident, which occurred some days later and involved some of the same people as had earlier assaulted him, the applicant told the Tribunal that the attackers threatened to contact other people from the applicant's caste. The attackers told the applicant that they would assist the other people from the applicant's caste to set up shop near to the applicant's shop, thereby putting the applicant out of business. I am not satisfied that if the attacks had indeed been motivated by the applicant's caste, the attackers would offer to assist other members of the applicant's caste to set up business in competition to him. Such an offer bespeaks a more personal grudge rather than one directed against members of the caste generally. I am not satisfied that the persecution of the applicant during the two attacks was for reason of his membership of a particular social group, namely as a member of a low caste.

No evidence had been put forward to show that the attacks on the applicant were racially motivated. I am not satisfied that the applicant was persecuted on the basis of his race.

Despite the applicant's claim in his protection visa application that he continued to experience attacks, abuse and harassment on the basis of his political connections and his statement that he had been targeted because he insulted people from the BJP party, there is no evidence before me to satisfy me that these attacks were politically motivated.

The applicant explained his decision to join the Congress Party in the following way:

[After the attacks], I was thinking to leave that place, and I was thinking to move somewhere and start my work and then I thought to join a political party so I could get support.

So what did you do?

I joined the Congress Party.

The applicant gave no evidence in relation to any previous political membership or of any earlier held political opinions. In his evidence, he spoke of the attackers as being people belonging to the BJP party but did not recognise any of them and did not provide any further details about them

Given that the applicant did not join the Congress Party until after the attacks and did not provide any evidence to show that he had an affiliation with any political party prior to the attacks, I am not satisfied that the applicant was attacked for reason of his political opinion or that he would be targeted upon his return for this reason.

Although the applicant stated that the police did not take his claims seriously, I am not satisfied that protection was discriminatorily withheld for a Convention reason but was because the police saw the matter as a civil business dispute. If the applicant was consequently unable to derive a proper income as a result of the attacks, I am not satisfied that this was for a Convention reason.

Relocation

The Tribunal considers that the applicant could reasonably be expected to relocate given his particular circumstances and the impact of relocation within India upon him. The applicant himself volunteered that he had been thinking of relocating before his friends suggested coming to Australia because the 'Australian government provides protection to some people if they have a problem in their country'. His wife and child have been living, according to the applicant, happily and well in the new town since he arrived in Australia. In light of his own thoughts of moving there and the fact that his family have happily re-located there, I do not accept the applicant's statement that he may not be safe there 'because BJP people know each other.' I am not satisfied that the applicant's involvement in the Congress Party has been such as to jeopardise his safety in the new town

The applicant has a profession which he could practise elsewhere in the country. He is fluent not only in Gujarati but also in Hindi and so would not suffer language difficulties upon relocation. There is no evidence that he has a high profile as a member of the Congress Party and so would be unlikely to attract attention for this reason. For any discrimination received as part of a lower caste, he would be able to seek state protection given that discrimination on the basis of caste is prohibited under Article 15 of the Constitution of India.

CONCLUSIONS

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

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

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

Sealing Officer's I.D. prrt44