

0900173 [2009] RRTA 743 (17 August 2009)

DECISION RECORD

RRT CASE NUMBER:	0900173
DIAC REFERENCE(S):	CLF2008/140666
COUNTRY OF REFERENCE:	India
TRIBUNAL MEMBER:	Linda Kirk
DATE:	17 August 2009
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of India, last arrived in Australia [in] September 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] October 2008. The delegate decided to refuse to grant the visa [in] December 2008 and notified the applicant of the decision and his review rights by letter [on the same date].
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 [in] January 2009 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 1 A(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 S15212003* (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, which includes the protection visa application and the decision record of the delegate dated [in] December 2008. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Background

20. The applicant was born [in] 1974 in [location deleted in accordance with s431(2) of the Migration Act as this information could identify the applicant], Kapurthala, Punjab, India. He married [wife's name deleted: s431(2)] [in] December 1996 and has two children, a son [name deleted: s431(2)] born [date of birth deleted: s431(2)] and a son [name deleted: s431(2)] born [date of birth deleted: s431(2)]. Before coming to Australia he resided at [location deleted: s431(2)], Dist Kapurthala, Punjab, India. He was the owner of a canteen business at the [school deleted: s431(2)] in Kapurthala since 2003. Prior to that he ran a bicycle mechanic shop from 1991 to 2002. He was formerly a Hindu but became a Christian and was baptised at [church deleted: s431(2)], Kapurthala [in] March 2001.
21. The applicant travelled to Australia on a visitor visa issued [in] May 2008 to attend World Youth Day in Sydney on 15 July 2008 and returned to India [in] July 2008. He returned to Australia on the visitor visa [in] September 2008.
22. [In] October 2008 the applicant applied for a protection visa.

Applicant's Claims

23. The applicant's claims were outlined in answer to questions 41-45 contained in his application for a protection visa.
24. The applicant claims that he fears persecution on the basis of his religion. Following his baptism in 2001 he was involved in organising religious processions and rallies during Christmas and Easter. He enjoyed this work and became well-known in his society. He came to the attention of the religious organisations Shiv Sena and Bajrang Dal who began to threaten him as they saw him as an enemy of their Hindu religion.
25. In March 2008 during the Easter festival when he was returning home on his scooter after a Christian religious rally in Kapurthala, he was attacked with iron rods and hockey sticks by activists of Shiv Sena and Bajrang Dal. They set his scooter on fire and tried to push him into it but he managed to escape unharmed.
26. The applicant claims that there have been many acts of violence against Christians in India and that Christians have been killed. The police and high officials do not take complaints seriously as they are Hindus and will not protect Christians. He has filed many complaints but no action has been taken against Hindu fundamentalists. They will do everything to

change him back to Hinduism or harm him. He does not believe that the government can protect him.

27. Included in the department file were the following documents:

- Copy of application Form for Aggregation of a Conference – St Vincent de Paul International Council General;
- Copy of letter dated [in] September 2008 from [official deleted: s431(2)] of the St Vincent de Paul Society, Kapurthala acknowledging applicant's charitable activities;
- Copy of letter dated [in] June 2008 from Parish Priest of [church deleted: s431(2)], Kapurthala acknowledging applicant's membership of the Church;
- Copy of applicant's certificate of baptism [in] March 2001 at [church deleted: s431(2)];
- Copy of applicant's passport.

Delegate's Decision

28. The protection visa application was considered by a departmental delegate. In the decision record [in] December 2008, the delegate did not accept that the applicant had a well-founded fear of persecution for his religious beliefs and activities if he returned to India now or in the reasonably foreseeable future.
29. The delegate accepted that Christians form a significant religious minority and that sectarian and inter-religious violence occurs in India. It was not therefore implausible that the applicant may be a victim of random acts of violence. Whereas there had been reports of attacks on pastors or those converting Hindus to Christianity, the applicant was not in either of these categories.
30. The delegate found that there was no evidence that state protection from religious based violence would not be available to the applicant in Punjab or elsewhere in India. The delegate further found that re-location to another part of India was not unreasonable in the applicant's circumstances and would reduce the chance of harm occurring in the future to a point where the risk would be remote or insubstantial.

Review Application

31. [In] January 2009 the Tribunal received an application for review of the delegate's decision.
32. [In] February 2009 the Tribunal wrote to the applicant advising him it had considered all the available material relating to his application, but was unable to make a favourable decision on that information. It invited him to give oral evidence to the Tribunal at a hearing [in] March 2009. No further material was submitted prior to the hearing date.
33. [In] March 2009 the Tribunal received confirmation the applicant would attend the hearing and did not seek to have the Tribunal take evidence from any other person.
34. The Tribunal sought and received from the Department the applicant's visitor visa application which included the following documents:

- Copy of undated letter from Parish Priest of [church deleted: s431(2)], Kapurthala supporting applicant's attendance at World Youth Day;
- Copy of undated letter from father of applicant ([father deleted: s431(2)]) supporting applicant's attendance at World Youth Day.

First Tribunal Hearing

35. The applicant appeared before the Tribunal [in] March 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi (Indian/Pakistani) and English languages. The applicant confirmed that he did not have any difficulty understanding the interpreter.
36. At the hearing, the applicant confirmed that he has owned and managed a [business deleted: s431(2)] in Kapurthala since 2003. He worked there from 6am to 2pm every day except weekends when he worked half a day only on Saturdays. In order to open the business he borrowed money from a friend which he quickly repaid as the business was very successful. Since he has been in Australia his brother has taken over the management of the canteen.
37. The applicant explained to the Tribunal that he was born into a Hindu family but that he converted to Christianity in 2001. He was a practising Hindu when he was younger but became disillusioned with the religion after he became active collecting money for the temple committee who refused to tell him where the money was going. This led him to argue with the members of the committee and he stopped attending the temple. Priests and sisters visited his village in 2000 and he began to pray with them and eventually converted to Christianity. He was baptised by [priest deleted: s431(2)] as a Catholic at [church deleted: s431(2)] [in] March 2001. The applicant provided the Tribunal with photographs of himself and other members of the church including [priest deleted: s431(2)] and photos of him and others participating in religious processions.
38. The applicant told the Tribunal that he was put in charge of organising the Christmas Day and Easter celebrations and processions and was also responsible for money matters. He worked with 12-14 other church members but he spent more time working than them as he was able to work after he closed the canteen at 2pm during the week and on weekends. The applicant told the Tribunal that he also did welfare work for the St Vincent de Paul Society from 2003. He worked with about 6 or 7 volunteers who collected money which was distributed to poor people in the villages who needed it to pay for medicine, clothes and food. The applicant provided the Tribunal with photographs of himself with one of the sick people he had helped.
39. The applicant told the Tribunal that the [school deleted: s431(2)] belongs to [church deleted: s431(2)]. He was asked by [priest deleted: s431(2)] at [church deleted: s431(2)] to take over the running of the school canteen after the previous owner left the business.
40. When asked whether the applicant attends church now that he is living in Melbourne, he told the Tribunal that he has done so once or twice. He said that he relies on the people he is now living with to take him to church as he cannot catch public transport because he cannot read English. The people he lives with are Hindu and do not encourage his practise of his religion. He does however read his bible and pray when he is alone.

41. The applicant told the Tribunal that when he was working with the St Vincent de Paul Society in 2003 he attracted the attention of members of Bajrang Dal and Shiv Sena who considered him to be an enemy of the Hindu religion because he had converted to Christianity and was spreading what they considered to be false propaganda. On two occasions in 2003 and 2004 respectively they stopped him on his scooter and they threatened to kill him if he did not stop the work he was doing for the poor. On the third occasion in March 2008, they stopped him on his scooter when he was on his way back home from a Good Friday procession at about 6:30pm when he was near the [school deleted: s431(2)]. They beat him with steel rods and hockey sticks and set fire to his scooter and tried to put him on it. He managed to escape and run back to his home. When asked whether he was hospitalised following this attack, he told the Tribunal that it was not necessary as he did not lose any blood or sustain any bruises. He did however need to take some time off work.
42. The applicant told the Tribunal that following the attack he rang [priest deleted: s431(2)] of [church deleted: s431(2)] who advised him to report the attack to the police which he did at 8pm that evening. The police dismissed his complaint because he was not injured in the attack. There had been police protection at the procession. This was the only occasion that he reported the harassment of him by Shiv Sena and Bajrang Dal to the police.
43. The applicant told the Tribunal that it was because of his conversion to Christianity that he specifically was targeted. He advised the Tribunal that one other member of the St Vincent de Paul Society, [name deleted: s431(2)], was threatened by Shiv Sena and Bajrang Dal but he was not attacked.
44. Following the attack, the applicant said that he and his family continued to receive threats from members of Shiv Sena and Bajrang Dal. They came to his home when his family was there and told them that they wanted to kill him. He then told the Tribunal that the first of these visits to his home was the same evening that he was attacked and his scooter set alight. At midnight there was a knock on the door at his family home in [location deleted: s431(2)] and his father answered to find members of the police, Shiv Sena and Bajrang Dal. They threatened his father and said that they wanted to kill the applicant.
45. When questioned as to why he had not mentioned in his protection visa application these threats received by this father on the evening of the attack, the applicant said that a friend had helped him to write the application and that he must not have included all the information that the applicant told him.
46. The applicant told the Tribunal that he went to [location deleted: s431(2)]. the following morning at 5am. His family stayed at home in [location deleted: s431(2)]. He decided to go to [location deleted: s431(2)] because the St Vincent de Paul Society had an office there. He was accommodated in a room provided by the church associated with the Society for 1½ months. His wife and children re-located from [location deleted: s431(2)] to his in-law's house.
47. The applicant went to Calcutta in May 2008 and stayed there for two months. He took a train to Calcutta which took three days. In Calcutta the applicant worked in a grocery shop for a person who was known to his fellow Society member, [name deleted: s431(2)].
48. While he was away, his brother and father continued to receive threats from Shiv Sena and Bajrang Dal and they told the applicant about these when he phoned them. The threats were

to the effect that the applicant was damaging their religion by encouraging others to become Christian.

49. The applicant told the Tribunal that Shiv Sena and Bajrang Dal knew that he had gone to Chandigarh and then Calcutta. He could not understand how they could have learned that he had gone there. However, when he was in these places he felt safe. He did consider moving to Calcutta and settling there. When asked by the Tribunal why he did not re-locate to Calcutta he said that if the St Vincent de Paul Society can operate in more than one place so can Shiv Sena and Bajrang Dal.
50. The applicant said that [priest deleted: s431(2)] called him and said that he would organise a visa for him to travel to Australia for World Youth Day. He asked the applicant to arrange for his passport to be sent to him. The applicant arranged for his brother to send his passport to [priest deleted: s431(2)].
51. When asked by the Tribunal whether he filled out an application form for a visa to come to Australia the applicant said he did not do so. He did however pay 80,000 rupees to [priest deleted: s431(2)] which was for his return ticket to Sydney. The Tribunal again asked the applicant whether he completed an application form for a tourist visa. He said he did not. The Tribunal showed the applicant a signed copy of an application for a tourist visa in the applicant's name dated [in] April 2008. He said that it is his signature on the form but that he does not remember signing it. He cannot write in English so he could not have completed the form. He said he was very confused at the time. He said that his wife had a problem 'in her brain' and she was in hospital for about five days when he was in Calcutta. She was working at the [school deleted: s431(2)] and she had to stop work there and this caused them to lose her wage of 4,000 rupees. He did not return home to see his wife when she was in hospital.
52. The applicant said that he flew from Calcutta to New Zealand where he spent about 8-10 days. When asked why he went to New Zealand the applicant said that it was to 'pass the time' but because of his language problems he left and went to Australia. When he arrived in New Zealand he did not know anyone so he found a taxi driver who spoke Punjabi and he took him to a church. He could not remember the name of the church except that it was a Catholic church. He stayed at the Father's home. When asked by the Tribunal why he went to New Zealand when he didn't know anyone, hadn't organised any accommodation and didn't have any plans for when he was there, the applicant said that it was [priest deleted: s431(2)] and the Society who organised the trip. He had an airline ticket from Calcutta to New Zealand and another from New Zealand to Sydney. When asked whereabouts he was in New Zealand he said he didn't know. He no longer has copies of his itinerary or boarding passes for the trip. He does not know which airline he flew as he cannot read English.
53. He told the Father at the church that he really wanted to leave New Zealand and go to Australia. The Father drove him to the airport and he left for Australia.
54. The applicant told the Tribunal that once he arrived in Sydney he met a group of people in a park from Madras (Chennai) who spoke Hindi and he went out with them. He said that he attended some World Youth Day events. He was in Sydney for 9-10 days. He stayed a few kilometres away from the church in accommodation in Campbelltown with 25-30 people sleeping on the floor. The people he stayed with were from the South of India, Chennai and Kerala.

55. He left Sydney [in] July 2008 but stopped over in Singapore for 3 or 4 days with a group of Indians from Chennai. He then flew from Singapore to Chennai where he stayed with one of the people from the group for 8-10 days.
56. The Tribunal advised the applicant that it would adjourn the hearing and re-schedule it to a date to be advised so that the Tribunal could take further oral evidence from the applicant.

Second Tribunal Hearing

57. The applicant attended a resumed hearing of the Tribunal [in] March 2009. The hearing was conducted with the assistance of an interpreter in the Punjabi (Indian/Pakistani) and English languages. The applicant confirmed that he did not have any difficulty understanding the interpreter.
58. The applicant told the Tribunal that he stayed at a church in Chennai but he couldn't remember its name. When he was there he called his family to find out whether it was safe to return home and was told it was not because they were still receiving threats about him. When asked why he didn't return to Calcutta, the applicant told the Tribunal it was because he was with a group from Chennai. He told the Tribunal that the reason he flew to Chennai was because the ticket that [priest deleted: s431(2)] booked for him was such that he had to fly there. The Tribunal again asked the applicant about whether he still had his itinerary or boarding passes from the flights and he said that he had thrown them away. The Tribunal asked him whether he could get a copy of these from [priest deleted: s431(2)] and he said that he was no longer at the church.
59. The applicant said that he spent one month in Chennai. His passport indicates that he arrived in Chennai [in] July 2008. He told the Tribunal he spent 20-25 days in Chennai. When asked why he told the Tribunal at the first hearing that he spent only 8-10 days in Chennai he denied that he had said this. When asked what he was doing in Chennai he said he stayed at the church but didn't do much.
60. The applicant told the Tribunal that he was in contact with his family and in-laws whilst he was in Chennai. They told him that Bajrang Dal and Shiv Sena had been coming to the house looking for him and his brother told them that he had gone to Australia. He told the Tribunal that there were three to four people who came to the house and that they visited twice between March and the end of July 2008 when he was away from his home. When asked as to their response when they were told by his brother that he had left India, the applicant told the Tribunal that they asked the whereabouts of his family.
61. When asked whether he came into contact with members of Bajrang Dal and Shiv Sena when he was in Chennai, the applicant told the Tribunal that he did not. The Tribunal asked whether the applicant considered moving his family to Chennai. He said that it was not possible for him to do so because Bajrang Dal and Shiv Sena have a big network and they would try to do the same to him there.
62. The applicant told the Tribunal that his family is now living with his in-laws and they call him asking for money. He wants to spend some time here in Australia until the problems at home subside.
63. The applicant told the Tribunal that he went from Chennai to Calcutta to Delhi to Amritsar. He travelled by train and it took four days. He then told the Tribunal that he did not go via

Calcutta, just Delhi. The applicant was told by his father that it was not safe to stay in India and that it would be better for him to return to Australia. A ticket was bought for him by his father and he left India [in] August 2008. His father, his wife and two children came to Amritsar airport to give him the ticket and see him off. The applicant paid for the ticket which cost 60,000 rupees. His friend [name deleted: s431(2)] helped his father to organise the ticket.

64. The applicant said that his wife was able to come to the airport because she was feeling better at this stage but when she experiences stress or tension she becomes unconscious. When asked by the Tribunal the exact nature of his wife's illness the applicant said that he doesn't know what is wrong with her and neither do the doctors even though she has had x-rays and undergone medical treatment. She takes medication but she goes through stages when she is very unwell. Her problems began when the applicant was harassed by Bajrang Dal and Shiv Sena.
65. The applicant flew from Amritsar to Melbourne. When asked by the Tribunal why he came to Melbourne rather than returning to Sydney, the applicant said that it was because [name deleted: s431(2)] gave him the phone number of a taxi driver in Melbourne and told him he would help the applicant when he arrived. [Name deleted: s431(2)] works with the taxi driver's brother in Kapurthala. The applicant told the Tribunal that he has been trying to get in touch with the taxi driver but he is never available.
66. When he spoke to [name deleted: s431(2)] two months ago he told him that the situation in Kapurthala is still bad and there is continued violence. [Name deleted: s431(2)] is no longer involved in the St Vincent de Paul Society. [Name deleted: s431(2)] was never attacked by Bajrang Dal or Shiv Sena even though he ran the Society with the applicant.
67. The applicant confirmed that he arrived in Melbourne [in] September 2008. When he landed at the airport, he bought a phone card and he rang the taxi driver but couldn't get in touch with him. He then met some Indian students who were at the airport and pleaded with them that he had nowhere to go and that if they helped him that he would do all their housework for them. He told the Tribunal that he is still living with these students but that he doesn't get along with them because they treat him badly. They do not pay him for his work but they do provide him with accommodation and board. He has lived with them at a house in [suburb deleted: s431(2)] since he arrived in Melbourne. He is fearful that if they find out what he has said about them at the hearing they will kick him out. They often ask him to leave the house when they have their girlfriends over.
68. The Tribunal asked the applicant who assisted him to complete his protection visa application and he said it was an Indian tourist that he met on the plane. He cannot remember his name. He told the tourist his story and he helped him, including by obtaining the forms required for him to apply for protection. The applicant gave him the required information and the tourist typed up his application. The tourist was only here for three months. They only met a few times but they talked on the phone several times.
69. The applicant told the Tribunal that the students he lives with are Hindus and they don't approve of him practising his religion. He has only been able to go to church once when they took him there. He cannot go to church now because he cannot catch public transport because he can't read English.

70. The Tribunal asked the applicant why he did not apply for a protection visa until mid-October 2008. He said that it took time as he needed the help of the tourist and it had to be witnessed at a police station.
71. The applicant said that he speaks to his family at home every second or third day. He told the Tribunal that he came to Australia with \$7000 but he has spent it all, mostly on phone calls. When he speaks to his family they tell him that they have not received threats recently from Bajrang Dal and Shiv Sena. There have been no threats or harassment for the past three months. This is because the Society has been disbanded and the applicant is in Australia.
72. The applicant does not have any family in other parts of India. His sisters live in the Kapurthala region.
73. The Tribunal asked the applicant whether, if he returned to India, he could start a business in the south or in Calcutta. He said that he is happy to return to India but he is concerned that if he settles with his family somewhere and Bajrang Dal and Shiv Sena find out where he is living they will target him there. He told the Tribunal that wherever he lives he will be involved in charity work for the poor. The Tribunal asked the applicant why Bajrang Dal and Shiv Sena would want to target him if he was living somewhere other than Kapurthala. It pointed out that, according to his own evidence, when he was in Calcutta, Bajrang Dal and Shiv Sena did not harass him. He said that if he moved there permanently with his family, Bajrang Dal and Shiv Sena would target him because they are everywhere. When asked whether there has been violence against Christians in Calcutta or other cities, the applicant said that Bajrang Dal and Shiv Sena are everywhere in India.
74. The Tribunal drew the applicant's attention to independent country research that it had considered that is relevant to his claims. The country information states that the targeting of Christians by Hindus in India is quite prevalent but that such violence does not occur in all regions. Furthermore, this violence tends only to be directed towards high profile members of Christian communities if they re-locate to another part of the country. In response to this country information, the applicant commented that the violence is everywhere.
75. The Tribunal asked the applicant whether there is police protection against violence in the Punjab. He said that the police are there but when Bajrang Dal and Shiv Sena are involved the police do not intervene as these groups are powerful. According to the applicant, this is the case in all parts of the country. He gave the example of the Australians who were killed in the recent siege at the Taj Hotel in Mumbai. When the Tribunal asked how this is relevant as Bajrang Dal and Shiv Sena were not involved in this incident, the applicant agreed it was just an example of the violence which occurs in India.
76. The applicant told the Tribunal that he believes that if he were living in another city, for example Calcutta, that the police would not protect him from violence by Bajrang Dal and Shiv Sena. He has no confidence in the police and claims that they will not do anything to help unless they are given money.
77. The applicant agreed that he could start another business in another city if he chose to do so but that he needs some help for his kids until they grow up and become independent. The Tribunal asked the applicant what he would do if he stayed in Australia. He said he would do any work he could get. He said that if he can survive this period he may be able to go back to India. He wants to help his wife recover and get her medical treatment. If she does not get better he will feel responsible. He would like to have his wife close to him.

78. He told the Tribunal he would be prepared to go back to India later. When asked where he would go he said he would go anywhere. Once his children are grown up he will return. There are good schools here in Australia whereas in India he has nothing and people do not treat him with respect. The Tribunal asked the applicant if he believes that in time the threat he says now exists will disappear. He said that perhaps in a few years time Bajrang Dal and Shiv Sena will have forgotten about him and his activities with the Society. The Tribunal asked why Bajrang Dal and Shiv Sena will not have already forgotten about him now that he has been away from his home for one year. He said that recently they were asking as to his whereabouts. When the Tribunal suggested that if he were to go to Calcutta, would Bajrang Dal and Shiv Sena even know that he had returned to India, the applicant said that they always manage to find out where he is living. The Tribunal suggested to the applicant that Bajrang Dal and Shiv Sena might not bother to target him if he returned to India and lived in another city. He said he believed they would find him.
79. The Tribunal asked the applicant whether he wished to comment on whether he was high profile enough in his church to support his claim that he would be targeted by Bajrang Dal and Shiv Sena if he were to return to India but re-locate to another part of the country. He said that he could not comment further and that you have to be there to understand the danger.
80. The applicant told the Tribunal that if he returns to India he would have to convert back to Hinduism and he doesn't want to do this.

Post-Hearing Correspondence

81. [In] April 2009 the Tribunal wrote to the applicant pursuant to s.424A of the Act incorporating the following:

You are invited to comment on or respond to information that the Tribunal considers would, subject to any comments or response you make, be the reason, or a part of the reason, for affirming the decision that is under review.

Particulars of information

In your protection visa application you stated that you have not ever applied for refugee status in another country. You did not apply for protection in New Zealand where you stayed for a period of 8-10 days en route to Australia in July 2008.

You did not apply for a protection visa in Australia until [date] October 2008 despite arriving in Australia on [date] July 2008 and staying in the country for the World Youth Day festival until [date] July 2008. You left Australia and returned to India via Singapore and stayed in Chennai for approximately one month before travelling to Amritsar to fly back to Australia on [date] August 2008.

Why this information is relevant to the review

Your failure to seek protection in New Zealand and your return to India following your stay in Australia is difficult to reconcile with your claim to have experienced religious persecution and to fear further persecution by the Hindu groups Bajrang Dal and Shiv Sena because of your conversion to Christianity.

Furthermore, your failure to apply for protection at the earliest time possible once you arrived in Australia is difficult to reconcile with your claimed motives for leaving India, and raises serious

doubts in the Tribunal's mind in relation to the veracity of your claim to have a well-founded fear of persecution if returned there, and your credibility more generally. This may be a reason or part of the reason for the Tribunal to decide that you do not have a well founded fear of persecution for a Convention reason and therefore, that you are not entitled to the grant of a protection visa.

Particulars of information

Your claims at the hearing that if you were to relocate to another part of India you would continue to be targeted for your religious views are difficult to reconcile with country information that Christians who experience religious persecution have the option to move to a State where Christians are greater in number or even the majority and can practice their religion free of violence and harassment from Hindu groups.

The 2007 UK Home Office *Operational Guidance Note: India* notes that there exists the option for Christians who encounter difficulties in freely practicing their religion or who experience ill-treatment as a consequence of their religious beliefs to relocate within India.

The US Department of State, *International Religious Freedom Report 2008* indicates that parts of Kerala, Tamil Nadu, Goa, Nagaland, Mizoram and Meghalaya have sizeable Christian communities or even Christian majorities, and Christians in those areas appear to be able to practice their religion without harassment or violence from Hindu groups.

Why this information is relevant to the review

This information is relevant to the review as it may lead the Tribunal to find that it is reasonable for you to relocate to another part of India and, as a consequence, to find that your fear of persecution is not well founded. This may be a reason or part of the reason for the Tribunal to decide that you do not have a well founded fear of persecution for a Convention reason and therefore, that you are not entitled to the grant of a protection visa.

82. [In] May 2009 the Tribunal received a fax from the applicant as follows:

I [the applicant] RRT case no 0900173, here by reply to your letter dated [date] april 2009.

1. "Your failure to seek protection in New Zealand" (I never applied a protection visa in New Zealand at all. so here is no question of failure arise.)

2. The tribunal has advised me that it is reasonable for me to relocate to another part of India-As I have already and repeatedly told to tribunal during my personal interview and I repeat it again sticking to my words that I have full doubts with confidence that I would not rest in peace and would become the spade goat of Bajrang dal. It would be not only me but my kids and wife have to see the same consequences just because being a hindu baptized to Christianity.

I am confident of this consequences since I tried to relocate myself to 3 different places before I decided to come back to Australia and rest in peace. During these relocations I never rest in peace since the Bajrang Dal and their allies kept following me every now and then where ever I went.

This is what I have told the tribunal before in my personal interviews and still I say the same. I am confident that I would not be safe even if I relocate to any part of India since I am also in their hit list of Bajrang dal.

I request the tribunal to go deep into the heart and place yourself in my position and then

make a final decision. I shall honor your decision whole heartedly. India is my country where I am born I would not hesitate to go back to my country If I am safe there, which I have seen and felt the danger of my life, in India.

Thanks

[The applicant]

INDEPENDENT COUNTRY INFORMATION

83. The Tribunal considered information from external sources relevant to the applicant's claims.

Bajrang Dal and Shiv Sena

84. A Human Rights Watch report on attacks against Christians in India published in 1999 describes three major Hindu organisations which are "most responsible for violence against Christians" These organisations are the Rashtriya Swayamsevak Sangh (RSS), the Vishwa Hindu Parishad (VHP), and the Bajrang Dal (BD). Shiv Sena has also been implicated in the activities carried out by these groups, particularly in Maharashtra. A former RSS member is quoted in the report as likening the RSS to the ruling political party, the Bharatiya Janata Party (BJP): "There is no difference between the BJP and RSS. BJP is the body. RSS is the soul, and the Bajrang Dal is the hands for beating".

The RSS was founded in the city of Nagpur in 1925 by Keshav Baliram Hedgewar with the mission of creating a Hindu state. Since its founding, it has propagated a militant form of Hindu nationalism as the sole basis for national identity in India.

...[According to the RSS], Western thought and civilization are perceived as enemies of Hindu culture. Religions such as Islam and Christianity are depicted as alien to India, as they are the religions of foreign invaders-the Mughals and the British.

..The Vishwa Hindu Parishad (VHP) was formed in 1964 to cover the social aspects of RSS activities. The VHP organizes and communicates the RSS message to Hindus living outside India and holds conferences for Hindu religious leaders from all over the country.

..The Bajrang Dal is the militant youth wing of the VHP. It was formed in 1984 during the Babri Masjid conflict, in order to mobilize youth for the Ayodhya campaign...Unlike other organizations affiliated to the RSS, the Bajrang Dal is not directly controlled by the sangh parivar. With its loose organizational structure, it initially operated under different names in different states. Its activists are believed to be involved in many acts of violence carried out by Hindutva organizations, including the recent spate of attacks against the Christian community in India.

... Founded by Bal Thackeray on June 19, 1966, the Shiv Sena is a Hindu party based in Maharashtra. Arising out of a campaign against the growing influence of non-Marathi speakers in Bombay, the Shiv Sena became a major force in Indian politics during the 1980s. The Sena is a close ally of the BJP and is part of the ruling central government coalition. An alliance of the Shiv Sena and the BJP, with the Sena as the dominant partner, has also been in power in the state government of Maharashtra since 1995. Leaders of both parties were implicated in the demolition of the Babri Masjid in Ayodhya and the ensuing violence in Bombay, the state capital. (Human Rights Watch 1999, *India Politics by Other Means: Attacks Against Christians in India*, October, Vol. 11, No. 6 (C), Section III.

85. A Human Rights Without Frontiers International report indicates that the organisations identified above form part of “a family of Hindu organizations all built around the RSS” known as the Sangh Parivar (SP). The RSS is the central controller of this group, which, through its promotion of Indian nationalism and Hindu culture, has employed “extreme and, at times, violent means”. Human Rights Without Frontiers International describes Bajrang Dal as follows:

On the 1 October 1984 in Uttar Pradesh, India, the VHP founded the Bajrang Dal as its youth wing. The Dal has since spread throughout all of India, runs 2,500 akhadas, traditional place for wrestlers of India to practice or to have duels with other wrestlers, and claims to have 1,300,000 members. It has organized in many states major training camps called *shakhas*, where thousands of young men simultaneously train in group activities, receive religious and cultural education and in many cases, self-defensive arms training. The current president is Prakash Sharma.

The BD carries the slogan “service, safety, and culture”. It has several main agenda items, which include preventing the slaughter of cows, and the liberation the Ramjanmabhoomi temple in Ayodhya, the Krishnajanmabhoomi temple in Mathura and the Kashi Vishwanath temple in Kasi, which are currently disputed places of worship. Another main goal of the BD is to protect India’s Hindu identity, from the perceived dangers of Muslim population growth, Christian conversions, and anti-national Hindus.

Although the BD claims to have no association with violent acts against Christians, BD members have repeatedly been linked to crimes against Christians, anti-Muslim protests, and other acts of violence throughout India (Human Rights Without Frontiers International 2009, ‘India – Hindu Extremist Movements’, Human Rights Without Frontiers International website, 31 January, http://hrwf.net/uploads/hindu_extremists.doc - Accessed 24 February 2009).

86. Human Rights Without Frontiers International describes Shiv Sena as follows:

The Shiv Sena (Army of Shiva) is a political party in India that was founded on 19 June, 1966 by Bal Thackeray. Thackeray has since resigned and given the post to his youngest son Uddhav Thackeray, but despite this, he still maintains control of the party while his son handles its day to day affairs. The party emerged from a movement to increase the influence of the Marathi language in the Indian state of Maharashtra, where the party’s primary base resides. The party has moved from its pro-Marathi platform to a broader Hindu nationalist agenda and has aligned itself with the BJP. Several Academics describe the SS as a militant nativist organization.

The SS maintains its Hindutva ideology and is a right-wing political party. It has been accused of instigating many riots in the state, including the Mumbai riots of the late 1960s, the Bhiwandi riots in 1984 and the Mumbai riots of 1992-93

The SS upholds itself as a nationalistic party and claims to not discriminate against any religion, caste and creed. They profess to be willing to go to any extent to eliminate the traitors or enemies of India and supposedly have a suicide squad known as the Balidani Jatha. The squad has been involved in aggressive protests (Human Rights Without Frontiers International 2009, ‘India – Hindu Extremist Movements’, Human Rights Without Frontiers International website, 31 January, http://hrwf.net/uploads/hindu_extremists.doc - Accessed 24 February 2009).

Situation for Christians in India

87. The Indian Penal Code prohibits any violation of tolerance and non-discrimination based on religion or belief; promoting enmity between different groups on grounds of religion (Section 135A); injuring or defiling a place of worship with intent to insult the religion of any class (Section 295); deliberate and malicious acts intending to outrage the religious feeling of any class by insulting its religion (Section 295A); disturbing religious assembly (Section 296); and uttering words with deliberate intent to wound religious feelings (Section 298).

88. On religious freedom in India generally the US State Department *Religious Freedom Report* 2006 states that:

The constitution provides for freedom of religion, and the Government generally respected this right in practice. However, the Government sometimes did not act swiftly enough to counter effectively societal attacks against religious minorities and attempts by some leaders of state and local governments to limit religious freedom. This resulted in part from legal constraints on national government action inherent in the country's federal structure and from shortcomings in its law enforcement and justice systems, although courts regularly upheld the constitutional provision of religious freedom. Despite Government efforts to foster communal harmony, some extremists continued to view ineffective investigation and prosecution of attacks on religious minorities, particularly at the state and local level, as a signal that they could commit such violence with impunity, although numerous cases were in the courts at the end of the reporting period (US Department of State 2006, '[Introduction]' in *International Religious Freedom Report 2006 - India*, 15 September 2006).

89. There are numerous reports of conflict and violence between Hindus and Christians in India in general and to a lesser extent in the Punjab. Several Christian organisations have recorded a large number of incidents of attacks on Christians by Hindus in recent years. One of them, *Compass Direct News* describes 2007 as the most violent year (US Department of State 2008, *International Religious Freedom Report – India*, 19 September, Section III).

90. Of the sources consulted, no specific information relating to violence against Christians in the Kapurthala region of Punjab could be found. However there were reports of violence against Christians in other regions of the Punjab.

91. The Global Council of Indian Christians' published 'list of attacks' against Christians only reported one attack in the state of Punjab in 2008, in contrast to 236 attacks in Orissa ('Global council of Indian Christians (GCIC) list of attacks- 2008' 2009, Persecution Update India website, 1 January, <http://persecution.in/archive/2009/1/1>, Accessed 16 April 2009).

92. Referring to the treatment of Christians by the right-wing Hindu groups in India, Amnesty International noted in 2001 that:

International attention continued to focus on violence against Christian minorities but victims of apparently state-backed violence in several areas included Muslims, dalits and adivasis (tribal people). Concerns about discrimination based on religion, particularly directed at members of the Christian community, were heightened by statements made by members of right-wing Hindu groups which appeared to encourage the use of violence. Attacks on members of Christian communities and church property continued (Amnesty International 2001, *Annual Report 2001 - India*).

93. In 2003 DFAT replied to the question of whether there were states in India, other than Gujarat, where harassment or ill treatment of Muslims or Christians had increased. DFAT states:

While most Muslims and Christians are generally able to live a normal life in India, well respected human rights organisations point to an increase in recent years of harassment, ill treatment, and on some occasions the use of extreme violence against these religious minority groups. The perpetrators are often members or supporters of Hindu extremist groups, and, according to media reports, often are not held to account. The trial and conviction of those responsible for the murder of Australian missionary, Graham Staines and his two sons, has been viewed by respected Indian human rights activists as a significant exception to what they believe is an increasing climate of impunity under which Hindu nationalist extremists act. In the view of these observers, the core political party in the coalition national government, the BJP, depends heavily on the resources of these groups and the votes they are able to mobilise at elections. Harassment and ill treatment of Muslims and Christians has not been restricted to particular states in India.

With the exception of the killings and violence in Gujarat in 2002, instances of violence tend to be localised events, rather than widespread organised campaigns of violence targeting religious minorities. Violent incidents that have occurred in 2003 include the burning of a church in the state of Tamil Nadu in March, an attack on an American missionary in the state of Kerala in January and the killing of Hindus in Kerala in May by a Muslim group. This event was widely viewed as a revenge attack, to pay back killings of Muslims the previous year.

There is a climate of unease, and often hostility in relation to people converting from Hinduism to Christianity and Islam (this does not extend to those converting to Buddhism, which is considered an off-shoot of Hinduism). Low caste Hindus and Dalits (formerly known as Untouchables) are the most likely candidates for religious conversion. Among a range of reasons for conversion, the primary one is considered to be in order to escape the social inequalities of the Hindu caste system. Christian evangelists (both Indian and foreign) are particularly targeted by Hindu extremist groups, as they are the most active in encouraging religious conversions (Department of Foreign Affairs and Trade 2003, *DFAT Report 254 - India RRT Information Request IND16042*, 13 October).

94. The most recent Human Rights Watch *Annual Report* on India states that:

Christians have come under attack as Hindu fundamentalist groups continue their campaign to force them to convert to Hinduism. At the same time, several states governed by the rightwing Bharatiya Janata Party has banned, forced, or coerced conversions in an effort to end the influence of the church and missionaries in rural, underdeveloped areas (Human Rights Watch 2007, *World Report - India*, January 2007).

95. Many of the reports of violence against Christians relate to those committed against Pastors, church leaders and Christian missionaries: see for example the Asian Centre for Human Rights' 2006 *Human Rights Report on India*.
96. However a number of other reports indicate that attacks by Bajrang Dal and other Hindu extremists are often indiscriminate regarding the profile or status of their victims, with many victims identified simply as church members, supporters or worshippers at various events.

State Protection in the Punjab

97. State protection is not always reliable and effective in Punjab and often Christians are subjected to false accusations and beatings when attempting to report violent incidents against them. In 2005 *Compass Direct* reported as follows:

Religious tensions in Punjab state increased last week, as police who had taken several Christians into custody, presumably to protect them from Hindu extremists, instead beat them in jail. At least 40 Christians were praying at a home in Maloud the night of September 25 when a mob, including members of the Hindu extremist group Bajrang Dal, stormed the house. The mob threatened the Christians and beat some of them. The believers called the police, and four of them – Gurdev Singh, Balkaran Singh, Jaswant Singh and Amar Singh, a pastor – were taken into custody, as the mob had grown increasingly violent. At the police station, however, Hukum Chand Sharma, assistant sub-inspector of the Maloud Police station, repeatedly struck the Christians, gravely injuring Gurdev Singh and Amar Singh. He later also beat a 60-year-old pastor, Sukhdev Singh, who was later hospitalized with serious injuries (Lal, Vijayesh 2005, 'INDIA: Police beat Christians in Punjab State, India, *Compass Direct*, 3 October 2005.

98. A news article from 2006 describes the concern expressed by Christian leaders in Punjab regarding the “slow progress” in police investigation into an attack on a church in the Amritsar region of Punjab. The report claims that although the police had arrested seven people in connection with the attack, the investigation had “failed to yield substantial results” as the people arrested had not been presented before the courts (‘Concern over slow probe into attack on church in Punjab’ 2006, All India Christian Council website, 13 September <http://indianchristians.in/news/content/view/709/45/> - Accessed 20 April 2009.
99. The US Department of State reported an incident in May 2006 where Hindu extremists involved in a raid on an Easter event, in which Christian worshippers were threatened and property was vandalised, were arrested following protests by Delhi aicc leaders. When the Pastor had initially attempted to register a complaint with the police, he was advised by the Senior Superintendent of Police that he required direct permission from the District Magistrate to file the request. However, it was reported that the police later permitted the services (US Department of State 2008, *International Religious Freedom Report for 2008 - India*, September, Section II).
100. A 2006 news report from *Worthy News*, a Christian news service website, describes police protection of Christians in Punjab following an attack on a Church during an Easter service by Hindu extremists, including Shiv Sena.

Police in India's northeastern state of Punjab have urged Christians to remain calm and promised protection after a house church in Bhatinda district was attacked by Hindu extremists during an Easter service, news reports said Tuesday, May 9. Sukh Pal Singh, a member of the nationalist Hindu group Vishwa Hindu Parishad (VHP) or 'World Hindu Council' led five militants April 16 who disrupted the service at the House of Prayer, an independent church. The militants also warned the church not to hold further meetings.

“I have asked the Bhatinda police superintendent to look into the matter. Rest assured of the safety of Christians,” senior police official Virender Kumar told *Compass Direct*, a Christian news agency.

Pastor Francis, who uses only one name apparently for fear of repercussions, was quoted as

saying that police had taken statements from church members and would do the same with the accused. "On the basis of these statements the police will arrange a compromise meeting between ourselves and the accused," he reportedly said.

Francis said that "five people carrying sticks stormed the Easter service," attended by 200 Christians, which was taking place on the terrace of his house at 11 am local time on April 16. "Initially, they stood outside my house and warned the Christians who were coming to attend the service not to enter the house. Later they came onto the terrace and started shouting, demanding that we stop the prayer right away," he added.

ABUSING WOMEN

They apparently attempted to vandalize the canvas awning that was pitched on the terrace to provide shade during the service, and started verbally abusing women. The men reportedly shouted anti-Christian slogans, saying Jesus Christ was "an illegitimate child", and accused church members of offering money to Hindus to convert them.

Christians attending the church phoned police and "as soon as the police reached the house, the extremists started running away. However, the police managed to catch three of them," said Francis.

Those three were identified as Yogesh Batish, a leader of the Hindu hard-line group Shiv Sena; Vivek, alias Appu, also from Shiv Sena, and a man known only as Suraj. 35 extremists other militants were about to join the attack, but fled when the police arrived, news reports said.

MEETINGS CONTINUE

Despite warnings from fleeing militants not to conduct a prayer meeting the following Sunday, Francis reportedly continued and has held meetings under police protection.

It comes after previous reported attacks against several other Christian gatherings in the state. Human rights groups and churches have expressed concern over growing pressure on missionaries, church leaders and individual believers amid concern among nationalist groups over the spread of Christianity in the predominantly Hindu nation ('Police In India State Protects Christians After Militants Attack House Church', 2006, *Worthy News*, 10 May, <http://www.worthynews.com/932-police-in-india-state-protects-christians-after-militants-attack-house-church> - Accessed 20 April 2009).

101. Reports indicate that the Punjab state government has made some efforts to protect Christians but they were not effective and the police officers failed to act in a manner expected of them (eg, All India Christian Council 2007, 'Three Pastors sent to jail in Punjab', All India Christian Council website, 12 March <http://indianchristians.in/news/content/view/736/45/> - Accessed 21 January 2009; Lal, Vijayesh 2005, 'INDIA: Police beat Christians in Punjab State, India, Compass Direct, 3 October; All India Christian Council 2006, 'Hindu extremists stop Christian worship gathering in Punjab' All India Christian Council website, 5 May <http://indianchristians.in/news/content/view/912/45/> - Accessed 21 January 2009).
102. Reports indicate that the Punjab state police have not been able to provide effective protection for victims of violence. This is attributed largely to the corruption permeating throughout government agencies and politicisation of the police. Referring to the scope of human rights violation and police corruption in India, the 2009 US Department of State *Country Reports on Human Rights Practices* comments that:

Corruption in the police force was pervasive and acknowledged by many government officials. Officers at all levels acted with considerable impunity and were rarely held accountable for illegal actions. Should authorities find an officer guilty of a crime, transfer to a different post or position was the common response. Human rights activists and NGOs reported that bribery was often necessary to receive police services.

Availability of State Protection in Other States

103. Christian Solidarity Worldwide discusses police inaction over religiously-motivated attacks in various states of India throughout 2007, particularly in states where the BJP holds power.

Police inaction or complicity was a pervasive problem throughout 2007, with perpetrators of religiously-motivated attacks commonly receiving little more than a superficial censure. In numerous cases, particularly in Chhattisgarh, Karnataka and Madhya Pradesh, police refused to register the complaints of Christians or arrested the Christian victims instead of their attackers. In some cases, police were directly implicated in violence against Christians. Ineffectual or discriminatory police responses were most common in states under the governance of the Bharatiya Janata Party (BJP), which espouses a Hindutva agenda (Christian Solidarity Worldwide (CSW) 2008, 'India: Religious Violence and Discrimination against Christians in 2007', Christian Solidarity Worldwide website, March, p. 3 <http://dynamic.csw.org.uk/article.asp?t=report&id=91> – Accessed 24 February 2009.

This was also emphasised by the US Department of State in 2006.

Human rights groups and others suggested that political links between the BJP and hard-line Hindu groups such as the Rashtriya Swayamsevak Sangh (RSS) influenced some state BJP governments' inadequate responses to acts of violence against religious minorities.

... Christian organizations also claimed that BJP officials in some localities did not restrain the illegal activities of radical Hindu groups. The All-India Catholic Union (AICU) expressed concern over growing anti-Christian violence in several states ruled by the BJP. The AICU claimed that the perpetrators were members of fundamentalist groups affiliated with the RSS. For example on April 3, a local newspaper reported that senior BJP leader Dilip Singh Judeo threatened Christian missionaries during a public address, stating that "if Christian missionaries don't stop converting people, we will take up arms." In June allegedly in order to prevent violence, the Jodhpur district administration in Rajasthan rescinded permission for the Pentecostal Church of God to hold a gathering in the city after members of the Vishwa Hindu Parishad and Bajrang Dal protested, claiming that the church was converting Hindu children (US Department of State 2006, *Country Reports on Human Rights Practices for 2005 - India*, March, Section 2(c).

104. The 2009 elections in India saw the Congress-led UPA form government in the States of Kerala, Tamil Nadu, and Mizoram: *The Financial Times* ('India: election results' 2009, *Financial Times*, 18 May – [Link](#)). Official graphics from the Election Commission of India are available at: <http://eci.nic.in/results/> – Accessed 20 May 2009.

Internal Relocation

105. The US Department of State 2008 *Country Reports on Human Rights Practices - India* comments on freedom of movement in India as follows:

The law provides for freedom of movement, and the government generally respected this in practice; however, in certain border areas the government required special permits.

Security forces often searched and questioned occupants at vehicle checkpoints, mostly in troubled areas in the Kashmir Valley or after major terrorist attacks. The government also completed construction (except in areas of difficult terrain) of a 330-mile security fence along the Line of Control in Jammu and Kashmir, causing difficulties as it cut through some villages and agricultural lands. The government asserted that a decline in insurgent crossings during the year was due in part to the fence.

Under the Passports Act of 1967, the government may deny a passport to any applicant who may engage in activities outside of the country "prejudicial to the sovereignty and integrity of the nation." The government prohibited foreign travel by some government critics, especially those advocating Sikh independence, and members of the separatist movement in Jammu and Kashmir.

Unlike in previous years, there were no reports of the government using the issuance of passports or travel documents to restrict travel of separatist leaders in Jammu and Kashmir. However, citizens from Jammu and Kashmir continued to face extended delays, often up to two years, before the Ministry of External Affairs would issue or renew their passports. Government officials demanded bribes for applicants from Jammu and Kashmir who required special clearances. Applicants born in Jammu and Kashmir--even the children of serving military officers born during their parents' deployment in the state--were subjected to additional scrutiny, requests for bribes, and police clearances prior to passport issuance.

There was no law banning forced exile and no reports of its use during the year (US Department of State 2009, 2008 Country Reports on Human Rights Practices - India, February, Section 2 (d)).

106. A 2003 DFAT report comments 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 Report No. 254 -India RRT Information Request IND 16042, 13 October).

107. Commenting on the internal relocation for Sikhs, the 2008 UK Home Office Country of origin information report: India states that:

... an Immigration and Refugee Board (IRB) of Canada Response to Information Request, dated 18 January 2006... continued "Citizens are not required to register their faith in India there were no checks on a newcomer to any part of India arriving from another part of India, even if the person is a Punjabi Sikh. Local police forces have neither the resources nor the language abilities to perform background checks on people arriving from other parts of India. There is no system of registration of citizens, and often people have no identity cards, which in any event can be easily forged ...

108. In connection with an appeal in 2002 by the Secretary of State for the UK Home Department regarding an Indian Catholic Christian who sought protection in the UK, the UK Immigration Appeal Tribunal decided that the option of internal relocation was available to him in India (UK Immigration Appeal Tribunal 2002, *Secretary of State for the Home Department v. WF* (Internal Relocation - Christian) India, UNHCR Refworld website, 15 October <http://www.unher.org/refworld/country,,GBR AIT,,IND,4562d8cf2,46836ac90,0.html> - Accessed 2 March 2009).
109. The Tribunal considered the US Department of State, *International Religious Freedom Report 2008* (Released September 2008), at <http://www.state.gov/g/drl/rls/irf/2008/108500.htm> . The Tribunal notes that the report indicates that there has been violence against Christians in the parts of India where Hindu extremists are active, but that other areas of India such as parts of Kerala, Tamil Nadu, Goa, Nagaland, Mizoram and Meghalaya had sizeable Christian communities or even Christians majorities and Christians in those areas appeared to be able to practice their religion without harassment or violence from Hindu groups.

FINDINGS AND REASONS

Country of Nationality

110. The Tribunal accepts, based upon the applicant's entry into Australia on an apparently valid Indian passport, and in the absence of any information suggesting that he is a citizen of any other country, that he is a citizen of India. For the purposes of the Convention, the Tribunal has assessed the applicant's claims against India as his country of nationality.

Assessment of the Claims and Evidence

111. The Tribunal has considered the applicant's claims as set out in answers to questions 41-45 of his application for a protection visa and the oral evidence given at the hearings.
112. The Tribunal is required to determine whether the applicant has a well-founded fear and if so whether that fear amounts to persecution for a Convention related reason.
113. The applicant claims that he has been the subject of threats made by people who are members of or connected with various militant Hindu groups, particularly Shiv Sena and Bajrang Dal for reason of his conversion to Christianity, his involvement in church activities and his welfare work with the St Vincent de Paul Society. He claims that he was verbally threatened by members of these groups on two occasions in 2003 and 2004, and that in March 2008 he was physically assaulted. He claims that if he returns to India he will be targeted by these Hindu groups and that they have threatened to kill him. He claims that he was previously targeted by these groups and will be again if he returns to India. He claims that he reported the attack on him in March 2008 to the police but his complaint was dismissed. He claims that these groups continued to threaten his family and ask them about his whereabouts. He claims that although he could relocate to a predominantly Christian area of India and start a business, he cannot do so because the Hindu groups will find him and threaten him again
114. To be a refugee within the terms of the Convention, the applicant must fear persecution for reasons of his race, nationality, religious beliefs, political opinion or membership of a particular social group. There is no evidence before the Tribunal that he has ever been involved in politics in India. The Tribunal finds that the harm the applicant fears is not for

reasons of his nationality, his race, his political beliefs or as a member of a particular social group.

Religion

115. The Tribunal finds that the claims made by the applicant are that he fears persecution as a result of his religious beliefs namely as a Christian.
116. The Tribunal accepts that the applicant grew up and lived in Kapurthala in the Punjab in India until he came to Australia in July 2008. The Tribunal accepts that the applicant is a Christian and was baptised into the Catholic Church in 2001. The Tribunal accepts that the applicant regularly attended Church in India and organised various processions for Christian celebrations including Christmas and Easter. The Tribunal also accepts that the applicant was an active member of the St Vincent de Paul Society and was involved in welfare work helping the sick and poor. In reaching this conclusion the Tribunal accepts the applicant's evidence on this issue and the supporting documentation including the letter from the Parish Priest of [church deleted: s431(2)], Kapurthala acknowledging the applicant's membership of the Church, the letter dated [in]September 2008 from the [officer deleted: s431(2)] of the St Vincent de Paul Society, Kapurthala acknowledging the applicant's charitable activities, and the applicant's baptism certificate.
117. With respect to the applicant's participation in World Youth Day and church attendance in Australia, the Tribunal is satisfied that the applicant engaged in this activity other than for the purpose of strengthening his claim to be a refugee.
118. The Tribunal notes that there is independent evidence in the form of country information such as that referred to above, which indicates that there has at times been violent conflict between Christians and militant Hindu groups in the Punjab, including Shiv Sena and Bajrang Dal, and that Christians in this area have been attacked by these groups.
119. The country information sourced by the Tribunal indicates that there has been violence against Christians in certain parts of India where Hindu extremists are active. The Tribunal accepts that they are active in the Punjab where the applicant lived and that therefore it is more than a remote possibility that the applicant has been targeted by Hindu extremists, verbally threatened and physically attacked as claimed.
120. The applicant claims that he was threatened and physically attacked by members of Shiv Sena and Bajrang Dal. The Tribunal accepts the applicant's evidence that he was subjected to threats and physical attack by members of Shiv Sena and Bajrang Dal when he was living and working in Kapurthala.
121. The applicant claimed at the hearing that, following the attack on him in March 2008 when his scooter was set alight, members of Shiv Sena and Bajrang Dal came to his house at midnight with members of the police. They threatened his father and said they wanted to kill the applicant. The Tribunal notes that this claim was not made by the applicant in his protection visa application and was only raised by him at the hearing. In light of the lack of evidence to support this claim, the Tribunal does not accept that members of the police as well as members of Shiv Sena and Bajrang Dal made the threats towards his father.
122. Having considered the evidence before it, the Tribunal is prepared to accept that the applicant's account in relation to the threats and attack against him by the extremist Hindu

groups Bajrang Dal and Shiv Sena is credible and consistent with country information about the situation for Christians in the Punjab. The Tribunal therefore accepts that the applicant has in the past been subject to serious harm by non-state actors for reason of his religion.

123. The Tribunal therefore is satisfied that the applicant faces a real chance of serious harm from extremist Hindu groups in the Punjab now or in the reasonably foreseeable future.
124. At the hearing the applicant claimed that members of Bajrang Dal and Shiv Sena continued to threaten his family after he left his home in Kapurthala and travelled to Chandigarh and then Calcutta before coming to Australia.
125. The Tribunal accepts the applicant's evidence that his family received threats in relation to him from Shiv Sena and Bajrang Dal until such time as he left for Australia.
126. At the hearing the applicant claimed that when he returned to India after World Youth Day he stayed in Chennai during which time he was in contact with his family. They told him that while he was in Australia in July 2008 members of Shiv Sena and Bajrang Dal came to his family's house looking for him and were told by his brother that the applicant had gone to Australia. The Tribunal accepts the applicant's evidence on this issue.
127. The Tribunal accepts that the applicant reported the attack on him in March 2008 to the police but that no action was taken.
128. Country information supports the applicant's evidence of the failure of the authorities to intervene to assist or protect victims of religious violence. It is evident from the country information cited above that Christian victims of sectarian violence do not necessarily receive any assistance or protection from the police or authorities. There are examples in the information before the Tribunal of attacks on Christians resulting in no action being taken by the police, who often refused to even file complaints by Christians against Hindus.
129. The Tribunal is prepared to accept, in light of all the evidence available to it, that if the applicant were to return to the Punjab and encounter further persecution, state protection would not be available to him there in accordance with international standards.

Internal Relocation

130. The remaining issue in the present case is whether it is reasonably open to the applicant to relocate to another part of India where he would not face a real chance of persecution for the Convention reason of his religion.
131. In *Randhawa v MILGEA* (1994) 52 FCR 437, Black CJ observed that the focus of the Convention is not upon the protection that the country of nationality might be able to provide in particular regions, but upon a more general notion of protection by the whole of the country. Black CJ considered that the reason for this was that (at 441):

If it were otherwise, the anomalous situation would exist that the international community would be under an obligation to provide protection outside the borders of the country of nationality even though real protection could be found within those borders.

132. In *Randhawa*, Black CJ held that given the humanitarian aims of the Convention, the question to be asked is not merely whether an applicant could relocate to another area, but whether he or she could “reasonably be expected to do so”. His Honour stated (at 442):
- ... a person’s fear of persecution in relation to that country [of nationality] will remain well-founded with respect to the country as a whole if, as a practical matter, the part of the country in which protection *is* available is not reasonably accessible to that person.
133. Justice Beaumont agreed that relocation must be a reasonable option, stating (at 451):
- ... that is to say, if relocation is, in the particular circumstances, an unreasonable option, it should not be taken into account as an answer to a claim of persecution.
- If it is not reasonable for a person who has a well founded fear in part of a country to relocate to another part, then the person’s fear of persecution in relation to the country as a whole is well founded (*Randhawa*, per Black CJ at 443). Conversely, if it is reasonable for the applicant to relocate to another part of the country then that applicant's fear is not well-founded.
134. What is reasonable will depend on the circumstances in the individual case. It may often be necessary to have regard to a broad range of issues in determining whether an applicant has genuine access to meaningful protection in their country of origin.
135. The law in India provides for freedom of movement and the government generally respects this practice (see US Department of State 2008 *Country Reports on Human Rights Practices - India*).
136. The Tribunal has considered whether the feared persecution is localised and if so whether it would be reasonable to expect the applicant to seek refuge in another part of India.
137. The Tribunal has taken into account independent country information such as that extracted above which indicates that Christians have experienced persecution in some parts of India. The Tribunal however does not accept that the persecution of Christians is endemic throughout the country. The Tribunal finds that the applicant could safely live in India by relocating to an area outside the Punjab for the reasons outlined below.
138. The Tribunal has carefully considered the situation for the applicant as a Christian in India both now and in the reasonably foreseeable future. The Tribunal finds that there is evidence that the applicant could safely practice as a Christian in India by relocating to a predominantly Christian area.
139. Country information supports a finding that in other areas of India, Christians can safely live and practice their religion without difficulty. The US Department of State, *International Religious Freedom Report* 2008 cited above indicated that in areas of India such as parts of Kerala, Tamil Nadu, Goa, Nagaland, Mizoram and Meghalaya, there are sizeable Christian communities or even Christians majorities and Christians in those areas appeared to be able to practice their religion without harassment or violence from extremist Hindu groups.
140. According to the applicant’s own evidence, when he relocated to Chandigarh and then Calcutta in mid-2008 he was able to find work and did not fear for his safety. Similarly, upon his return to India following World Youth Day the applicant spent time in Chennai where he was not threatened by Bajrang Dal or Shiv Sena. On this basis, the Tribunal does

not accept that members of these groups would pursue the applicant outside of the Punjab in the future. The Tribunal finds that the serious harm to which the applicant was subjected is localised to the Kapurthala region.

141. The Tribunal finds that the applicant would be able to safely relocate to an area of India such as parts of Kerala, Tamil Nadu, Goa, Nagaland, Mizoram and Meghalaya where there are sizeable Christian communities or even Christians majorities or to Chandigarh, Calcutta or Chennai where he spent periods of time in early 2008 and was not subjected to serious harm by Hindu extremists.
142. The Tribunal has considered the applicant's individual circumstances and whether it is reasonable for him to relocate within India. The Tribunal finds that the applicant is 34 years old and has proven to be a successful businessman. The applicant speaks Hindi and Punjabi. The Tribunal finds that any possible language difficulties would not be an insurmountable barrier to the applicant's ability to set up a business in another part of India.
143. In his evidence at the hearing the applicant acknowledged that he would be able to start another business in another city if he chose to do so. The applicant has run a successful canteen business in the Punjab for several years. He could therefore be economically viable in another area of India.
144. The Tribunal has taken into account the fact that the applicant is married with young children. The applicant's wife is not working and she and his children have already relocated to live with their in-laws. The Tribunal therefore finds that it is not unreasonable for the applicant to move his family to another part of India.
145. The Tribunal therefore finds that it would be reasonable for the applicant to relocate to one of the several regions in India which have large Christian populations.
146. The applicant claims that it is not reasonable for him to relocate outside the Punjab because he would be persecuted by Hindu extremists wherever he went in India. He claims that when he went to Chandigarh and Calcutta, Shiv Sena and Bajrang Dal knew he was there. He says that these groups operate in more than one place and that he would not be safe anywhere.
147. The Tribunal does not accept that the people who attacked the applicant in Kapurthala would pursue him to other areas of India if he were to relocate. The applicant is not a pastor or other high profile member of the Christian church who would attract attention wherever they go in India. The Tribunal finds it unlikely that members of Bajrang Dal and Shiv Sena would pursue the applicant to a part of India where Christians live in large numbers and are able to practice their religion peacefully.
148. This conclusion is further supported by the applicant's evidence at the hearing, that his family told him in March 2009 that they have not received threats from Bajrang Dal and Shiv Sena for the past three months.
149. The applicant claims that if he were to relocate to another part of India that the police would not protect him from violence by Bajrang Dal and Shiv Sena. He claims that the police will not intervene unless they are given money. The applicant's claims are supported by country information referred to above which confirms that police corruption is rife in India and that bribery is often necessary to receive police services.

150. Country information indicates that police inaction over religiously motivated attacks is most prevalent in States where the BJP holds power. The Tribunal does not accept that the applicant could not seek and receive police protection if he were to re-locate to another part of India where the BJP are not in power
151. As the Tribunal has found that the applicant would be reasonably able to relocate to another area of India, the Tribunal is not satisfied, on the evidence before it, that the applicant has a well-founded fear of persecution in relation to India as a whole for the Convention reason of his religion, or for any other Convention reason.

CONCLUSIONS

152. 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

153. 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>.</p>
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<p>Sealing Officer's I.D. prrt44</p>
