

**1102827 [2011] RRTA 480 (6 June 2011)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1102827
<b>DIAC REFERENCE(S):</b>	CLF2010/161259
<b>COUNTRY OF REFERENCE:</b>	India
<b>TRIBUNAL MEMBER:</b>	Denise Connolly
<b>DATE:</b>	6 June 2011
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The first, second and third named applicants, who claim to be citizens of India arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicants] February 2008. The fourth named applicant was born in Australia on [date deleted: s.431(2)]. The applicants applied to the Department of Immigration and Citizenship for the visas [in] November 2010. The delegate decided to refuse to grant the visas [in] March 2011 and notified the applicants of the decisions.
3. The delegate refused the visas on the basis that the first named applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] March 2011 for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decisions are RRT-reviewable decisions under s.411(1)(c) of the Act. The Tribunal finds that the applicants have 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. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
9. 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’

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

17. 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.
18. 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
19. 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**

20. The Tribunal has before it the Department's file and the Tribunal's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
21. According to the Protection visa application the first named applicant is a male born on [date deleted: s.431(2)] in Amritsar, India. He is a Sikh. He arrived in Australia [in] February 2008 on a Student visa. He undertook 12 years' formal education. He provided his addresses in India, in the 10 years prior to coming to Australia, in Amritsar and West Bengal. He indicated he worked as a salesperson before he came to Australia. He is currently unemployed.
22. According to the Protection visa application, the second named applicant is a female born on [date deleted: s.431(2)] in Delhi India. She is a Sikh. She has undertaken 18 years' formal education. She was a sales and marketing manager before coming to Australia. She is currently employed at [employer deleted: s.431(2)].
23. The third and fourth named applicants are the children of the first and second named applicants. The third named applicant was born on [date deleted: s.431(2)] [in] India. Her Indian passport was issued in Jalandhar [in] May 2006. The fourth named applicant was born in Australia on [date deleted: s.431(2)].
24. The first named applicant stated on the application form that he left India for the following reasons:

We left India so that my wife could study [course] in Australia. My wife always wanted further study and we felt insecure in India.

I had an argument with [Mr A] in 2006 because of this argument he physically assaulted me and threatened to kill me. Our lives change because of this. I had to leave my employment and hide from him. I had reported him to the police and they gave me two weeks protection but I continued to feel threatened. So I fled to East India in Bengal with my family. We are educated people and wanted a good career for ourselves and also a good future for our children, so we decided to leave India and study in Australia.

25. The first named applicant stated on the application form that he believes the following might happen if he returns to India:

Since 2006 when I had fight with [Mr A] I had tried to distance myself from him. But he continues to hunt for me to kill me and my family. We moved to West Bengal and he sent people after us and even now he is waiting for us to return to India. I feel that my family including me would be physically assaulted.

I provide for my whole family. I have two little kids. If something would happen to me and am worried who will take care of my wife and children.

26. The first name applicant stated on the application form that he fears [Mr A] and members of the Shiromani Akali dal Amritsar Party.

27. The first named applicant believes if he went back to India, the following would happen:

I joined the Shiromani Akali dal Amritsar Social Party in Aug 2005. I participated in all of their activities, including fundraising. I got to know [Mr A] and other party members in this time. Initially I was interested in their movements so I introduced about 15-16 of my friends to this movement. But later I found out things which troubled me. About a year later in the March annual general meeting, I confronted [Mr A] about misusing funds of the club. He got angry with me and started abusing me. I got angry too and we had a fight. The club members then settled our fight. But [Mr A] threatened me to see me outside the club. I reported this to the police. While Police was investigating I went to visit my parents in [Country 1]. A month later when I came back my home was damaged and neighbours told me that people are looking for me. Next day some people came to my home and hit me. Again I inform to police and given Police security for two weeks. But I still kept getting messages from friends that [Mr A] would kill me. I was so scared that I fled to another state in India which is West Bengal. But after some time I found out that they were looking for me there. I know if they find me they will kidnap me then torture me until I die.

28. The first named applicant believes that the authorities will not protect him if he returns to India for the following reasons:

I have already informed this to Police. But they were not able to get enough evidence to lodge FIR. My friends and neighbours were so scared from [Mr A], that they don't want to give any evidence to Police against him. They saw what he did to me and because they had families too they were scared to get involved. Most of them started to ignore me. I also report to this to West Bengal Police but they were waiting for reports from Amritsar Police. They referred the matter back to Amritsar Police because [Mr A] was living there.

I feel that the Police will not be able to give me protection for long period. I know that [Mr A] will have me kidnapped when I least expected. There are not any people to say anything against [Mr A] so the police will not be able to lodge FIR.

29. A written statement was attached to the application signed by the first named applicant [in] November 2010. In summary, it states as follows:

- the first, second and third named these applicants came to Australia in February 2008 so that the second named applicant could study for a [degree deleted: s.431(2)]. The first named applicant came as her dependent. The second named applicant did not complete her studies because she gave birth to the fourth named applicant in Australia and she could not extend her student visa as it has a 'no further stay' condition.
- The applicants made arrangements to go back to India to reapply for a student visa, but then received information from the first named applicant's father that he would be in danger if he returned to India.
- The applicant's problems started in India in August 2005 after the first, second and third named applicants returned to India from [Country 1]. At that time he decided to join the social party in Punjab, Shiromani Akali Dal Amritsar because he is a Sikh and wanted to support the party. They are demanding a separate nation for Sikhs in the name of Khalistan. In September 2005 he visited the party's office located in [address deleted: s.431(2)] and met [Mr A] and other party members. He was encouraged to join and attend regular meetings. He was encouraged to bring his friends to show the media and government that they have strong support. He started to regularly participate in party events.
- After spending time in the organisation he noted that most people were working for themselves and handling donations and funds fraudulently. He realised this when he was given a job working with the fund collectors, making receipts and picking up donations. He had the job of looking after the donation collection boxes and he had an exact idea of how much money should be inside the boxes.
- [Mr A] forced the first named applicant to meet with businessmen and asked for support. He did not like to go but he was told he had to and not to question what they were doing or he would be sacked from the organisation. He felt very frustrated and used.
- In March 2006, the [party office] announced that they were going to organise their annual meeting, which was to be held in the [venue deleted: s.431(2)] [in] March 2006. At the meeting, the first named applicant noted that [Mr A] was pressuring the secretary to build more Sikh temples in India and abroad to get more donations. The first named applicant knew that those monies would be misused. He objected and said, as it is they were getting too many funds from national and international Sikh temples. He questioned why they did not help poor Sikh farmers because the Punjab government is doing nothing for them. Also the fund should be used to promote Sikhism worldwide rather than constructing new buildings.
- [Mr A] did not like the first named applicant's views and started to shout at him saying the first named applicant had no right to say anything about Sikhism as he had already cut his hair, was clean shaven and he did not wear a turban. He accused him of not being a true Sikh. The first named applicant was insulted and embarrassed. He told [Mr A] that cutting his hair did not mean he does not believe in his religion. He accused [Mr A] of using the money for his own personal use and not having an interest in the Khalistan movement or Sikh people.

- [Mr A] then got angry and started manhandling the first name applicant. He swore at him. The first named applicant slapped [Mr A]'s face. Supporters also attacked the first name applicant. Other party members intervened and stopped the attack. [Mr A] threatened the first named applicant. He was subsequently told that he should move away.
- [In] April 2006 the first named applicant went to his local police station to report the incident. The Senior Superintendent noted his complaint and said it would be investigated. He asked the police to lodge an FIR (First Incident Report) against [Mr A] but they said they needed more evidence or a witness. He approached his friends for support but they said they did not want to get involved. They indicated [Mr A] was too powerful.
- The first name applicant called his parents in [Country 1] who arranged for the first name applicant to visit. He and his family went there in June 2006. When he returned to India, he was informed by a friend that his property had been attacked in July 2006. He was told that people were searching for him. The landlord indicated he was receiving phone calls enquiring about the first named applicant's whereabouts and indicated he had reported the damage to the police. The landlord asked him to find another residence. He called his friend in the party and was told that [Mr A] still holds a personal grudge and some party members are also unhappy because he reported them to the police. He was told there was a plan to kill him as members of the party were concerned that he would expose their hidden matters to the police or the media.
- In September 2006 he received a phone call on his mobile from [Mr A], who was still angry about the first named applicant approaching the police and slapping him openly in front of people. He was told he is no longer a member of the party and to wait for [Mr A]'s next decision.
- The next day, people came to his home and started to beat him and said he had to take back his police complaints or they would kill him. The first named applicant told the police and they warned him not to contact anyone and to be careful. He decided to stay at his uncle's home, with his wife and daughter. He received calls from his neighbour that seven or eight people had come to his home with swords and knives. The neighbour said they were searching for him. The next day he told the police and demanded protection. Two constables gave him security for two weeks. His family advised him to leave India. He applied to migrate to [Country 1]. He applied to travel to Canada but it was refused. They decided to leave the city and move to another state to stay with relatives. In November 2006 they moved to Durgapur West Bengal. In December 2006 his application to migrate to [Country 1] was refused.
- In March 2007 he wrote to the Party's President Simranjit Singh Maan seeking his intervention in the matter. He told him that [Mr A] is misusing funds and donations for his own purposes. He included his mobile phone number in the letter but not his address.
- In April 2007 he received a call from [Mr A], who indicated he knew where the first named applicant lived and he could find him and that would be the last day of his life. The first named applicant applied for visas to New Zealand but they were refused in April 2007.

- In May 2007 he visited a local Sikh temple [in] West Bengal. He noticed two people who were members of the Shiromani Akali dal Amritsar Party. He quickly left. He told his brother-in-law, who advised him that he should inform the police. He went to the police and demanded his security but the police said they needed more information. They noted his report and said they would proceed by asking the Punjab Police about his case history.
  - In June 2007 his wife applied for an Australian student visa and was successful. They sold everything because they decided they would not return to India. They are scared of returning to India because they know they are still being looked for.
30. There is an affidavit on the Department's file attested by the first named applicant dated [in] May 2007 indicating in summary: he lodged a complaint with the Amritsar Police against [Mr A] [in] April 2006. He left his residence in the Punjab in November 2006 and went to West Bengal because he feared for his life. The day before he prepared the attested the affidavit he saw two workers of [Mr A] in the Sikh temple. He fears they are searching for him to harm him. He seeks police security.
31. [In] February 2011 the first named applicant was interviewed by a Departmental officer. The Tribunal sought to obtain a copy of the recording. However the Department advised that due to technical problems, the interview was not recorded, except for the first minute which consisted of the delegate's introduction only. The delegate relied on her case notes which were made available to the Tribunal and record that first name applicant indicated in summary the following:
- he fears being killed by people in the Akali Dal party. He claims he is being threatened by [Mr A].
  - The matter started with a personal grudge. The applicant threatened to go to the media. If the applicant was to go to another political party he would be a big danger for the person he fears. However he has no intention of doing so.
  - The applicant indicated that the party members know where he is as his second cousin is part of the party.
  - He believes he would be harmed because of an argument he had, and that he went to the police and head office. Also they concerned he will go to the media.
  - He claims he has been approached by another party (Bittu is the President) to join as they know about the fight and he knows where to get funds and donations. However he does not want to join another political party.
  - He claims he was protected by two constables who did not have guns but had sticks.
  - He claims he did not apply for protection when he first arrived in Australia because he wanted to go through the student visa process but her extension request was refused. His wife is eligible as she has 125 points.
  - He claims he cannot relocate in India because there are only two places to go. His mother's side of the family are in [Country 1]. No one wants to get involved and support him due to the issues with [Mr A]. His uncle holds a grudge against him because he could not arrange a job for his uncle's son. He does not have the finances to start a new life.



- He claims his parents returned to India from [Country 1] in support and to check out the situation. His application for [Country 1] residence was refused because he applied immediately after returning from [Country 1].
  - The delegate asked him if he feared returning to India from [Country 1]. He said at the time it was just a normal fight but when he went back he saw his property had been damaged. If he'd known that he would have applied for protection in [Country 1].
32. [In] February 2011 the first named applicant provided the Departmental officer with copies of the following documents:
- a handwritten police report dated [in] April 2006 in Punjabi and translated indicating the first named applicant made allegations against [Mr A]; and
  - a statement of the first named applicant dated [in] April 2006 in Punjabi and translated, stamped by the Superintendent of Police Amritsar, indicating he is applying for an FIR against [Mr A].
33. [In] March 2011 the delegate decided not to grant Protection visas to the visa applicants as she was not satisfied that the essential and significant reason for the first named applicant's perceived harm is his political opinion. She found that the essential and significant reason for his fear stems from his personal disagreement with one of the leaders of the party he belonged to while living in India. She found that there was no Convention ground that could be found to be the essential and significant reason for the harm feared. She found that there was no real chance of the first name applicant suffering persecution for a Convention reason in the reasonably foreseeable future. Therefore she found that the applicant's fear of persecution was not well founded. As the first named applicant's protection visa had been refused. She also refused to grant protection visas to the members of the family unit, the second, third and fourth named applicants.
34. [On a further date in] March 2011 the applicants lodged an application for the review with the Tribunal. The first named applicant provided a statutory declaration attested [in] March 2011 indicating in summary, as follows
- he came to Australia with his wife and daughter [in] February 2008 as a dependent on his wife's Subclass 573 Student visa. Before coming to Australia he and his family were trying to leave India because he was afraid of members of the Shiromani Akali Dal Amritsar (SAD). In about September 2006 SAD was worried that he was building support and that he might form his own party. The party became scared that some members were supporting him because they were beginning to realise that the party was not helping them.
  - The first named applicant's son was born on [date deleted: s.431(2)] in Australia.
  - The first named applicant continues to have contact with his parents, sister and brother-in-law and some friends who are still in SAD and tell him that he still has a bad name in the party. The party knows that he will continue to question them. He is afraid to return. His life and his family are in danger if they go back to India.

## Hearing [in] May 2011

35. The first and second named applicants appeared before the Tribunal [in] May 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages. The following is a summary of the oral evidence provided at the hearing. As most of the oral evidence was provided by the first named applicant he is referred to below as the applicant.
36. The Tribunal asked the applicant if he completed his own Protection visa application form. He indicated that he completed it with the assistance of his wife. He filled out most of the form himself. If he had a problem using English he got help from his wife. He said that everything in the application form is true and the form was signed by him.
37. The Tribunal asked the applicant if he prepared his own written statement provided with his protection visa application form. He said he prepared it and typed it himself. He said everything in the statement is true and it was signed by him.
38. The Tribunal asked the applicant if he prepared his own statutory declaration provided to the Tribunal. He said that he prepared it himself and signed it, and everything in the statutory declaration is true.
39. The Tribunal asked the applicant if he had told the truth during his interview with the Departmental delegate [in] February 2011. The applicant indicated that everything he said in the interview is true.
40. The Tribunal asked the applicant about his background circumstances. The applicant indicated that he has lived at the same address with his wife and children in [suburb deleted: s.431(2)] for about two years. He and his wife paid the rent as they were working. They have no other citizenship or right to live in any other country apart from India. They lived in West Bengal before coming to Australia and he lived in Amritsar from birth until October 2006. The applicant said that he completed Year 12 in [year deleted: s.431(2)]. He confirmed that he has received 12 years' formal education. He indicated he was comfortable speaking English.
41. The Tribunal asked the applicant about his employment before he came to Australia. He said he worked as a Salesperson in a [shop] for three years. The Tribunal asked what other employment he had in India. He said after he worked as a Salesperson he joined the Party and he was not in paid employment. The Tribunal was surprised by this because he had indicated he completed school in [year deleted: s.431(2)] and he did not come to Australia until 2008. It asked again if he had had any other employment in India, and asked if he had indicated in his wife's Student visa application that he was working in India at the time of the application. He said that the Student visa application will say that he worked for an export company. His father owns the export company. He said that he did not tell the truth at the time of the student visa application.
42. The Tribunal asked the applicant if his family has any property in India. He said his father has a property in Amritsar at [address deleted: s.431(2)]. He said his father's export company is based at the property.
43. The Tribunal asked the applicant who he had lived with prior to coming to Australia. He said he lived with his wife and daughter, born on [date deleted: s.431(2)]. He said

that from his daughter's birth until he came to Australia, he lived only with his wife and daughter. They did not live with anyone else.

44. The Tribunal asked the applicant about his religion. The applicant said that he is a Sikh. The Tribunal noticed that the applicant had used the Koran when he took his oath to tell the truth to the Tribunal. It asked why he used the Koran to take his oath. He said he believes in both religions. He said his grandparents are Muslim and his mother is a Muslim. He said that the information he is giving to the Tribunal is about five or six years old now, so if he says something wrong he does not want to blame himself. His mother is a Muslim and he believes in both religions. He said that except for people in his family, no one else knows that his mother is a Muslim. He said they tell everyone that they are Sikhs.
45. The Tribunal asked the applicant if he is a committed Sikh. He indicated that he is committed to Sikhism. It asked him about the five signs of Sikhism. The applicant then named the five signs and indicated that the Kara is the bangle that Sikhs wear and he wears one. The Tribunal asked the applicant if he has adopted any of the other articles. He said that he only wears the bangle. He decided to cut his hair at 15 years. He indicated he does not adopt the others because it is his wish not to adopt them.
46. The Tribunal asked the applicant about his commitment to Sikhism. The applicant said that in his childhood there was an attack on his house in 1984. This put fear in his heart. He grew up and then understood the problems for Sikhs. After understanding all of the circumstances for Sikhs, he became more attracted to the organisation which he joined, Akali Dal, as he believed it was doing a good job. He believed it was good to join and do something for his Sikh religion. He believed the Party was not corrupt and it was doing things honestly. He wanted to make his country a better place like other countries.
47. The Tribunal asked the applicant about the circumstances of his wife's upbringing and her residence in India. It also asked about her family, her educational background, and her employment history. The applicant said that his wife was born in New Delhi. He said she grew up in different parts of India as her father was in the Indian Army and they moved around every two years. He said that they did not spend a lot of time in any particular State. He understands that she lived in Assam, Punjab and Rajasthan. He met her in Amritsar and it was an arranged marriage. She was living in Amritsar at the time he met her, completing a [degree]. She subsequently completed a [Masters]. She is very well educated. He said that she spent one year of her Post Graduate Course in Uttar Pradesh at [university deleted: s431(2)]. He said her father is a retired [officer deleted: s.431(2)] in the Indian Army. He currently lives in Jalandhar. He is [age deleted: s.431(2)] and receives a pension. Her mother has never worked. She has one brother studying a Bachelor degree in Jalandhar. Her sister is married with one child and living in Jalandhar but her husband is in the Army, and so she moves around.
48. The applicant indicated he has one brother, [age deleted: s.431(2)], who lives in [Country 1] and works as a taxi driver. He has been in [Country 1] for about 20 years. He has two sisters, one [age deleted: s.431(2)] living in [Country 1], and his younger sister is [age deleted: s.431(2)] and lives in West Bengal.
49. The Tribunal asked the applicant about his wife's employment before she came to Australia. He said that she was working as a Manager in the export company owned by

his father. He said she only worked there for one or two months in 2005. The Tribunal asked what else she had done in India, and the applicant said she had no other work since 2005. The Tribunal indicated its surprise that she had only worked for one or two months since 2005 and her protection visa application indicates she was a sales and marketing manager before she came to Australia. It asked if she had indicated on the Student visa application that she was working. The applicant indicated that she would have said that she was working but most of the information on the Student visa application is not true. The Tribunal asked the applicant how they were able to demonstrate that they had sufficient funds to come to Australia and pay for her tuition fees. The applicant indicated that they sold everything in the household and all of his wife's jewellery to get the money to come to Australia.

50. The Tribunal asked the applicant if his wife has been working in Australia since their arrival. He said that she has worked as a Marketing Executive and Account Executive for [employer deleted: s.431(2)]. She has also worked as a Sale's Executive for [employer deleted: s.431(2)]. The applicant said his wife is currently not working because they lost their work rights when they were granted a Bridging visa.
51. The Tribunal asked the applicant about his parents' circumstances. The applicant said his parents live in Amritsar. The Tribunal asked for their address. He said he does not know their address. The Tribunal was surprised by this and asked where they had last lived in Amritsar. The applicant said they lived in [address deleted: s.431(2)]. The Tribunal asked about his father's export company. He said his father has had the company since 1985. He was also involved in other businesses, such as [details deleted: s.431(2)]. He said he is not running those businesses now. The Tribunal asked the applicant about his parents' age, and he said his father is [age deleted: s.431(2)] and his mother is [age deleted: s.431(2)], they are both retired. He then said they do not own any property in India.
52. The Tribunal asked the applicant about his arrival and purpose for coming to Australia. He said he and his wife and daughter came here in February 2008. They came to Australia so that his wife could study. She had enrolled in a [Master's degree] at [university deleted: s.431(2)]. They were planning to get permanent residence after she finished her course. The Tribunal asked the applicant about the tuition fees and other costs for coming to Australia. He indicated that her tuition fees were \$36,000 and she had to pay for the first semester which was about \$6,000. He said their airfares were \$2,000.
53. The Tribunal asked if he was required to demonstrate that they had sufficient funds to cover their living expenses in Australia. He said that they needed to show that they had about \$60,000. The Tribunal asked how he and his wife were able to demonstrate this. He said they relied on information from the export company and from a loan from somebody. The Tribunal asked about the source of the loan. He said it was an agent based in Amritsar. He made out a cheque for \$60,000 in advance and gave it to the agent. The Tribunal asked how he acquired this money. He said they sold everything in their household, the jewellery and their car.
54. The Tribunal asked about the applicant's employment in Australia since his arrival. He said he worked for a [company] as a Machine Operator. He started working in April 2008 and worked until 2010. He then worked in a travel company for about a week and with an employment agency for a short period of time. The Tribunal noted that his

son's birth certificate indicated he worked as a Forklift Driver. He said he worked as a Forklift Driver in the [company].

55. The Tribunal asked the applicant why he does not want to go back to India. The applicant indicated it was because of the Party. He said he fears the Party and its workers. He has been threatened by them because they have a fear that he might go to the media and tell the media about the Party's hidden matters. The Tribunal asked him to expand on this. He said they do not want to see him because they think he is the person who can spoil things for the Party. The Tribunal asked the applicant who it was he feared in India. He said he fears the Party's District President and other Party members. He said there are other senior members in Amritsar who he fears.
56. The Tribunal asked what he fears will happen if he returns to India. He said he thinks that they can harass and compel him to do things because they have a rival Party there, led by a person named Bittu. He said if he goes back they can beat him, harass him, kidnap his children, and lodge cases against him. The Tribunal asked why they would do this. He said they would do this if he does not go their way and do what they say. He said these things have happened to him in the past and that is why he moved from one place to another in India.
57. The Tribunal then asked the applicant to provide details about what has happened in the past. The applicant said after joining the Party in September 2005, he tried to present new ideas to the Party. He wanted to help farmers, not just construct new temples. The Party would not agree with him. They said their system works and will continue. They told him that they were not going to bring anything new to the Party, and people running the administration were doing their best. He said they were against him because of his new ideas. He said other workers in the Party supported him and they did not want things to stay the same in the Party. He said when he tried to speak about his new ideas in the Party, they tried to bring him down. There was an argument between him and [Mr A] and there was a physical affray. He said the argument increased to the level where he was required to seek medical help.
58. The Tribunal asked for the details of the person who he argued with and the argument. He said it was [Mr A]. The main Chief of the Party is Simrangit Singh Mann. He said [Mr A] said he should not bring these ideas into the Party.
59. The Tribunal then asked the applicant what else had happened to lead to his fear. He said he lodged a complaint against them with the police. He said the Party thought that he was going against the Party. A person from a rival Party, Mr Bittu, had contact with him in 2006. The Tribunal noted Bittu was the leader of his party. It questioned whether the leader of a political party would have directly contacted the applicant. He said when he came back from [Country 1], members of the rival Party contacted him. They said that he should lodge a complaint and that they would support him if he joined their Party. The Tribunal was surprised by this as it had not seen this claim in his written application and statement. The applicant said that he had mentioned it in his interview with the delegate. The Tribunal noted that the delegate's notes indicated that he had said that he would not join another political party. The applicant said that he definitely would not join a political party in India as they just want to use him.
60. The Tribunal asked why he had not set out these details about Bittu's party contacting him in his written statements and application. He said he just answered the questions

on those forms. The Tribunal noted that his written application was quite detailed and it does not mention that he was approached by a Party. He said at the time that he was preparing his written statement he was just thinking that he did not need to put it all in writing because he would be asked questions and he could give his answers

61. The Tribunal asked the applicant why he could not be protected by the authorities in India. It noted that he had stated that two Constables had provided him with protection in his home for two weeks. He said that two Constables came from Amritsar Police Station while he was staying in the [village deleted: s.431(2)]. He said he was there for about 15 to 20 days. The Tribunal asked when it was that the Constables provided him with protection. He said it was in November 2006. He then said he thought it was in October 2006. The Tribunal suggested that two police staying with him for two weeks indicated that the authorities were making efforts to provide him with protection. The applicant said the police were saying they were trying to investigate and solve the problem but [Mr A] has political power and they could not take his case seriously. The Tribunal suggested that providing protection for two weeks indicated they had in fact taken it seriously. He said the police needed more evidence. He said the police indicated that political parties always have conflict and this becomes a party issue, so the police are not interested to do too much about it. He said he cannot rely on police protection when his life is in danger.
62. The Tribunal asked the applicant when he first feared persecution in India. He said he first feared persecution [in] March 2006 at the Party meeting.
63. The Tribunal asked the applicant who had first told him about Protection visas and what it was they told him. The applicant indicated the Department had first told him about Protection visas when he and his wife were unable to get an extension for her to apply for another Student visa. He indicated they first told him about protection in 2009 when he was granted a Bridging visa and then said he thought it might have been in 2010.
64. The Tribunal was surprised that two educated people who had feared persecution in India since 2006 did not know about the possibility of being granted protection in Australia. The Tribunal noted his evidence that both the applicant and his wife are well educated and had been in Australia since 2008. It noted that his wife had a [Masters]. The applicant then indicated they knew about protection visas in Australia when still in India but he and his wife wanted to go through the legal channels to obtain permanent residence in Australia. So they decided his wife would apply for a Student visa and then seek permanent residence after she completed her course. He said they knew the success rate in Australia for protection visa applications for Indians was not good. He said in India it is known that the success rate for protection visas for Indians applying in Australia is not good. The applicant confirmed that he knew about Protection visas when he was in India. The Tribunal asked how he knew about Protection visas in India, and he said he had seen it on a website.
65. The Tribunal asked the applicant what had happened when his wife was studying and on a Student visa, and why she was not able to apply for permanent residence at the end of her Student visa. The applicant said his wife gave birth and the Student visa was not extended because she was subject to Condition 8534 – no further stay. He said they were told that they would have to go back to India and re-apply for a Student visa. They were told they were not eligible to seek a review at the Migration Review

Tribunal. They then applied to the Minister to intervene so that his wife could apply for another Student visa onshore. However, they were unsuccessful. The applicant said that they cannot go back to India because of their fear.

66. The Tribunal asked the applicant about the birth of his daughter in India. He said she was born in Assam, Dibrugarh. The Tribunal noticed that that was a very long way away from Amritsar. It asked why she was born in Assam. The applicant said she went to stay with her parents to give birth. The Tribunal asked if he travelled with his wife to Assam. He said that he did not go until after the delivery. His wife was there for about four or five weeks and left Amritsar in about [month and year deleted: s.431(2)]. The Tribunal asked why the applicant did not go with his wife. He said he did not go because he was doing something. The Tribunal indicated that it was concerned the applicant was not telling the truth about why he did not go with his wife. He said he did not go because he was involved in something. He had some commitments in Punjab.
67. The Tribunal asked the applicant about the details his membership of Shiromani Akali Dal. He said he joined in September 2005. The Tribunal asked about his political background and experience prior to joining the Party. He then said that before he joined SAD he worked for [Mr D], the Counsellor for his area. The Tribunal asked which party [Mr D] stood for. The applicant said he stood for the Congress Party. The Tribunal asked about his political involvement with [Mr D]. He said he started to take more interest in politics in 2003. He supported [Mr D] by providing propaganda, attending rallies and campaigning. He would encourage people to vote for [Mr D]. The Tribunal asked if he was a member of the Congress Party, and he said he was not actually a member of the Party. He said he was really just helping [Mr D].
68. The Tribunal asked the applicant why then he then joined SAD. He said he joined because he liked their agenda and their target was very clear. The Tribunal asked him to expand on this. He said their motives were good and he liked them, and they supported the Sikh religion, and he liked their views. The Tribunal asked the applicant to expand on this and about his commitment to Sikhism and the Party's politics, given the nature of the party he joined. He acknowledged that he is does not appear to be very religious as he when he was 15 he cut his hair. He said the Party is not a religious party, it is just a political party. He said if he wanted to join other Sikh religious parties he would have to change his appearance.
69. The Tribunal indicated that it was concerned that, when asked to outline what had happened in the past, the applicant had omitted to mention an important issue that he had outlined in his written statement. It was surprised that in his oral evidence he had not mentioned the fraud and [Mr A]'s misuse of funds that he had indicated in his written statement had been the main reason for the conflict between him and [Mr A]. The accounts of the lead up to their fight seemed to be different. The Tribunal invited the applicant to comment on the omission. He said when he filed his application, he filed everything he knew. He said when he prepared the application, he was thinking of all the details he had to give, and the persecution he faced. After his interview, he came to know the Department wants the grounds of what happened, and that is why he has provided the explanation he has given to the Tribunal.
70. The Tribunal noted that the applicant had indicated in his written submissions that he was responsible for managing donations made to the Party. The Tribunal was surprised

that he has not raised this issue so far in the hearing. It was also surprised that the Party would give a relatively new member such a responsibility. The applicant indicated that he did not tell the Tribunal about the issue with the money being used fraudulently because he thought he only had to tell the Tribunal the main things. The Tribunal was of the view that his claim about uncovering fraud in the Party was significant and a 'main thing'. The applicant indicated he thought he had submitted everything in writing and that the Tribunal would read those things.

71. The Tribunal indicated that it was concerned that the applicant had indicated that he had been appointed to an important position of Fund Collector and Manager after having been in the Party for only six months. The applicant said he was not a main fund collector, he was just a helper with donations. He just picked up the boxes. He said two other people counted and collected the money. The Tribunal noted that this was a different description to that which he had given in his written statement, where he indicated that he had been responsible for making out receipts, picking up boxes of donations, depositing them to Amritsar Office, making manifests, and looking after the donation collection boxes, indicating he knew how much money should be inside the boxes. The applicant said he knew how much was in the boxes because he was present at collections.
72. The Tribunal asked the applicant to outline what had happened between him and [Mr A] that had offended [Mr A] so much. It also asked him to outline the events leading up to and including the physical fight. The applicant said that he was not agreeing with [Mr A]'s views, and [Mr A] told him to be quiet. [Mr A] said that what the Party was doing was right. It then ended in a physical fight where [Mr A] pushed him to the floor. The applicant then slapped [Mr A]'s face. The Tribunal asked if there were people, such as [Mr A]'s supporters, standing around at the time of the physical fight. He said there were about 200 people in the room. The Tribunal asked the applicant how it was then that he was able to get up off the floor and slap [Mr A]'s face without [Mr A]'s supporters defending [Mr A]. The applicant said he surprised himself that he could hit [Mr A]. The Tribunal indicated that it did not see that it was possible that he could have struck [Mr A] if [Mr A]'s supporters were standing close by. It was surprised that they did not intervene to prevent him hitting [Mr A]. The applicant said [Mr A]'s supporters attacked him after he hit [Mr A].
73. The Tribunal asked the applicant why [Mr A] pushed him to the floor. The applicant said the main reason was because he said to [Mr A]. "You do not have an interest in the Khalistan Movement. There is corruption in the Party. You're just making money in this Party for yourself".
74. The Tribunal asked the applicant if he has studied the SAD Party's history and, if so, when he did this. He indicated that he has studied the history of the Party as he was interested to do this when he joined. The Tribunal asked the applicant about the leadership of the SAD Party in 2006. The applicant said that the leader was Singh Maan. The Tribunal indicated it had country information about the Party and asked about any significant events that occurred for the Party in 2006. The applicant indicated that there was a significant event when a significant member of his Party, Dargeet Singh separated from the Party in 2004. The Tribunal asked the applicant again if there were any significant events in 2006, the year of his membership. The applicant said that nothing serious happened for the Party in that year. He then said there was a seminar where the police arrested several members of the Party.



75. The Tribunal indicated that there was country information about the Party which indicates that there was a significant merger in 2006 with Bittu's Party. The applicant indicated that after the incident [in] March 2006, he did not go back to the Party so his knowledge of the Party from then is not good. He said in June 2006, he went to [Country 1] for two months. He said he tried to distance himself from the Party, so he would not know anything about the merger. The Tribunal indicated it was surprised by this given his earlier evidence and asked the applicant why he would not know about a significant merger with Bittu's Party. He said he was no longer interested in politics. He said he would not be joining another political party in India ever again.
76. The Tribunal noted that the statutory declaration provided to the Tribunal by the applicant states that in around September 2006, the Party was worried that he was building support and that he may form his own Party. The Party became scared that some members were supporting him because they were beginning to realise that the Party was not helping them. The Tribunal was surprised that the applicant's statutory declaration referred to him forming his own party, and having support, as it was a claim that he had not made before. The applicant said that he had support in the other rival party. His friends had said to him to come and join our party. They liked his agenda to help poor farmers.
77. The Tribunal also noted that the applicant's statutory declaration indicated that his relatives and friends were also members of the Party. The Tribunal was surprised by this statement as it had not been made in his written statement to the Department lodged with his Protection visa application and he told the delegate his second cousin was a member. It asked why he had included the information in the statutory declaration. The applicant said that if he goes back to India his cousin, who is in Australia now, will tell everyone. His life will then be in danger. The Tribunal asked about his cousin in Australia. He said he has regular contact with his cousin in Australia. They lived together for six months when his cousin first arrived in Australia. He is close to him. He is his mother's sister's son and they get along well. The Tribunal was surprised then that his cousin would tell members of the Party that he had returned to India, if he thought this might put the applicant in danger. The applicant said his cousin will tell all of his relatives he is back and they will tell members of the Party. The Tribunal indicated its surprise that members of his own family would put him in danger.
78. The applicant indicated his relatives are unhappy with him because they had an expectation that he would be able to arrange jobs for his relatives in the public hospital because of his Party connections. He said he was unsuccessful at this and his relatives are not happy. The Tribunal indicated that it found it implausible that he would have sufficient political power in the SAD Party, given his brief membership of six months, to be able to arrange for people to be appointed to jobs in the public hospital. It asked why he would have been considered to have so much power. He said it was because he had links to Party members. The Tribunal noted that the applicant now indicated his other relatives were also members of the Party. It asked why they themselves could not arrange for job appointments for their relatives. He said his other relatives joined the Party after him.
79. The Tribunal noted that the delegate had decided that there was no Convention ground that could be found to be the essential and significant reason for the harm feared and found there was no real chance of the applicant being persecuted for a Convention reason in the reasonably foreseeable future. The Tribunal noticed she decided that the

applicant's issues with [Mr A] were personal issues, and not related to his membership of a political party or his political opinion. The applicant said that his fight with [Mr A] was because of his views. He was trying to put forth a new agenda in a party and [Mr A] objected to his views.

80. The Tribunal noted that the applicant is no longer involved in politics and claims that he will not be in the future. The applicant says he has no power to face the people and fight with them. He said he does not want to be involved in politics.
81. The Tribunal asked the applicant why it was that he had not applied for protection until November 2010 when he had indicated he had had difficulties in India since 2006, and he arrived in Australia in February 2008, and knew about Protection visas. The Tribunal was concerned that a person waiting nearly three years and applying for protection only after their other visa options are exhausted, could give the impression that they are just seeking permanent residence in Australia. It asked why he did not make an application for Protection until nearly three years after he arrived in Australia. The applicant said that he and his wife thought they could get an extension of her Student visa. They wanted to get permanent residence using his wife's Student visa. They had fulfilled all of the requirements, such as the IELTS test, etc. They sought Ministerial intervention to get an extension to apply for another Student visa but were unsuccessful.
82. The Tribunal was concerned that the applicant might not have had a genuine fear of persecution, and that was the reason they had not made applications for protection earlier. The applicant said that they face too many things in India and he has tried to distance himself from [Mr A]. He said before they came to Australia, he had tried to migrate to Canada but were unsuccessful. He said he does not want to stay in India.
83. The Tribunal indicated that it had not made its decision but if it found that he did have a problem in returning to Amritsar, and there was a real chance that he could be persecuted for a Convention reason, it needed to consider the issue of whether he could relocate in India. The Tribunal noted that there is country information which indicates that as a Sikh the applicant would be able to relocate in India, as there are many States and cities where the Sikh population is significant and Sikh communities do quite well. It noted that there are many Sikh communities located outside Punjab. The Tribunal also noted the applicant and his wife are well educated and his wife has recent employment experience in marketing and accounts. The Tribunal asked the applicant if he had any comment to make about relocation in India. He said they had already relocated in India. He said they moved from Amritsar to West Bengal but people in the Party found him. The Tribunal indicated it would be surprised if he could be found in any State in India, as it was such a huge country with a very large population. It also noted his evidence that the last time he said that they found him it was because he had written to the Party. The applicant said he wrote to the Party to get help and seek Maan's involvement in the matter. The Tribunal was surprised by this as the applicant indicated he was no longer interested or involved in politics after March 2006. The applicant said he thought Maan would deal with his matter. The Tribunal was surprised he thought Maan would be interested in his matter, given the country information indicates the Party was going through particularly difficult times in 2007 as it was going through a significant split amongst the leaders. The applicant said that he did not know what was happening for the Party in 2007.

84. The Tribunal asked the applicant why the Party would devote so many resources to trying to find him when the incident, as described, did not seem to be particularly significant. The applicant said he does not know why they are so concerned about him. Maybe it was because they thought he would go to the media. The Tribunal indicated that it was concerned that it did not seem sufficiently significant for the Party to warrant searching for him across India.
85. The Tribunal noted that the applicant had provided a statement that he said had been stamped by the police in India. It noted that there is country information indicating that police corruption in India is common, and indicating it is not difficult for a person to obtain documents said to be from the police by bribery. It asked for his comments. The applicant said his father sent him a copy of the police letter.
86. The Tribunal noted that the applicant provided the envelope that his father used to send him the document with his father's address on the back. The Tribunal asked for his father's address in India. He said his father now lives at [address deleted: s.431(2)]. The Tribunal noted that his father had used a different return address on the envelopes and indicated he lives at [address deleted: s.431(2)]. The applicant said that his father used to live there but he had to move.
87. The Tribunal asked the applicant if he had any other evidence or information he wished to give about his claims. The applicant indicated he wanted to emphasise that he had difficulties in India because of his views. They did not want his new ideas in the Party.
88. The Tribunal then took oral evidence from the applicant's wife. The following is a summary of her oral evidence.
89. The applicant's wife indicated that she was born in New Delhi in [year deleted: s.431(2)]. She grew up in the northern part of India. Her father was an army officer. She met the applicant in Amritsar. She had been living there for about two years before they married. She was studying and then she worked for the applicant's father's export company in 2005 for two months. She said when she applied to be a student she was not working.
90. The Tribunal asked her about her husband's work experience in India. She said that he worked on and off in the export company. It was his father's company. The Tribunal asked if she had indicated to the Department that she was working. She said that she told them that she was working but this was not the truth. The Tribunal asked about her educational background. She indicated that she has a Master's [degree]. The Tribunal asked why it was that she had not been truthful with the Department for her Student visa. She said she did not fill out the form and she did not read it, she just signed it.
91. The Tribunal asked where she gave birth to her daughter. She said that she gave birth to her daughter in Amritsar. The Tribunal noted that this was different to the evidence given by her husband. She repeated that she gave birth to her daughter in Amritsar. The Tribunal said that it was aware that the baby was born elsewhere. She then indicated that she gave birth in the [hospital deleted: s.431(2)] near her parents.
92. The Tribunal asked the applicant's wife about her husband's membership of a political party. She indicated that he joined in September 2005. The Tribunal asked if he was

involved in any political activity before he joined. She said that she did not know if he was involved in anything before September 2005.

93. The Tribunal asked the applicant's wife about her religion. She said that she is a Sikh. It noted that she had taken her oath on the Koran. It asked why she had chosen to do this. She said that a book has nothing to do with anything. Her husband had opted to use the Koran so she followed him.
94. The Tribunal asked the applicant's wife when they had married and what her husband was doing for employment before they came to Australia. She said they married in 2005 and her husband worked for the export company but it was not run properly and it was not making a profit. Then they went to Australia. She said her husband had said he wanted to join a political party and she had asked him why. He said he was interested in politics and wanted to do something for society. He had seen farmers suffering and he wanted to do something about it. They then went to [Country 1] in July 2005 to spend time with his family.
95. The Tribunal asked the applicant's wife what her husband did in the Party. She said he was a Fund Collector when he joined. She said he approached businesses to collect funds. She said he did not give her any other information as he told her that she was not to get involved.
96. The Tribunal asked the applicant's wife about her family in India. She said her parents live in Punjab at Jalandhar. Her father retired in 2009.
97. The Tribunal asked the applicant's wife about her employment in Australia. She said that she was a Sales Executive for [employer deleted: s.431(2)]. She has also worked in marketing as an Account Executive for [employer deleted: s.431(2)].
98. The Tribunal asked the applicant's wife about the source of money for their trip to Australia and her tuition fees. She said they sold everything to come to Australia. They sold her jewellery, their bed, their curtains, and all household items. She said they made about \$2,000 from the sales. The Tribunal asked about the source of other money that she needed to study in Australia. She said her husband worked full-time once they got to Australia.
99. The Tribunal asked the applicant's wife why they came to Australia. She said they came to Australia to get away from people who were after her husband. The Tribunal asked the applicant's wife if she knew why they had not made protection visa applications until November 2010, when they had arrived in Australia in February 2008. She said when they came to Australia, they came for her to do her Masters. They wanted to stay here but their visas were taken away.
100. The Tribunal asked the applicant's wife if she had anything else that she wanted to tell the Tribunal, and she did not.
101. The Tribunal noted that there were two inconsistencies in the evidence given by the review applicant and his wife. It noted that his wife indicated she gave birth to their daughter in Amritsar. The applicant indicated that his wife definitely gave birth to his daughter in Dibrugarh. He said perhaps his wife thinks she needs to say she gave birth to their daughter in Amritsar. She gave birth to their daughter in the [hospital deleted:

s.431(2)] in Assam. She was there for a month before the birth. He did not go with her but he arrived after the birth. Their circumstances were very difficult because their daughter was born with a disability.

102. The Tribunal noted that the information about the purpose of their trip to Australia was different. The applicant said that they wanted to leave India so they decided to come to Australia for his wife to study, and then seek permanent residence. However it is the case they wanted to get out of India.
103. The Tribunal asked the applicant if he had any other information to give or any other claims he wished to make. The applicant said that what he is facing is because of his views, his political opinion, because he wanted to make a new agenda for the Party. He is interested in poor farmers because many of his relatives in India are farmers.

### **Country information**

104. The Tribunal obtained country information concerning police corruption in India.

The 498A Organisation report states that “Section 498A [of the IPC] fosters corruption, as the very nature of it, due to its loopholes, exposes the police force to corruption” It is argued that when a dowry case is filed, the police treat the accused according to their social standing and the officer’s perception of the accused. Furthermore, the counselling session which, in some cases, is imposed prior to making an arrest, is an opportunity for the police to make “a demand to settle the issue monetarily”. Upon arrest, the police reportedly continue to demand bribes, intimidate, and threaten the accused and, depending on the social standing of the accused, may “resort to coercive tactics” such as physical assault. The report states that the police “make an average of Rs. 10,000 for each 498A case, and that is a very low estimate”.<sup>1</sup>

Pervasive police corruption and the prevalence of bribes to police officers are also identified by the US Department of State and a number of non-governmental organisations. According to Human Rights Watch, “[p]olice officers sometimes make arrests in retaliation for complaints of police abuse, in return for bribes, or due to political considerations or the influence of powerful local figures” A report by Transparency International and the India Center for Media Studies identified almost one million Indian households living below the poverty line who were forced to pay bribes to police officers to obtain public services. In January 2010, Trace International reported that bribes to police officers accounted for 30 percent of all bribe demands.<sup>2</sup>

The UK Home Office cites a 2005 Transparency International India report, which found that more than 10 percent of Indian households had reported paying bribes to police in order to receive services. The Asian Human Rights Centre reported that “[n]ot only is corruption rampant, it is done in the open. 81% of those who paid bribes reported doing so directly to police officers rather than middlemen. This suggests that bribery itself has become institutionalized and that some instances of it are not even perceived as deviant”.<sup>3</sup>

105. The Tribunal also obtained information about Shiromani Akali Dal (Amritsar) as follows:

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<sup>1</sup> 498A Organisation 2008, ‘A Guide to Surviving IPC’, IPC 498A website, April, pp.31-33, 43 <http://ipc498a.files.wordpress.com/2008/04/a-guide-to-surviving-ipc-498a-apr-2008ci.pdf> – Accessed 9 November 2010 – Attachment 3

<sup>2</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – India*, 11 March, Sections 1d, 4

<sup>3</sup> UK Home Office 2010, *Country of Origin Information Report – India*, 21 September, p.33

The Election Commission of India lists the Akali Dal party led by Simranjit Singh Mann as SAD(M), Shiromani Akali Dal (Simranjit Singh Mann). According to *The Political Handbook of the World*, the party is a splinter Akali Dal group, formed in the mid-1990s by Simranjit Singh Mann, a former Indian Police Service (IPS) officer. Further background on Mann and his party is given below. The main stance of the party and Mann appears to be an independent Sikh nation (Khalistan).<sup>4</sup>

The party merged in June 2006 with Shiromani Khalsa Dal, led by Daljit Singh Bittu, a former militant. Bittu became vice-president of SAD(A).<sup>5</sup> In 2007, Mann dismissed Bittu from the party, stating in a subsequent letter that Bittu and others were making the party the vehicle for their violent actions, and Mann did not want the party to become the target of state violence.<sup>6</sup>

## FINDINGS AND REASONS

106. On the basis of the Indian passports of the first, second and third named applicants provided at the time of the Protection visa applications and the evidence of the applicant, the Tribunal finds that the applicants are citizens of the Republic of India and assesses the claims against that country.
107. In his written application, the applicant claims he, his wife and daughter came to Australia in February 2008 so that his wife could study for a [Master's]. He claims in August 2005 he joined Shiromani Akali Dal, Amritsar (the Party) and he was given a job working with the fund collectors, making receipts, looking after the donation collection boxes and picking up donations. He claims he had an exact idea of how much money should be in the boxes. He claims he was told by the Party's [official], [Mr A], to approach businessmen and ask for support and if he did not do this he would be sacked from the organisation. He claims at the Annual General Meeting he confronted [Mr A] about misusing the party funds and not directing funds to help poor Sikh farmers. He claims [Mr A] said that the applicant had no right to say anything about Sikhism as he was not a true Sikh. He claims he accused [Mr A] of using the money for his own personal use and not having an interest in Khalistan. He claims they had an argument and [Mr A] physically assaulted him and threatened to kill him. He claims he slapped [Mr A]'s face. He claims while he was visiting his parents in [Country 1] in June 2006 his home in Amritsar was damaged and he was subsequently told that there was a plan to kill him because members of the Party were concerned that he would expose their hidden matters to the police or the media. He claims he reported the incident to the police. He claims in September 2006 [Mr A] telephoned him and said he was still angry about the applicant slapping him in front of people. He claims the next day people came to his home and beat him. He claims he went to the police and was given two weeks' police protection, by two officers, in his home. He claims he fled to West Bengal. He claims in March 2007 he wrote to the Party's President, Simranjit Singh Mann, seeking intervention in the matter. He claims in April 2007, [Mr A] telephoned him and threatened him. He claims in May 2007 they found him in West Bengal because he saw two party members at the [Temple].

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<sup>4</sup> *Political Handbook of the World* (2007), CQ Press, Washington D.C., pp. 539&541

<sup>5</sup> 'SKD merges with SAD (Amritsar)' 2006, *The Tribune* website, 7 June

<http://www.tribuneindia.com/2006/20060608/punjab1.htm#6> – Accessed 8 January 2007

<sup>6</sup> Text of S. Simranjit Singh Mann's letter' 2007, Shiromani Akali Dal Amritsar website, August

[http://www.akalidalamritsar.com/punjab/Aug\\_2007/qhs20070825.htm](http://www.akalidalamritsar.com/punjab/Aug_2007/qhs20070825.htm) – Accessed 6 September 2007

108. In his interview with the delegate [in] February 2011, the first named applicant claims he was approached by a rival party, of which Daljit Singh Bittu was president. He claims the Party would know where he was hiding because he has a second cousin in the Party. He claims he cannot relocate in India because there are only two places he can go and his uncle holds a grudge against him for not getting his son a job and he does not have the finances to start a new life in India.
109. In a statutory declaration provided to the Tribunal [in] March 2011, the first named applicant claims Shiromani Akali Dal was worried that he was building support and feared that he would form his own party. He claims relatives and friends who are still in the Party tell him he still has a bad name in the Party as they know he will question them.
110. In his evidence to the Tribunal [in] May 2011, the applicant also claims that he participated in Congress Party activities in the period 2003 to 2005. He claims he tried to present new ideas to Shiromani Akali Dal. He claims after he returned from [Country 1] in July 2006 he was approached by the rival party, led by Daljit Singh Bittu, to join them. He claims that his relatives will tell the Party if he returns to India and this will put him in danger.
111. The Tribunal has serious concerns about the applicant's credibility in this case. It notes the applicant's own evidence was at times internally inconsistent and also inconsistent with the country information. There was a significant omission in the applicant's oral evidence to the Tribunal. His evidence about his political involvement and the events leading to his fear was inconsistent, vague and lacking in detail. The problems with his evidence were put to the applicant and he was not able to provide a satisfactory explanation for them. The Tribunal finds that the applicant is not a credible witness for the reasons set out below.
112. The focus of the applicant's written application was on [Mr A]'s misuse of funds. He indicated at the annual general meeting in March 2006 he confronted [Mr A] about misusing funds of the club. He indicated he had the job of working with fund collectors, making receipts and picking up donation boxes, and he had an exact idea of how much money was in those boxes. He indicated when he raised the issue of misuse of funds [Mr A] accused him of not being a true Sikh, they physically fought and the applicant slapped [Mr A]'s face. However in his oral evidence to the Tribunal, his description of the events leading up to the physical altercation was different. His focus was on his presentation of new ideas to [Mr A]. He indicated that when he tried to present his new ideas to the party that it resulted in a fight with [Mr A]. He did not mention that [Mr A] accused him of not being a true Sikh. He gave very little detail in his oral evidence, compared to the detail he provided in his written statement. His oral evidence was evasive and vague. He did not mention that he had raised with [Mr A] the issue of the fraudulent use of funds. When this omission was put to the applicant he indicated that he had submitted everything in writing and he thought the Tribunal would read those things. As the Tribunal had asked him to provide oral evidence of the details of the events leading up to the physical altercation it does not find this explanation satisfactory.
113. The Tribunal also notes the applicant's evidence about his actual role as a fund collector seems somewhat inconsistent. In his written claims he indicates that he was a fund collector involved in collecting donations and making receipts and he had an exact

idea of how much money should be inside the boxes. However, when the Tribunal was surprised that the party would give a new member such an important role enabling him to know the Party's financial details, he indicated he was not a main fund collector, he was just a helper and other people counted and collected the money. When the Tribunal put this inconsistency to the applicant he said he knew how much was in the boxes because he was present. The Tribunal finds this explanation unsatisfactory because his whole argument in his written claims is that he knew how much money was coming into the Party and he knew [Mr A] was using the money for his own personal use. The Tribunal does not believe that the applicant would have known this information, given he had been involved in the Party for only six months. It does not accept that he would have been given such an important and responsible role and been privy to the financial operations of the Party after such a short period. It has formed the view the applicant has manufactured evidence that he had a fund collector role in the Party and knowledge of its financial operations.

114. The Tribunal was also concerned that the applicant indicated to the Tribunal that after he returned to India from [Country 1], in July 2006, he had been approached by the rival party, led by Daljit Singh Bittu, to join their party. The country information indicates that Bittu's party and Shiroman Akali Dal merged in June 2006. The applicant was not aware of this merger. The Tribunal finds it concerning that the applicant has indicated that he was asked to join a rival party when in fact at that time it had merged with Shiromani Akali Dal. It was also concerned that the applicant seemed unaware of this significant merger. When it put its concern to the applicant he indicated he did not know this because after March 2006 he was no longer interested in politics. However, he also indicated that subsequently in March 2007 he wrote to the Party leader seeking his intervention. The Tribunal does not find the applicant's explanation for not knowing about the merger satisfactory. It also finds it implausible that he would be approached to join a rival party that had in fact merged with his own Party. The Tribunal finds the applicant has manufactured the evidence about being approached
115. The Tribunal was also concerned that the applicant's details of the physical fight seems implausible. In his written application he indicated that in the lead up to the fight, [Mr A] had accused him of not being a true Sikh and this made the applicant feel insulted and embarrassed. He indicated [Mr A] then manhandled him and the applicant responded by slapping him in the face. In his oral evidence he indicated he tried to speak his mind about new ideas for the Party and [Mr A] disagreed and pushed him to the ground. He indicated there were many [Mr A] supporters standing nearby. However, he indicated he was able to get up off the floor slap [Mr A]'s face before anyone could intervene. The Tribunal was concerned about whether the applicant would have been able to do this, given there were many [Mr A] supporters standing in close proximity. The Tribunal observed that when the applicant was giving his evidence about the physical fight he seemed unable to remember the details leading up to the actual physical contact. The Tribunal finds his account as presented in his oral evidence inconsistent with his written account and implausible. It concludes the applicant manufactured this evidence about fighting with [Mr A].
116. The applicant indicated to the Tribunal that he had studied the history of the Party. However, when asked about why he joined the party, his commitment to Sikhism and the party's politics his evidence was scant and general. He also indicated that it was not a religious party, just a political party. The Tribunal was surprised by this evidence,



given the country information indicates the party's main aim is to form an independent Sikh nation, Khalistan. The Tribunal considers the applicant's evidence about why he joined the party to be scant and lacking in the kind of detail that would indicate commitment to a political position of this kind.

117. The Tribunal was surprised by the applicant's suggestion in his statutory declaration, provided to the Tribunal after the delegate's decision, which indicates that there was a fear in the Party that he would form his own party. There appears to be no earlier evidence of this claim. The Tribunal was concerned the applicant had introduced this claim to address the problem raised in the delegate's decision, that the applicant's problems in India were based on a personal conflict he had with [Mr A] and that there was no Convention reason for his fear. When the Tribunal raised this with the applicant, he said he had the support of the rival party because they liked his agenda. The Tribunal was concerned that the applicant manufactured this response given the rival party had merged with Shiromani Akali Dal in June 2006. The Tribunal finds the applicant's explanation unsatisfactory and finds the applicant manufactured evidence that the Party feared he would form his own party.
118. The applicant's evidence about police involvement in the matter is also somewhat inconsistent. He provided evidence that the police were not interested to provide him with protection. However, he also said that the police stayed with him for two weeks to provide him with security. When this inconsistency was put to the applicant, he indicated that the police had said that political parties always have conflict and this is a party issue so they are not interested to do much about it. This is inconsistent with the police actually providing him with the protection of two officers for two weeks, in his own home. The Tribunal was also concerned that the document he provided said to be stamped by the police superintendent was not a genuine document. It was concerned that the document might have been stamped by bribing a police officer. It notes the country information indicating it is not difficult to bribe police in India. The Tribunal does not believe it can rely on the document he provided as evidence that he had difficulties in India.
119. The Tribunal also notes that the applicant's oral evidence about his father's address was inconsistent. Initially he told the Tribunal he did not know his father's address. Subsequently, when the Tribunal indicated they were envelopes on the Department's file which included his father's address, he gave the Tribunal an address for his father. Also his evidence to the Tribunal about his father's property ownership was inconsistent.
120. The Tribunal also observes that the applicant appeared vague about why he did not go with his wife in October 2006 to Assam for the birth of their child. He appeared to be reluctant to tell the Tribunal what he was doing in Amritsar that prevented him from travelling with her. The Tribunal is concerned that the applicant was not honest in his disclosure on this issue.
121. The Tribunal has serious concerns about whether the applicant actually has a genuine fear of persecution in India. The applicant told the Tribunal that he came to Australia so that his wife could study for a [Master's degree]. The applicant's wife evidence was essentially consistent with the applicant's evidence on this issue. The applicant acknowledged that he knew about protection visas when he was still in India in 2008. The Tribunal also notes his evidence that he and his wife are well educated. When the

Tribunal asked why he had waited nearly 3 years to make protection visa applications, he indicated that he and his wife had wanted to get their permanent residence in Australia by going through the legal channels. He said they knew the success rate for Indians applying for protection in Australia was not good. He told the Tribunal that his wife's student visa was subject to a 'no further stay condition' He indicated they made arrangements to go back to India but they were told their lives would be in danger. He indicated they sought ministerial intervention so that she could reapply for a student visa onshore. When the Minister refused the request they decided to make protection visa applications. The Tribunal does not accept that the applicant has feared persecution in India since March 2006 as claimed. The Tribunal finds the applicant's past behaviour was not consistent with a person genuinely fearing persecution in India. The Tribunal finds that the applicants did not make their protection visa applications until they had exhausted all their options. It concludes the delay in the applicant's case is because he did not have a genuine fear of persecution in India.

122. The Tribunal finds that the above mentioned inconsistencies, when looked at individually, do not necessarily mean that the applicant is not credible. However, because of the significant number of inconsistencies in this case, when looked at cumulatively, the Tribunal finds that the applicant is not a credible witness. It finds his evidence overall is inconsistent and implausible, vague and lacking in critical detail.
123. For these reasons, and given the Tribunal's finding about the applicant's general lack of credibility apparent from his lack of detail, inconsistencies and evasive and vague responses, the Tribunal finds that the applicant has been untruthful in his claims. The Tribunal rejects the claims that the applicant was a member of Shiromani Akali Dal, and that he was told to approach business people asking for support. Accordingly it rejects the claims that flow from the Party membership. It rejects that he confronted [Mr A] about misusing funds. It also rejects his claim that [Mr A] accused him of not being Sikh. It rejects his claim that he accused [Mr A] of using the Party's money for his own personal use and not having an interest in Khalistan. It does not accept that his house in Amritsar was damaged because of problems he had with the Party. It does not accept that he reported the incident to the police and was subsequently provided with police protection because of problems he had with the Party. Nor does it accept that he was contacted in September 2006 by [Mr A] and beaten in his home the next day. The Tribunal does not accept that the applicant fled to West Bengal because of problems he had in the Party. It does not accept that he wrote to the Party's President and he was subsequently contacted and threatened by [Mr A]. It finds his claim that two party members then found him in West Bengal to be unbelievable and manufactured. The Tribunal also rejects the applicant's claims to the Tribunal that he has relatives in the Party who will disclose to the Party that he has returned to India and this will put him in danger.
124. The applicant claimed he participated in Congress Party activities in the period 2003 to 2005. He gave no evidence indicating that this would put him at risk. However, as he is not a credible witness, the Tribunal does not accept that the applicant was involved in Congress Party activities.
125. After considering the applicant's claims individually and on a cumulative basis, the Tribunal finds that if the applicant returns to India now or in the reasonably foreseeable future, there is no real chance that he will be persecuted for the reason of his political opinion, imputed or otherwise, or religion, or for any other Convention reason.

Therefore it is not satisfied that he has a well-founded fear of persecution for a Convention reason.

## **CONCLUSIONS**

126. The Tribunal is not satisfied that any of the applicants is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

## **DECISION**

127. The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.