

**0808540 [2009] RRTA 153 (13 March 2009)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	0808540
<b>DIAC REFERENCE(S):</b>	CLF2008/124122
<b>COUNTRY OF REFERENCE:</b>	India
<b>TRIBUNAL MEMBER:</b>	Ms Christine Long
<b>DATE:</b>	13 March 2009
<b>PLACE OF DECISION:</b>	Sydney
<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 and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who is 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.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

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

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

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

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997)

191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

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

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

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant including the delegate's decision record. The Tribunal also has had regard to the material referred to in the delegate's decision. The Tribunal also has before it the applicant's application to this Tribunal for review.

#### *Application for Protection Visa*

20. In his application for protection visa the applicant states that he was born in Kerala in India in. He gives his ethnic group as Malayalee Indian and states that he is Christian. He states that he was married and that his wife and two children reside in India. He gives an address in Kerala where he lived from the late 1990s and indicates that he worked privately fishing from the mid 1990s. He indicates that he left his country using a passport in another name and he paid money to agents for his false passport.
21. In the statement attached to the applicant's application for protection visa he states that he lived in City X in India with his parents and the family is Christian and attached to a church which he names. He states that his father is a fisherman and he too is a fisherman. He said that he worked for the church and looked after the security of the church. Several years ago he helped a man make a report to the City X police station about police officers who had beaten the man and tried to take his boat engine from his boat at the beach. In the same year he protected a man who was being tortured and man handled by a police officer whom he named and anti socialites. The police then started to man handle him and he ran away and said he would go to the courts and give evidence against them. Later that year he was arrested by the same officers and taken into custody and beaten and tortured; they told him he should not have reported them about the theft at the beach. They threatened to kill him. He asked them to give him a chance to go away from Kerala but they said he could still file a case against them. They said he should leave India. He paid them for his release. They said they would pay Muslim criminals to follow him and kill him. They said that CPI-M party criminals/Hindus would trace him if he stayed in India. He left Kerala after paying them the amount and his church father advised him to get ready to leave the country with youths going to World Youth Conference in Australia. They arranged to send him and as he could not obtain a passport he had to enter Australia with the passport that they arranged for him. When he came to Australia his wife told him the police officers knew he had come to Australia and said that if he ever returned to India his wife and child would be killed.
22. The applicant attaches to his application for visa, and refers to therein, various independent reports in support of his claims, including documents about the persecution of Christians in India. He also attaches a copy of a recently dated marriage certificate in the name of Person Z with date of marriage in the mid 2000s He also attaches a copy of a recent document described as a Baptism certificate in the name of Person Y indicating that he was baptised in the early 1980s in Kerala. He attaches to his application for visa a copy of a passport in the name of Person T indicating his date of birth in a specific year; the passport is noted as issued in City X in the mid to late 1990s. He also attaches a copy of the passport on which he entered Australia in the name of Person S indicating a different date of birth; this passport is

noted as issued in City X in the mid 2000s and the original of the passport is with the applicant's departmental file.

23. The applicant provided to the Department a copy of two medical records in the name of Person Z, dated a week apart, described as outpatient records from a hospital in City X. The first certificate mentions an alleged assault by police. The applicant also provided to the Department in support of his application for protection visa a copy of a media report with a translation by a friend; the article names the applicant, Person Z, shows what appears to be his photograph, indicates that he attacked police and is arrested, also indicates where he is residing, states that he is a fugitive and that there are many cases against him and states that "he was in a hidden place".

#### *Application for Review*

24. In his application for review the applicant makes no new claims.

#### *Tribunal Hearing*

25. 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 Malayalam (Indian) and English languages.
26. In answer to questions from the Tribunal the applicant said that he came to Australia on a false passport in another name which he has given to the Department. He said that he lost his other passport in his real name at home and he lost the copy of it that he had when his bag was snatched. He reported the bag snatching to police and received a card about the report from the police; he produced that card to the Tribunal. The Tribunal noted that according to the card he reported that he lost these things to police only a couple of days before the hearing and he agreed. He said that he lost the passport in his real name many years ago in India. The Tribunal noted that there was a copy of the lost passport on the Departmental file and it is noted as issued in Kerala in the mid 1990s expiring ten years later. He said it was still valid when he lost it. He said that he did not think about replacing it then as he did not want to go out of his country; he was assisting his father with his work.
27. The Tribunal asked the applicant how he was supporting himself financially just before he came to Australia. He said that he had two sources of income; he fished with his father and his sister's husband works overseas and she helped him. His sister is in Kerala. The applicant said that he is married with two children. They live with his wife's mother in Kerala.
28. The applicant said that he did not live with his family before he came to Australia as he was in hiding for a few months in Tamil Nadu. He went to Tamil Nadu in the mid 1990s because he had problems with the Muslims in his area. The Tribunal asked the applicant whether he stayed in Tamil Nadu prior to coming to Australia. He said that when he was in Tamil Nadu he got a message to return to Kerala and then he was taken to the police station. He explained that he returned to Kerala as his wife told him his children were asking about him. After he went back to Kerala he then returned to Tamil Nadu. He was working in Tamil Nadu catching fish. Altogether he was in Tamil Nadu for several months he then returned to Kerala and then went back to Tamil Nadu. He stayed in Kerala for several weeks before he returned to Tamil Nadu and he stayed there until he came to Australia. He did not have any difficulties when he was in Tamil Nadu.

29. The applicant said that in Tamil Nadu he lived with a person associated with the church and a church related priest helped him. His photograph appeared in the media and he shifted to different houses and moved to another colony so he would not be recognised. He said that he told the officer from the Department at the interview that he went to Tamil Nadu even though this is not in the information he included in his application for protection visa; he named the person who prepared his application.
30. The Tribunal asked the applicant about the passport he claims is false. He said that he got the false passport in the mid 2000s because of the clash with the Muslims. The Tribunal asked him if he still had his other passport at that time and he said that he had lost it by then. The Tribunal reminded the applicant that he had said that he did not get his real passport renewed when he lost it because he had no intention to travel. He said that he did have an intention to travel in the mid 2000s He did not get his real passport renewed in his real name as there was a religious clash several years earlier and he was wanted by the Muslims. The Tribunal pointed out that he had lived in his country for some time after this and asked him why it was necessary for him to get a passport in a false name several years later. He said the priest in the area said to get him a photo and he organised it in the mid 2000s. The applicant said that he travelled on that false passport to Country B and country D and that he went to Countries B and D to work to get income and stayed for a number of weeks. The Tribunal asked him about the entry/stamp in the passport for a specific date and he said that that date is in relation to his visa to work for Country D. He said that he needed a false passport at that time because the Muslims probably had his name and when he wanted to renew his passport he thought that because the Congress government with the support of the Muslims were in he would not get the passport. The Tribunal asked the applicant why he was targeted in that way. He repeated that it was because of the clash several years earlier between the Muslims and “our people”. He said that at that time their boat was used by hooligans to burn Muslims’ boats but their boat had been stolen; the Muslims thought they had done it. The Tribunal asked the applicant how then he had managed to live for the time he did after that if he was threatened; it pointed out that he claims he was married and had a family after that time He said that he was confined to working in the sea and he did not reveal himself. He said that the false name was just used in the passport and he was not known by that false name otherwise in his homeland. The Tribunal asked the applicant why then he went back to Kerala from Country D if things were so bad for him that he had to get a passport in another name to travel He said that when he was working in Country D the supervisor said that if anyone came to know his situation they would cut his throat so he became scared and returned. The Tribunal told the applicant that his statement made in support of his application for protection visa suggests that he obtained his false passport around the time he came to Australia. He said that when he returned to Country D he gave the passport to his wife and told her to burn it but she kept it securely. She then gave it to the priest and told him she had not burned it when they heard about World Youth Day. The Tribunal told the applicant it found that explanation difficult to accept.
31. The Tribunal asked the applicant what happened in his country that caused him to come to Australia. He said that he was not aware of Youth Day. He was taken by police detained for several days in custody and punished; he had to bribe the police to be released. He explained that in his area in Kerala the engines of boats were stolen. He was on watch at night and saw police capture a man and threaten to throw him into the sea and they asked him to throw the man into the sea. When he enquired the man said that they were taking the engines. The applicant said that then he “did the case” for the man. The applicant said that there was also another incident a few days after the boat incident when police attacked a man on the road

and he asked the police why the man was targeted. As he was a witness to these things local police said they would see him later.

32. The Tribunal asked the applicant how he managed to remain living and working in his country until he came to Australia if these events happened in the middle of the previous year and if the media article around the time he was released from custody, which he had said was at the end of the year. The applicant said that when he was taken onto custody late in the year he was there for several days and police harassed him physically and sexually and he paid a ransom to be released. They said if he did not leave the country they would find him, so he left. The Tribunal pointed out that he did not in fact leave; he went to Tamil Nadu according to his evidence and supported himself by going fishing. The Tribunal asked him how then he managed to live in Tamil Nadu and support himself by going fishing until he came to Australia. He said that he worked there for some time and police attacked him and then he did not go to sea after that. The Tribunal clarified whether that occurred in Tamil Nadu. He then said he moved around in Tamil Nadu. When the Tribunal asked where he moved around to he said that he lived in the same area but moved to different houses. When the Tribunal asked him for more details about where he stayed during that time he said that he moved to a place in front of a church but he does not remember the name of the church and he was also in the field of the church for sometime. He said that although authorities were interested in him they did not find him as the father at the church assisted him to live in different places and then his wife told the church/priest about World Youth Day.
33. The Tribunal asked the applicant why those who had detained him and mistreated him for several days and to whom he had to pay a ransom for his release would negotiate with him about leaving the country if he was of such interest to them. He said that police told him if he went away there was not a problem and they would not be after him if he left the country. He said that the police were softer on him towards the end and they told him to go.
34. The applicant said that he is Latin Catholic and was brought up as such. The Tribunal asked him about his religion. He said that Latin Catholics follow the New Testament and help and love everybody. The Tribunal asked the applicant if he could tell the Tribunal the basic principles of his religion. He said they are an association of Christians who make a life avoiding sin. They believe in Jesus Christ, Maria and baptism. The Tribunal asked him if he knew why members were baptised or what it symbolised. He said that they do what is advised and because Jesus Christ was baptised baptism is traditional. Followers of the religion celebrate the day Jesus Christ was born on 25 December and the last supper, Good Friday. The applicant said that he goes to a specific church in Australia although he does not go every week. Apart from going to church he prays with his room mate; they read the Bible and go to prayer meetings.
35. The Tribunal asked the applicant what his main fear is of returning to India. He said that within weeks of his arrival in Australia police came to his house and asked where he was and said if he comes back he will be killed and it will affect his wife and children as well.
36. The Tribunal showed the interpreter the copy of the media article produced by the applicant to the Department in support of his case. The Tribunal asked the interpreter whether the copy of article in the applicant's language is dated. He said there was no date to indicate when the article was written. The interpreter confirmed that the article said that at a named place the police were attacked in their jeep and the attacker was caught, that the man arrested was a named Person Z, that he is wanted in another case and involved in other cases and that he is part of a group of thugs, and that he has been hiding for several years; the article named

police involved. The applicant said that he lost the original of the newspaper in the bag that was snatched but he gave it to the departmental officer at the interview and also gave the officer the medical certificate. The applicant stated what the date of the article in the newspaper is and he went to the hospital several days later. He saw his photograph in the article when he returned to his family after being detained at the police station. He asked his wife's relative to send the article to him in Australia. The Tribunal noted that according to the translation of the article that he provided the article states that there are many cases against him in a number of places in India. He said that there is only one case against him and the other cases are just a threat and to give him a bad name. He said that there is one real case against him in his country relating to a border dispute he had with a neighbour. The applicant said that that case was pending but it has now been settled amicably. He said that the article states he was in hiding for a number of years but that is not correct as he was in the country and not in hiding. He stated the name of the publication.

37. The Tribunal asked the applicant about the medical certificate/s he produced to the Department in support of his application for visa. He said that he got a certificate on or around a specific date; they asked for it from the hospital. He said he got the certificate on the day he went there or the next day. He said that he went to the hospital as soon as he was released from detention. He complained to the hospital that he had been beaten and they treated him and told him to go home. He said that he went to two different hospitals. The Tribunal noted that the certificates were on the same letterhead and he said that even though he went to two different hospitals they were under the same administration. He said that he had to go again to the hospital a number of days later as he had to report back. He said that he gave these documents to the Department about the time of the interview; his wife's relative sent them to him as he asked his wife's relative to get them to support his case.
38. The Tribunal told the applicant that it must decide whether the documents he had produced in support of his claims are reliable evidence of the facts in those documents.

### **FINDINGS AND REASONS**

39. 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.
40. Essentially the applicant claims that he is a Latin Christian from Kerala in India. He claims that he left his country and cannot return there because he was and will be harmed by police/authorities in India because he opposed and spoke out against corrupt local police when they threatened others in the middle of a specific year. He claims that he was detained by police at the end of the year and was mistreated at that time because he had reported them and that he was named in a media article as a person who was wanted for assaulting police and other cases and that a photograph of him appeared in the article. According to his evidence to the Tribunal he was "in hiding" in Tamil Nadu to avoid harm from the middle of the year until he left to come to Australia, except for several weeks when he was in Kerala in during which time he was detained, ill treated and threatened by police. He also claims that he left his country several years earlier because he was threatened by and had trouble from Muslims in a clash between Muslims and Christians a few years earlier. He also claims that the CPI-M (the Communist Party of India-Marxist) was involved in the clash between Christians and Muslims. He claims that he left his country in both times travelling on a false passport and that this was necessary because of the harm he feared and because he could not

get a passport in his real name in his country as the Muslims/government at the time probably had his name. He claims that he cannot get protection against the harm he fears in India.

41. The Tribunal accepts from the country information available to it including country information referred to by the delegate and the applicant, that there is violence and clashes sometimes between those of different religious beliefs in India and that Christians are sometimes targeted because of their religion. It accepts that protection is not always available to those who fear harm in these circumstances, including Christians who fear harm because of their religion. It also accepts that there is corruption and bribery amongst the police, the bureaucracy and politicians in India. Clearly however the Tribunal must determine whether the applicant before it has a genuine fear founded upon a real chance of persecution for a Convention reason if he returns to his country.
42. The Tribunal accepts that: "applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule." The Tribunal also accepts that: "if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt". (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para. 196). However, the Handbook also states (at para 203): "The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts".
43. It is for the Tribunal not only to consider inconsistencies but also to determine what evidence it finds credible (Nicholson J. in *Chen Xin He v MIEA*, 23 November, 1995 (unreported) at p.11). The Tribunal does not have to accept uncritically all statements and allegations made by an applicant. (Beaumont J in *Randhawa v MIEA*, 124 ALR 265 at p.278). "The mere fact that a person claims fear of persecution for reasons of political opinion does not establish either the genuineness of the asserted fear or that it is well-founded or that it is for reasons of political opinion.[it is] for the Applicant to persuade the reviewing decision-maker that all of the statutory elements are made out." (*MIEA v Guo and Anor* (1997) 144ALR 567 at 596).
44. The Tribunal has some doubts about the applicant's true identity and finds that he uses both the name in the passport which he used to enter Australia and the name in which he made his application for protection visa. Given that he communicated with the Tribunal using an interpreter in the Malayalam language the Tribunal finds that the applicant is a citizen of India. The Tribunal also accepts that the applicant is the religion that he claims to be.
45. Based upon the applicant's oral evidence at the hearing supported by details in the passport on which he entered Australia the Tribunal finds that the applicant left India and travelled to Countries B and D to work and then returned to India a number of weeks later The Tribunal finds that when the applicant returned from Countries B and D to India he returned to live in his area in Kerala and worked there supporting himself and his family, at least partially, by his fishing.
46. The Tribunal does not accept that the applicant left India to go to Countries B and D or to come to Australia to escape harm in India It also does not accept that the applicant left India to come to Australia for the reasons that he claims. Further the Tribunal does not accept that the applicant cannot or will not return to India because he fears persecution there for the

reasons he claims. The reason that the Tribunal finds against the applicant in relation to these matters is that the Tribunal does not accept that the applicant is a witness of truth.

47. The Tribunal does not consider that it is consistent with the applicant's claims that he feared harm in his country because of a clash/trouble with Muslims several years earlier or that after that time he was living in his area in Kerala, that he married in a specific year and that he was working with his father fishing until the time he left India to go to Countries B and D to work. The Tribunal does not accept as true that the applicant obtained a passport in another name for the reasons that he claims. The Tribunal also does not consider that it is consistent with his claim that he feared harm in his country after the clash/trouble with Muslims that he returned from Countries B and D to his area in India and stayed living there with his family until at least the middle of the year; he told the Tribunal that he went to Tamil Nadu to stay/hide in the middle of the year. The Tribunal does not accept that the applicant went to Tamil Nadu to hide because of the trouble with Muslims in that year
48. The Tribunal does not accept that the applicant was detained, ill treated and threatened by police/authorities in his country late in the year as he claims for the reasons that he claims. It does not accept as true that he opposed/reported and/or spoke out against local police in the middle of the year. The applicant told the Tribunal that he was of such interest to police at that time that they said they would send Muslim criminals to trace him and kill him if he did not leave the country and he claims that police were looking for him several weeks after he arrived in Australia and threatened to harm him and also his family if he returns there. The applicant told the Tribunal however that he in fact remained in India in Tamil Nadu, supporting himself or partly supporting himself, fishing after the end of the year until he came to Australia in the middle following year. The Tribunal considers this is inconsistent with his claims about the events of the end of the previous year and about his fear of harm in India. When the Tribunal initially asked him whether he had any trouble in Tamil Nadu he said that he did not. He also said that he was essentially in hiding in Tamil Nadu in the same area moving from house to house The Tribunal does not accept that the applicant was in hiding in Tamil Nadu as he claims. When the Tribunal asked him where he was in hiding he could give very little detail about the places he stayed over the several months he claims that he stayed in Tamil Nadu.
49. It is clear from the applicant's oral evidence to the Tribunal that he did not obtain a passport in a false name because he feared harm in his country and needed to leave there to come to Australia; he was using the passport on which he entered Australia several years earlier to travel to Countries B and D to work and then return to India. There is also in the passport an emigration check stamp granted for employment in Country D dated a specific date from the Protector General of Emigrants, Government of India. The Tribunal does not accept as true that he gave the passport to his wife to burn when he returned from Country D in the previous year and that she gave it to the priest and told him she had not burned it when they found out about World Youth Day. In the Tribunal's view the applicant gave this explanation only when the Tribunal queried why the applicant had suggested in his statement that he obtained the passport through his church to come to Australia.
50. Given that the Tribunal does not consider that the applicant is a witness of truth the Tribunal does not accept that the copy of the media article and the medical certificates produced by the applicant in support of his claims are reliable evidence of the facts in them. The Tribunal notes the comments in *WAGU v Minister for Immigration & Multicultural & Indigenous Affairs* [2003] FCA 912 at [36] per French J: "*Corroborative evidence may be rejected as of no weight because it is dependent upon and can be shown to be undermined by findings as to*

*the tendering party's credibility.*" Further in the Tribunal's view, if there were a media article such as the applicant has produced, with his photograph, circulating after a specific period, the applicant would not have been able to remain in India living, and working to the extent that he claims, until he came to Australia in the middle of the following year.

51. In the Tribunal's view there is no plausible evidence before it that there is a real chance that the applicant will suffer harm of threats from those he claims to fear in India or from anyone else in India, either now or in the reasonably foreseeable future because of his religion, his political opinion, his imputed political opinion, his membership of a particular social group or for any other Convention reason, if he returns to his country. Having regard to the above the Tribunal is not satisfied, on the evidence presently before it, that the applicant has a well-founded fear of persecution in India within the meaning of the Convention.

### **CONCLUSIONS**

52. 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**

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

<p>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 <i>Migration Act 1958</i>. PRRRNM</p>
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