

1208053 [2012] RRTA 1050 (20 November 2012)

DECISION RECORD

RRT CASE NUMBER:	1208053
DIAC REFERENCE(S):	CLF2009/37859 CLF2012/74043
COUNTRY OF REFERENCE:	India
TRIBUNAL MEMBER:	Alison Mercer
DATE:	20 November 2012
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 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, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] April 2012.
3. The delegate refused to grant the visa [in] May 2012, and the applicant applied to the Tribunal for review of that decision on 8 June 2012.

RELEVANT LAW

4. Under s.65(1), a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. 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.

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

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to other material available to it from a range of sources.
20. The applicant appeared before the Tribunal [in] August 2012 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's husband at the hearing.

Department file

21. The Department's records indicate that the applicant was originally granted a subclass 573 (Higher Education Sector) visa [in] April 2009. She entered Australia as the holder of this visa [in] April 2009, and it was valid until [date deleted: s.431(2)] August 2010. She has not left Australia since that time.
22. [In] August 2010, she was granted a bridging visa A on the basis of an application for a further subclass 573 visa, which was granted to her [in] October 2010. This visa was valid until [date deleted: s.431(2)] September 2011.
23. [In] April 2012, she lodged an application for a Class XA (Protection) visa.
24. In her form C (which asks for details about her and her claims for protection), the applicant indicated that:

- she was born on [date deleted: s.431(2)] in [Village 1], Hoshiarpur in the Punjab in India and is an Indian citizen by birth;
- she speaks, reads and writes in English, Hindi and Punjabi;
- her religion is Sikh;
- she was married [in] July 2010 in Melbourne;
- she holds an Indian passport issued in 2009 and valid until 2018;
- prior to coming to Australia in 2007, she lived in [Village 1] Hoshiarpur in the Punjab in India;
- she undertook primary, secondary and tertiary studies in India, with her highest qualification being a Bachelor of [Profession 3] in 2008;
- in Australia, she completed a Masters degree in [Profession 3] in 2009 and 2010 at the [university deleted: s.431(2)] in [Town 2] in NSW; and
- she maintains contact with her family in India by telephone and skype.

25. In response to the questions about what harm she feared if she returned to her home country, the applicant referred to her attached statement, the contents of which were as follows:

Why did you leave that country?

Life has been very unfair to me for the last couple of years. But there are some grave thoughts that caused a lot of fear and anxiety to me. I was not able to concentrate on anything properly and my mind was always distracted by the bad experiences that I faced earlier due to a dispute back in my home country. I was tired of my life and didn't know what to do as every day I was struggling with it because I held myself responsible for it. I left India because I am facing life threatening situation from a person from who my father got a loan to pay for my expenses as my family was facing financial crisis for the last couple of years. My father always wanted to provide quality education to their children and for that he borrowed some money to support my studies when I came to Australia. My father's business was going down each and every day, so he was not able to return the money on the committed time. The interest rate was also very high which made it even worst and my father gave up and he was not able to pay any amount at all. The person who gave the loan started threatening my father but there was nothing my father could do about that as he did not have any money to pay them. I visited my family in India and they started threatening me too. One day they also assaulted and threaten me.

What do you fear may happen to you if you go back?

My life will be in danger if I go back because there is a court case still going on and he also started sending some goons over our place and started threatening us that if we do not pay him money he will get us all harmed in return. I want to express my fears and concern for the future as I am still getting threatening letters back in my home country. I have leaded a life for the last few years where you are always in the danger of being harmed; I always lived in fear and my family was being affected by it. So I want to stay in Australia so that can build my career. I was relieved as I could live without fear and in peace. I am leading a normal life here.

What do you think may harm/mistreat you if you go back?

This man is after my life as he is evil and he does not want to give me any time to pay his loan. I have been to India only few times after I came to Australia as my parents are scared that my life is in danger. My father has filed a complaint against him and against his threats but nothing has happened till date because that person has got very strong political connections and approach. I believe that I would be harmed if I went back to my country because the situation is really worst now.

Why do you think this will happen if you go back?

All my family would be in big trouble if I go back to my country as I was already attacked by them. They want me and my father to pay the entire loan which is a lot more than the actual amount we borrowed and now my father or me don't have any other sources left apart from staying away from that stressful situation and if we don't pay the loan, they want my life in return.

Do you think that the authorities of that country can and will protect you?

No the authorities would not be able to help me because my father has already complained against him and the threats which he started giving but till time no action has been taken. Now the situation is that this man may also have bribed the police for not taking any actions against him. Anyway, India is famous for its corrupted authorities so nobody would be able to help me. Till time I have not applied for protection visa because I had some hopes that the situation might get better but the situation has worsened up.

Kindly accept my request and let me stay in Australia and help me to lead a fear free and stress free life.

26. [In] May 2012, an officer of the Department (the delegate) made a decision not to grant the applicant a protection visa. In reaching this decision, the delegate noted that:

- the applicant was a citizen of India and this was the appropriate country of reference against which to assess her claims;
- there was no evidence that the applicant had the right to enter and reside in, or effective protection from, any third country;
- the applicant was sent a letter on [date] April 2012 which (amongst other things) acknowledged receipt of her application and invited her to attend an interview;
- the applicant did not contact the Department as instructed to arrange to be interviewed;
- the applicant's written claims of harm and threats were very vague and had not been substantiated. She claimed that she had experienced threats and an assault at the hands of the money lender in India but had not provided any detailed information of what happened, or when these claimed events took place;
- furthermore, the application included conflicting information. In her written statement, the applicant indicated that she had returned to India 'only a few times' since arriving in Australia. However, her answer to question 64 of Form 866 is that

she had not returned to her home country since arriving in Australia. Her written statement was further contradicted by her movement record, which indicated that she had not left Australia since her arrival in 2009;

- there was also no evidence of the loan, the complaint made against the lender that the applicant claims her father lodged with the authorities or any evidence of the court case that the applicant claimed was still underway;
- the application did not include any supporting evidence;
- a fear of persecution is not well-founded if it is merely assumed or if it is mere speculation: *MIEA v Guo* (1997) 191 CLR 559 per the High Court at 572;
- there was so little detail provided in this application that the delegate considered that the applicant's fear was not well-founded;
- further to providing minimal details in her written application, the applicant was invited to contact the Department to further discuss her claims and/or provide additional information but did not do so. This supported the delegate's view that the applicant did not have a genuine fear of harm;
- having considered her visa application, migration history in Australia, lack of details in her claims and lack of documentary evidence, the delegate considered it far more probable that the applicant only made a protection visa application in a last bid attempt to remain in Australia. There were serious deficiencies in the applicant's claims which lead me to reach a positive state of disbelief in relation to her overall case. The delegate therefore did not accept the applicant's claims as credible or genuine;
- given this credibility finding, the delegate made no finding as to whether the harm feared was for a Convention reason, whether it involved serious harm and systematic and discriminatory conduct or whether it was well founded;
- the delegate was not satisfied that Australia had protection visa obligations to the applicant;
- similarly, the delegate's finding about the applicant's lack of credibility meant that the delegate made no finding on whether the claimed harm amounted to significant harm for the purposes of the complementary protection criteria, or whether there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there was a real risk that she would suffer significant harm; and
- accordingly, as the applicant did not satisfy the definition of a refugee or the complementary protection criteria, Australia did not owe her protection obligations and her protection visa application had to be refused.

27. The applicant was notified of this decision by letter of the same date.

Tribunal file

28. [In] June 2012, the Tribunal received the applicant's review application seeking review of the above decision. Together with the review application, the applicant provided:

- copy of the delegate's decision [dated] May 2012;
- submission [dated] June 2012.

29. In her submission, the applicant stated as follows:

...

I had applied for protection visa on grounds of threat; I would like to give a background of what had happened. I was facing a life threat in my country India as my father had obtained loan for my education in Australia, he wanted me to get the best of education. For the past couple of years my father was facing financial difficulties and so was unable to repay the money lender as his business was suffering. He told them that if your daughter comes back we will not leave her, though me being so far he always threatened my parents in relation to me.

I would like to mention in my protection visa by mistake I had mentioned that I had been to India. In fact since I have come to Australia, I have never been to India as my parents didn't want me to come as they feared that the money lender would harm me as he always used to threat them saying let your daughter come back then I'll show you. My father is unable to repay the amount as his business is still suffering losses. He wishes to pay back but is unable to; he has reported to the authorities and has lodged a police complaint also a court case is also going on. There is a lot of corruption in India and money speaks over there, my parents want my blessings.

My parents are facing a hard time they want me to remain safe, even though they go through hell every day. Every day they always remain in fear as he threatens them and forces him to repay anyhow as he has also to take care of the family. They are making a big sacrifice of not being able to meet me, it's difficult for me also as I am unable to meet them. For any parent safety of their children is of utmost important and because of threats my parents don't want me to come, otherwise which parent would not want to see their children. I came on Student visa to study and make my career and make my parents proud. I feel very safe in Australia this country is a safe haven for me and keeping me away from all the difficulties, my parents are happy that though I am far but safe and sound. As my family lives in pressure, I always feel the pressure and have lived in distress. Australia has given me my life partner, now my husband and friends are my family over here for me they are my support system; they are always stood by my good and bad times.

Even though you are not physically not in the place where the threat is taking place, but you can feel the threat as your parents are being threatened. To live in threat kills the person inside and leaves you emotionally and mentally disturbed. My parents don't want me to come back for my safety and wellbeing, they would love to have me back and I wished to go back but due to unavoidable circumstances I am unable to go back.

Lastly I would like to request of you on reconsidering the application for refugee visa and save my life from those people, which are not only trying to damage me mentally but emotionally also. Please let me my life in this country. I will be truly obliged if you allow me to live here peacefully and respectfully.

In anticipation of your favourable reply.

30. [In] June 2012, the Tribunal wrote to the applicant acknowledging receipt of her application and inviting her to provide any material or written arguments for the Tribunal to consider as soon as possible.
31. [In] June 2012, the matter was constituted to a Tribunal Member. [In] July 2012, the Tribunal wrote again to the applicant to advise that, on the basis of the material before it alone, it was unable to make a favourable decision in her case. The Tribunal therefore invited her to attend a hearing scheduled [in] August 2012.
32. [In] July 2012, the Tribunal received a response to its hearing invitation from the applicant, indicating that she would attend the hearing [in] August 2012 and that she wished the Tribunal to also take evidence from her spouse, [name deleted: s.431(2)].
33. At the hearing, the applicant provided the Tribunal with the following documents:
 - scanned copies of affidavits from her parents [Mr A] and [Ms B], and her grandfather [Mr C], all dated [in] July 2012. In his affidavit, [Mr A] (the applicant's father) states that he seeks protection for her due to his having taken out a loan to fund her higher education in Australia and now being unable to repay the loan due to losses in business. He states the lender will not accept repayments by instalments in future and that the lender started to threaten him and his family about two years ago. [Mr A] states that the lender is politically well connected and hired goons last year to attack the applicant's brother, after which [Mr A] sent the applicant's brother to Malaysia. [Mr A] said that he travelled to Australia twice to see the applicant and to arrange her wedding but that she may get killed if she returns to India. The affidavits of [Ms B and Mr C] essentially corroborate the claim that the applicant's father took out a loan for the applicant's educational costs in Australia, and that she is now at risk from the lender as her father is unable to repay the loan and they have received threats from him;
 - scanned copy of handwritten document in Punjabi script (with English translation) headed 'Agreement [date]-8-11', which is stated to be between [Mr D] (son of [Mr A], resident of [Village 1]) and [Mr E] regarding a dispute in [location deleted: s.431(2)]. It is further stated that [in] August 2011, the village panchayats made an agreement that both parties accepted and neither party will now take legal action on their reports as they both accepted their mistakes; and
 - scanned copy of record of marriage for the applicant and her husband, indicating that they were married at the [temple and location deleted: s.431(2)] [in] April 2010.
34. In her oral evidence, the applicant confirmed that she prepared her own protection visa application, with assistance from her husband. The contents are accurate, with one mistake that she wished to correct: she put down that she had returned to India twice but this is not in fact true. She has not been back to India since first coming to Australia as a student, although her husband has in fact been back to India twice since he came to Australia. The Tribunal queried why she would have made a mistake about something as significant as whether or not she had returned to India. The applicant said that she was very depressed at the time she made the application, was talking with her husband and simply forgot that she had not been back to India.

35. The applicant confirmed that, prior to coming to Australia as a student, she lived with her family in [Village 1] in Hoshiarpur District, Punjab in India. Her parents, [Mr A and Ms B], still live there. She speaks to them nearly every day on her husband's mobile phone or by using phone cards. She last spoke to them yesterday and they were good. The applicant said that she has one brother, [Mr D], who is three years younger than her. In response to the Tribunal's query, she said that he is no longer living in [Village 1]. The person who lent her father money hired goons who tried to kill her brother. He was set upon by 10 to 12 attacks who beat him with baseball bats and iron rods. They were drunk. He was nearly killed. This occurred [in] August 2011. He told her about it over the telephone six or seven days after it occurred. After this, her brother left [Village 1] and went to work as a [Occupation 4] in Malaysia. She has not seen him in three years and does speak with him on the telephone but since he is at sea, this is more difficult to do.
36. The applicant confirmed that she and her husband met in Australia and were married in both a religious ceremony at the [temple and location deleted: s.431(2)] and in a legal marriage under Australian law. The Sikh ceremony took place [in] April 2010. She took a break from her studies and came to Melbourne for a week for the marriage. She then returned to [Town 2] to complete her course and relocated to Melbourne to be with her husband after she finished the course. They were introduced by their families, who know each other.
37. In relation to her educational background, the applicant confirmed she completed her secondary schooling and a Bachelor Degree in [Profession 3] in India. She finished her degree around August 2008, then came to Australia in April 2009 to undertake a Masters degree in [Profession 3]. She undertook this course at the [university deleted: s.431(2)] in [Town 2] in New South Wales and completed it in August or October 2010. She then applied to be added as a dependent spouse to her husband's student visa as her own student visa was going to expire, and they thought that she would be able to work while he studied. Her family could not afford for her to do additional study, as they had already paid \$17,000 for her to do her Masters degree.
38. The Tribunal noted that the Department's records indicate that the applicant's student visa (as a dependent spouse) expired [in] September 2011, at which point she became unlawful until she applied for a bridging visa E [in] March 2012, nearly six months after the expiry of her previous visa. The applicant said that her husband applied for temporary residence on the basis of his qualifications as a [trade deleted: s.431(2)] last year, and is still awaiting the outcome of that decision. He completed a two year Diploma in [course deleted: s.431(2)] before they were married. The agent who handled his application was meant to include the applicant in the application as her husband's dependent but made a mistake and failed to include her. Therefore, she became unlawful when his student visa expired. He received a bridging visa A and the agent told her that she was included. However, when she later queried this with the Department in April 2012, she was told that she was not included in her husband's skilled application, that she had become unlawful and would need to apply for a bridging visa E, which she then did. She does not have work rights attached to this bridging visa. Before then, she had not thought that there was a need to tell the Department about what had happened in India (the threats and the assault on her brother) as she believed that she was included in her husband's skilled visa application.
39. In relation to her employment background, the applicant said that she did not work in paid employment in India, but did assist on the family farm, after her grandmother had a [illness deleted: s.431(2)] and her mother was injured [injury deleted: s.431(2)] on the farm. The applicant had to take over running the family home. In Australia, she worked at nights as a

cleaner while studying full-time and when she was a dependent on her husband's student visa, she worked part time in a café for a while but then she was unable to find work. She was not registered to work as a [Profession 3] at that time. Since then, she has completed the registration requirements, and did well in her work placements as part of this process. However, she is unable to work in this profession in Australia because she does not have permission to work. The applicant said that she would very much like to work as a [Profession 3] and contribute to Australia.

40. The applicant said that her father has visited her in Australia twice. He came in October 2009 for three months, and then returned in 2010 for her marriage. The applicant said that her father received threats from the lender after he returned from visiting Australia, as it was assumed that he had been able to earn money in Australia. However, he held a visitor visa so was not able to work while he was here. At the time of her marriage, her husband's mother also came to Australia. In response to the Tribunal's query, the applicant said that her family did not make a dowry payment. When asked if this was unusual, the applicant said that dowry practices vary. In her case, her father had funded all of her studies so that was effectively her dowry. Her husband's family are very religious and would not expect to pay a big dowry for their own daughter. Her husband is their only son, and he did not ask for a dowry. Her in-laws did give her gold jewellery as is traditional.
41. The Tribunal asked the applicant when her husband returned to India. She said that he went back for two and a half months around May 2011. The Tribunal asked if this was to see his family. The applicant said that six months after they married, her husband had back problems and had to have a [procedure and hospital deleted: s.431(2)]. It was not successful and he was unable to work. She was working washing dishes at the [facility deleted: s.431(2)] and visiting him in hospital in December 2010. Her husband had a [procedure deleted: s.431(2)] in January 2011 but this did not work either. He had further surgery in April 2011. This period was very stressful. She was very depressed as her husband was not working for about one year and she had to work on her own, 20 hours per week, as well as look after her husband or come home to an empty house when he was in hospital. Her husband was also depressed by their circumstances. Although the second surgery was successful, she decided that it would be better for her husband to return to his family in India for a while to recuperate, where there would be people who could stay with him during the day. His parents live in a village in a different area of the Punjab, about 25kms from Amritsar. That was the most recent time that her husband was in India.
42. The applicant said that she really wanted to go back to India to have a wedding reception there and see her family, but their circumstances do not allow it. She had to work and her husband had to have the medical treatment for his back.
43. The Tribunal asked the applicant when in 2008 she applied for her student visa. The applicant said that she was not sure as her father arranged all of this: he organised and paid for airfares, tuition fees and the visa application. She just knew the date that she was due to go to Australia. She had no trouble leaving the country. She felt that she was coming here to make her future. She felt lucky as her father was strongly of the view that she should get a good education, even though other people consider that daughters 'go to the other [ie their husband's] family' The applicant said that her father was [height deleted: s.431(2)] tall but had been a champion [sport deleted: s.431(2)]. He tried to join the police earlier in his life but was asked to pay a big bribe and refused to do so. He wants both his children to do well and has paid for everything. In response to the Tribunal's query, the applicant said that the family has [businesses deleted: s.431(2)] that is located on the property. It is one shop but looks like

two. The property is worked by her father and grandfather. Her grandmother also helped, until she died of a further [illness deleted: s.431(2)] in 2011. The applicant's brother was also involved until he left the area to go to Malaysia.

44. In response to the Tribunal's query, the applicant said that she has now completed the registration requirements to work as a [Profession 3] in Australia but is unable to do so due to the fact that her bridging visa E does not permit her to work. She stated that this was very frustrating and distressing, given her training and willingness to work in this field, and the fact that she had done well in her work placements as part of the registration course. She has to stay at home all day, which is frustrating and depressing.
45. The applicant said that life was very difficult after she married and her husband injured her back. She worked to support them both, then visited him in the hospital for visiting hours and brought him food, then went home to an empty house. She had no family support here. She became really depressed. In response to the Tribunal's query, the applicant said that she did not seek counselling but spoke to her family and husband about the problems.
46. The Tribunal asked the applicant why she felt that she could not return to India. She said that it is because of the loan that her father took out. The applicant said that it might be Rs 400,000, which is around AUD \$10,000. The Tribunal asked when the applicant's father took out the loan. She said that her father took the loan out while she was studying for her Bachelor degree in India, but the majority of the funds were for Australian study. The Tribunal asked if the loan amount was Rs 400,000. The applicant responded that her parents have never told her the full amount. They kept that from her. The guy who lent her father the money would not accept being repaid in instalments, but her father was unable to repay all the funds due to a downturn in his business. The Tribunal queried with the applicant whether the figure of Rs 400,000 was therefore a guess on her part. The applicant said that this is what she guesses must be owed by her father, as he paid \$10,000 to the college in Australia for her tuition fees at the beginning, plus he also gave her approximately \$2,300 in cash when she came to Australia. The Tribunal queried with the applicant if she had ever asked her parents the total amount owing. She said she was not allowed to ask such things; her parents know. The Tribunal noted that her parents do not mention the exact figure in their affidavits either. The applicant responded that she knows that it is a lot of money because of all her expenses in studying here.
47. The Tribunal asked the applicant how she knew that her parents' business income was insufficient to meet these expenses. The applicant said that the business was very small. They only have about five acres of land in the village, of which one to two acres is used to grow fodder for the [animals] so there is not sufficient land to grow crops like rice or wheat. There are a lot of expenses, such as farm labour, equipment and pesticides. The Tribunal noted that student visa applications generally require applicants to provide detailed financial information about their ability to pay for their fees and living expenses and so on, while in Australia. It asked her what was put forward in terms of financial details in her original student visa application. The applicant responded that she did not know, as she did not organise this material or see it. She knows that she received \$2,300 in cash from her father prior to coming to Australia, to take with her for living expenses. Also, her grandfather's [relative deleted: s.431(2)] lives in [town deleted: s.431(2)], and has done for some years. He has a [business deleted: s.431(2)] there. This was relevant because her parents told her that they could send her money, but her intention was to support herself through part-time work, and if needed, seek assistance from her [relative deleted: s.431(2)] in Queensland. He agreed to provide financial assistance if needed and has done on a couple of occasions. However,

this was fairly minor, such as providing \$50 or some blankets. She also borrowed money from him to buy a lap top computer. Also, when she had to pay \$6,700 for her semester two fees, she received \$2,000 from India, she borrowed some from a good friend here, and she used her savings from her part-time work.

48. The Tribunal asked the applicant who paid for her wedding expenses, such as her costume. The applicant said that her father brought with him matching jewellery and a costume costing in total about Rs 50,000. He also had to pay for his airfare to come out in 2009, and then again in 2010 for the wedding. The Tribunal asked the applicant what she has been told about the loan by her parents. The applicant said that she has been told that her father has borrowed money from a guy who was a friend of his, though not someone from their village. She said that she does not know the exact details as she was concentrating on her studies. The Tribunal asked whether there was a written loan agreement. The applicant said that she had no idea. In response to the Tribunal asking why the applicant's father was unable to repay the loan, the applicant said that he cannot afford to, as he has spent a lot of money on her fees and expenses for study, on her wedding and associated travel, and on the farm, where significant equipment has had to be replaced. He has also had to pay the fees for the [Occupation 4] course being undertaken by her brother and for his own travel to Malaysia to visit her brother there. In addition, her father had paid for a previous training course for her brother in [course deleted: s.431(2)], based in Delhi. Her brother is not a natural student, but her father still tries to do the best for them both to further their futures.
49. The Tribunal asked the applicant when the threats about loan repayments first occurred. The applicant said that when her father returned from Australia in January 2010, it was assumed that he had money from Australia and the threats began. The Tribunal queried how the applicant's father was able to pay for all of the expenses outlined by her (her studies and wedding in Australia, her father's travel to Australia and Malaysia, and her brother's course in Malaysia). The applicant said that maybe her father had savings but there were lots of family commitments that he had to meet, plus running their household in [Village 1]. The Tribunal indicated that it appeared that her father had exercised some choice in the matter of where he allocated funds, and had chosen to pay various expenses for the family rather than make any repayments. The applicant said that her father might have made some loan repayments but a lot of the obligations that he had to family members were non-negotiable, such as payments for wedding gifts for extended family members and so on. The Tribunal queried why he would pay these expenses if he were being threatened to repay the loan as a priority. The applicant responded that it is the tradition, and not something a person can elect not to do. The Tribunal queried whether the applicant's father's extended family members would be offended, or insist on gifts from him, if he told them he was receiving death threats in relation to a loan. The applicant said that extended family members would still expect to receive gifts and so on from her father. Extended family members do not always understand and do not always help. The applicant said that her father wants to repay the loan but he cannot. She wants to work and contribute financially so that they can repay but she is unable to do so.
50. The Tribunal asked the applicant what threats her father had received. She said that he was told that they could kill her and her brother, and her brother was attacked. The Tribunal noted that, although her brother was attacked by 10 to 12 men, he was not in fact killed, which suggested that this was not the aim of the attack. The applicant responded that, from what her brother had told her, his attackers might have thought that he was dead, as he was unconscious for a period and bleeding. After the attackers left, he regained consciousness

and ran off. He called their father and he came to get her brother and they took him to the hospital. He was there for one to two days and had stitches to his wounds. They have a medical certificate about this but she does not have a copy of it. When asked why not, the applicant said there was no reason, she just did not ask her parents to send it to her. She said that she felt very depressed about what happened to her brother.

51. The Tribunal queried how the applicant and her family could be sure that the attack on her brother was connected to the loan owed by her father. The applicant said that she and her family assumed that the people who attacked her brother were hired goons acting on behalf of the lender. There was no other reason for her brother to be attacked, and threats had been made. The Tribunal noted that the applicant had not mentioned this incident in her protection visa application or the statements she made in connection with the application and asked why she would not have raised this significant claim at some point prior to the Tribunal hearing. The applicant responded that she felt that she did not want to say everything that had happened to her family in her application, and thought that she may not have to. She was very depressed at the time. The Tribunal said that it found it difficult to accept that, in answering the detailed questions on the protection visa application by way of a detailed statement, the applicant would not have mentioned a significant event like the attack on her brother, given its direct relevance to her fears. It noted that one conclusion that it might draw from this was that this claim had been fabricated to bolster her case after the rejection of her application by the delegate, and that this in turn might suggest that her claims in their entirety were made up and not genuine. The applicant asserted that what she had told the Tribunal was true, and that she had documentary evidence in relation to what happened to her brother. The applicant showed the Tribunal a document in English, stated to be an agreement between her brother and [Mr E], dated [in] August 2011. When asked who [Mr E] was, the applicant said that she did not know, but she thought that he might be the other party. The Tribunal put to the applicant that the document did not give any details about the background to the settlement or the parties, so – even if it accepted that the document was genuine – it did not substantiate the claim that her brother had been attacked in connection with loan repayments owed by her father. The Tribunal noted that there therefore appeared to be limited weight it could give to this document.
52. The applicant also showed the Tribunal an untranslated article with a photograph of various police officers and civilians, with someone posed in front of a tractor. It appeared to be from a newspaper but was undated. The applicant explained that she provided this as one of civilians in the picture was her father, and this indicated that he had often gone to the police to try to report the loan threats. The Tribunal again noted that in the absence of any indication of the date or subject matter of the article, there appeared to be extremely limited weight that it could put on this picture as establishing that her father had reported the threats received to the police or that the police had failed to take any action. In relation to police reports, the applicant said that her father did go once to the police and filed a report but the police later said that they had no record of this, and her father assumes that the lender interfered or bribed the police not to investigate the matter. The applicant then said that her father went many times but no evidence or investigation was undertaken. She thought that her father might be able to provide evidence of lodging reports, but then again, the police may continue to deny that they have any records relating to this.
53. The Tribunal asked the applicant about the reference she made to a court case in her statements submitted to the Department and the Tribunal. The applicant said that she thought that her father filed a case against the lender but she was unable to get more information.

When asked if her father has any proof from the court of having filed an application, the applicant said that he just filed a report with the police and no copy of this was given to him.

54. The Tribunal asked the applicant whether her father has continued to receive threats. She said that he was, but she was not sure when he last received one. She thought it would be March or April of 2012. When asked how her father received the threats, the applicant said that her parents received them by telephone. The applicant herself has never received a direct threat. She is depressed by the situation and feels that she could not return to India, as they would find her anywhere. In response to the Tribunal's query, the applicant said that nothing had happened to her parents or grandfather in terms of physical acts or harm since she came to Australia. The Tribunal questioned why the applicant would be at risk if the lender had not made any attempt to harm her parents or grandfather, despite them remaining in their home, since 2009. The applicant speculated that the lender may wish to finish off the next generation of the family.
55. The Tribunal clarified with the applicant that her reason for fearing returning to India is solely to do with the issue of the loan. The applicant confirmed that this is the case, and she has no other fears of returning to India for any other reason. Also, to return now would be to break her dream of making a future in Australia. This is important to both her and her father.
56. The Tribunal asked the applicant about the mistakes in her protection visa. The applicant confirmed that she incorrectly wrote that she had returned to India twice from Australia but had not in fact returned to India since coming here in 2009. She said she was not sure why she wrote this. The Tribunal noted that in the statement that she submitted with her protection visa application, she not only claimed to have returned to India twice, but also claimed that on one visit there, she was assaulted. The Tribunal noted that it was very difficult for it to accept that this was a mistake on the part of the applicant, and that, rather, it was suggestive of claims that had been fabricated. The applicant said that it was just a mistake and she was not sure how it happened that she wrote this down.
57. The Tribunal asked the applicant about state protection. The applicant said that she did not believe in the police in India, as they are very corrupt, and will take bribes to do anything. The Tribunal noted that country information indicates that there is corruption within the Indian police force but asked the applicant why she believed that they would not personally protect her. She responded that she has no confidence that they would protect her if the lender paid them not to do so. Unless you can pay, they will not protect you.
58. The Tribunal asked the applicant whether her brother went to the police to report the attack on him in August 2011. The applicant said that she thought that he did go but the police advised him to make the agreement she showed to the Tribunal. Her brother told her that he thought it would be better to do this to settle the matter. The Tribunal queried why the applicant's brother would be willing to settle the matter if a criminal case against his attackers could be pursued. The applicant said that her brother and the family thought that it would minimise the risk of further harm if they settled the matter.
59. The Tribunal asked the applicant about whether she believed it would be possible for her to relocate elsewhere in India and be safe, given that she is a well-qualified health professional who speaks Hindi, English and Punjabi. It asked her, as an example, whether she thought that she could live somewhere like New Delhi, a large city with a reasonable Sikh population. The applicant said that her family are linked to their land in the village and could not live elsewhere. The Tribunal asked her why this meant that she personally could not relocate

elsewhere, even if her family remained on their land. The applicant said that she would be at risk anywhere. She said that there would also be practical issues with relocation. She would need funds to establish herself in a new place and she and her husband would have to find jobs. She did not want to live outside her home area, and also there is a cultural imperative that she must look after her in-laws, who are settled in Amritsar. It is not open to her and her husband to leave her in-laws to look after themselves. The Tribunal queried whether this would not be an issue if she remained in Australia with her husband. The applicant said that if she and her husband remain here, they can apply to bring their parents here and look after them. The Tribunal queried why this would be acceptable, yet moving to a different place within India would not be. The applicant said it was very different to move within India and not live with one's in-laws than it is to move to another country. If she and her husband went to live with his parents near Amritsar, she would still be at risk of harm, as this is only 50kms or so from her home area. The Tribunal queried how anyone would find out if she returned to a different part of India. The applicant said that people could find out, as people talk and it would become known if her parents came to visit her.

60. The Tribunal asked the applicant whether there was anything else that she wished to add in relation to her claims. The applicant said that her father had invested a lot in her education. Even though she has very high marks in her studies, in India, there are employment quotas for Sikhs. It is like a form of discrimination and would make it very hard for her to get a government job as a [Profession 3], whereas non-Sikhs with less impressive marks would get in. If she were to work in the private sector as a [Profession 3], the pay is lower and the opportunities not as good. If she were able to remain in Australia, she could work as a [Profession 3] and earn money to repay her parents, and she and her husband could establish themselves properly and think about buying a home and starting a family. At the moment, they cannot make such plans due to the uncertainty of their position.
61. In response to the Tribunal's query, the applicant said that her husband is working at the moment, at [employer deleted: s.431(2)]. His hours per fortnight vary but he generally earns about \$800 to \$840 per fortnight. They pay \$1,400 in rent per month so there is very little left over for them to send to their families in India, even though they would like to do so. In response to the Tribunal's query, the applicant said that she thought that her brother may have sent some money back to her father but it would not be much as he is still training and not earning a full-time wage as a qualified [Occupation 4]. Her mother told her that her brother sent Rs 17,000 the previous month but this is not very much.
62. The Tribunal asked if any other family members could assist her parents financially. The applicant said that no one else could, as her [relative deleted: s.431(2)] in Queensland disapproves of the fact that her [relative deleted: s.431(2)] has assisted her financially in the past. Her in-laws are farmers who are also paying for their daughter's studies, including tuition and hostel fees. No one is in a position to assist her family financially.
63. The Tribunal raised with the applicant the timing of the provision of affidavits from her parents and grandfather, being provided only at the hearing, and not to the Department. The applicant said that she did not realise that it was relevant to obtain these. The Tribunal noted that it might not accept that the contents of the affidavits were genuine, in view of their recent provision and in view of the fact that her parents and grandfather might be expected to support her claims even if they were fabricated. The applicant said that they are supporting her and the claims are true.

64. The Tribunal noted that country information it had read indicated that the Punjab state government had introduced a Debt Swap Scheme, whereby farmers who were the subject of high interest loans from private lenders could apply to the Punjab National Bank and obtain a loan at a lower rate to repay the high interest loans. The applicant said that she did not know anything about this scheme and did not know whether her father did either. The applicant further noted that some country information also suggested that there are attacks or kidnappings in relation to outstanding loans made by private lenders, but that these are meant to be regulated in each state by legislation, which generally provides for a mediation process in the event of a dispute. However, it also noted that the country information suggested that many private lenders were not registered under such legislation and operated outside it. The applicant said that she had no idea about such legislation.
65. The Tribunal raised with the applicant that her delay in applying for a protection visa, including the fact that the application was made after she had been unlawful for six months, might lead the Tribunal to consider that her application was not based on a genuine fear of returning due to threats but because it was the only visa option remaining for her to stay in Australia. The applicant reiterated that she was unaware that she was unlawful for six months, due to the oversight of their previous agent in not properly including her in her husband's skilled migration application. Once she discovered this, she applied for the protection visa. Before this, she hoped that she would not have to discuss any of the things that had happened with the loan.
66. The Tribunal raised with the applicant that another concern it had about the veracity of her claim to fear harm in relation to the loan dispute was the fact that she did not mention the attack on her brother until the Tribunal hearing, and yet mentioned that she had been back to India twice and was assaulted on one of these visits, yet now claimed that this was a mistake by her. The Tribunal noted that these inconsistencies, mistakes and omissions seemed more significant than simply oversights. They were about very important parts of her claims. It further noted that these might lead the Tribunal to conclude that her claims were made up. The applicant said she did not realise at the time of her application that she had to tell everything but she did so after she realised this.
67. The Tribunal put to the applicant that the issue with the loan appeared not to fall within any of the Convention grounds, as it appeared unrelated to her race, religion, political opinion, membership of a particular social group or nationality. The applicant said that she did not disagree but asked about complementary protection.
68. The Tribunal then took evidence from the applicant's husband, at her request. Prior to giving his evidence, the applicant's husband had been waiting outside the hearing room. The applicant's husband confirmed that he met the applicant in Australia, after their parents began discussing a possible marriage between them. They met after he had qualified as a [trade deleted: s.431(2)]. The applicant's husband confirmed that he has applied for temporary skilled migration in Australia and is awaiting the outcome of this application. He is not sure when a decision will be made.
69. The applicant's husband confirmed that his family lives in Amritsar. When asked what he believed his wife was afraid of if she returned to India, the applicant said that she is afraid due to death threats received about her and by the fact that her brother was badly beaten. The Tribunal asked him what he understood to be the reason for the threats. The applicant's husband said that it was due to an education loan that the applicant's father took. He now cannot repay this loan, except through instalments, which the lender will not accept. The

applicant's brother was threatened and then attacked and has now gone to Malaysia. In response to the Tribunal's query, the applicant's husband said that he had no idea about the amount owing by his father-in-law. He has spoken with his in-laws over the telephone about it and his wife was crying. When asked about the possibility of relocating elsewhere in India, the applicant's husband said there was no point. The applicant's brother had been attacked outside his home area so she could be at risk anywhere. The Tribunal asked how it would become known if he and his wife returned to India and lived in a different area. The applicant's husband said that the police can be bribed to track people down, and for the same reasons (corruption) he had no confidence that the police would protect them.

70. The Tribunal noted that it may be necessary for it to write formally to the applicant to put certain information to her and to give her a chance to respond in writing if she wished to do so.
71. [In] August 2012, the Tribunal wrote to the applicant pursuant to section 424A of the Act and put the above information formally to the applicant in writing. The applicant was invited to provide written comments or a response by [date deleted: s.431(2)] September 2012 if she wished to do so.
72. [In] September 2012, the Tribunal received the following response from the applicant to its letter:

...

It is so sad but I would like to tell you that my brother was attacked on [date]/08/2011 by the hired goons of [Mr E]. As it was a family matter I did not want to describe the whole situation to you or to anybody else. I do not want to reveal my family secrets in front of the court because I do not want to create any trouble for my brother as he already being [sic] through unfavourable circumstances. I am also sending you the attached copy of my brother's medical certificate. So the information regarding my brother is true and relevant. I am happy if you want to send an enquiry to India.

Since coming to Australia, I have never been to India just because of this reason. My father borrowed some amount of money from [Mr E] and our family was passing through a big financial crunch due to a big loss in my father's business, my father could not repay the amount to [Mr E]. My father requested him so much but he did not agree at all. I explained that the error occurred by mistake while me and my husband [were] writing a letter. Actually my husband has been to India twice after our marriage but not me. I was worried about myself and my family.

Finally, I want to say that my family getting threats from the lender and getting more threats from him so that is why I lodged protection visa. As my life in danger as well if I go back because lender also said that he won't leave me. He can definitely harm me as he hired goon to kill my brother but luckily he survived.

My family has a mental satisfaction that I am at Australia so he will not be able to spoil my life. I am so obliged to Australia and its people for accepting me as an individual and providing me equal rights to live and breathe freely in this country. I always think about my family members back in India and about their safety but I am trying my best to help them in whatever ways possible. My brother has also shifted to Malaysia because of a life threat to him.

Please try to understand my condition and grant me Refugee Visa as I won't be able to go back to India now because of a life-threatening situation. So please it is my humble request to be considerate enough to grant me Refugee Visa.

73. The applicant's letter was accompanied by a copy of a document stated to be on [facility deleted: s.431(2)] letterhead, the contents of which were handwritten and partly illegible. It is dated [in] August 2011 and stated to be about [Mr D], son of [Mr A], and indicates that he presented on that date with various injuries, the details of which are illegible. This document had as an attachment a diagram of a human body annotated with arrows to the back and head, apparently indicating injury sites.

FINDINGS AND REASONS

Country of Nationality

74. The Department's records indicate that the applicant entered Australia on a passport indicating that she is an Indian national, and the Tribunal so finds. There is no evidence to suggest that the applicant had the right to enter or reside any other third country, and she did not claim that she did. The Tribunal therefore has assessed her claims for protection on the basis that this is the appropriate country of reference for her and is the 'receiving country' for the purposes of complementary protection pursuant to section 36(2)(aa) of the Act.

Assessment of Protection Claims

75. The applicant claims to be at risk of harm if she returns to India at the hands of a loan shark (and/or this person's associates) in her home area, who she alleges has threatened to kill her. The motivation for this is said to be that the applicant's father took out a loan to pay for the applicant's study and associated costs in Australia but has been unable to repay the loan. The particular risk to the applicant is said to arise from the fact that the lender has threatened to harm her in order to put pressure on her father and/or to gain revenge against him for non-payment. The applicant claimed that a group of thugs associated with the lender attacked and attempted to kill the applicant's brother in August 2011 for the same reason. She claimed that her brother avoided being killed only by chance and asserted that he was obliged to leave India to avoid harm after this incident. The applicant asserted that she would be at risk if she returned to India as these people still want to kill or harm her and her parents continue to receive threats to this effect. She maintains that she would not be able to obtain state protection due to corruption within the police force and the ability of the lender to influence the police. She further asserts that she and her husband could not relocate elsewhere in India to avoid the harm she fears as they would face economic hardship in relocating to an area outside their home area and it would not be culturally acceptable to their families for them to do so.
76. The Tribunal accepts that the applicant comes from [Village 1] in Hoshiarpur district in the Punjab, and that her parents [Mr A and Ms B] remain there, as does her grandfather [Mr C]. It further accepts that the family business consists of agricultural land and a [business deleted: s.431(2)] operated from their property. The Tribunal accepts that the applicant's parents sent her to Australia to undertake further [Profession 3] studies in 2009, for which they were the principal source of funds. The Tribunal accepts these things as fact as the applicant was able to give consistent, detailed information about these issues, and that her evidence was also consistent with documentary information on her protection visa and student visa files listing her parents, grandparents and birthplace. The Tribunal is satisfied,

from the Department's movement records, that the applicant has not returned to India since her arrival in Australia [in] April 2009.

77. However, the Tribunal does not accept the applicant's claims that she would be at risk of being harmed or killed if she returned to India due to threats from a money lender, made in connection with a loan taken out by her father to fund her study in Australia. In summary, the Tribunal does not accept the applicant as a credible witness in relation to this claim for the following reasons:
- the vagueness of the evidence given by her in her written claims to the Department and the Tribunal and in her oral evidence to the Tribunal about the details of the loan allegedly taken out by her father;
 - the significant inconsistent evidence provided by the applicant regarding her return travel to India on two occasions, on one of which she was assaulted, which she subsequently resiled from but was unable to satisfactorily explain;
 - the delay in the applicant lodging a protection visa application in Australia, and her subsequent delay in raising the claim relating to the attack on her brother in August 2011; and
 - the inconclusive and/or self-serving nature of the documentary evidence provided by the applicant to the Tribunal and the delay in doing so until the hearing and after the hearing.
78. As discussed with the applicant at the hearing, the Tribunal found it implausible that the applicant was unable to provide details of the loan taken out by her father, including the amount, whether there was a written agreement, the name of the lender, how many times her father had attempted to report threats received from the lender to the police, whether there was a court case concerning the loan or not and what had caused the downturn in the applicant's parents' business such that they were now unable to repay the loan. The Tribunal acknowledges that the applicant would not have been directly involved in obtaining the loan and it notes her evidence that her parents preferred not to involve her more than necessary as they wished her to concentrate on her studies. However, the Tribunal does not accept that the applicant's parents would continue to have this view once they were aware that the applicant had applied for a protection visa in Australia on this basis and was required to provide details of her claims for needing protection. Nor does it accept that the applicant would have been unaware of the relevance of this information or been unable to request it, if it had been genuinely available. The Tribunal notes that as recently as July 2012, after the rejection of her claims by the Department, the applicant provided affidavits from her parents which also failed to mention the amount of the loan owing. The Tribunal finds the assertions made by the applicant (and her parents and her grandfather) regarding the loan to be vague, implausible and unconvincing.
79. The Tribunal's concerns in this regard are heightened by the original written claims provided by the applicant in her protection visa application of April 2012, in which she asserted that she had returned to India twice since the threats against her father (and her) began, and was assaulted on one of these occasions. Following the delegate's decision (in which it was noted that this claim was contradicted by the applicant's electronic movement records indicating that she had not left Australia since her arrival as a student in April 2009), the applicant asserted in writing to the Tribunal that she had made a mistake about this and had not in fact

returned to India as originally claimed. At the Tribunal hearing, the applicant was asked to explain how she came to make such a mistake. She stated that she was depressed and must have mixed up the fact that her husband had returned to India since they have been in Australia but she had not. The Tribunal finds this explanation to be implausible and unconvincing. It does not accept that the applicant would make a mistake of this significance or illogicality in setting out her claims in writing. The applicant's mistake was not a failure to mention something that she had in fact done, nor did it relate to a minor aspect of her claims. Rather, it was a positive assertion of travel undertaken and harm experienced which was apparently central to her claim to face harm if she returned to India now, which was directly contradicted by her movement records. The Tribunal finds the fact that she initially made this claim in writing and then resiled from it when it was brought to her attention that it was impossible for this claim to be true, to be highly suggestive of the fact that her claims have been fabricated in their entirety.

80. The Tribunal finds that the delay in the applicant making a protection visa application, and the delay in her raising the claim regarding the attack on her brother, add to its concerns about the truthfulness of her claims and bolster its conclusion that they have been fabricated.
81. As discussed with the applicant at the hearing, the Tribunal had concerns about the fact that the applicant was unlawful between the expiry of her student visa [in] September 2011 and her application for a bridging visa E [in] March 2012 and only applied for a protection visa [in] April 2012. The Tribunal notes the applicant's explanation that she and her husband believed (incorrectly) that she was included in his skilled visa application, and thus she only applied for a protection visa once it became apparent that she had not been included in his application and was in fact unlawful. The applicant maintained that the family situation regarding the loan that she described was true but that she had hoped not to have to make any visa application based on it and only did so once she was left with no other option. The Tribunal accepts that it is plausible that the applicant may not have perceived a need to make a protection visa application before it became evident in early 2012 that she was not in fact included on her husband's skilled visa application. However, the Tribunal finds that the applicant was unable to satisfactorily explain why, once she had decided to make a protection visa application, she provided significant incorrect information (dealt with at paragraph 80 above) yet failed to provide all of the claims she subsequently relied upon.
82. As noted above, the applicant was unable to provide any definite details regarding the identity of the lender or the quantum of the debt, and she did not mention the attack on her brother in August 2011 until the Tribunal hearing in August 2012, despite providing written claims to the Department in April 2012 and to the Tribunal in June 2012, and despite giving evidence at the Tribunal hearing that her brother told her about the attack on him by telephone a week after it happened. When queried by the Tribunal about why she had not mentioned the attack on her brother prior to the Tribunal hearing, the applicant indicated that she did not want to say everything that had happened to her family in her application and thought she may not have to do so. The Tribunal does not accept this explanation, as it notes that the protection visa application form asks for details of all relevant incidents of harm and/or the reasons that a person fears harm, and that the applicant wrote relatively detailed answers, including incorrectly stating that she had returned to India and been assaulted in connection with the outstanding loan. The Tribunal therefore does not accept that the applicant was unaware of the relevance of this information to her case, or unable to describe it prior to August 2012. It finds the fact of the applicant raising this claim only at the Tribunal hearing to be highly suggestive of an attempt by her to bolster her claim.

83. The Tribunal has had regard to the copies of a medical report in relation to [Mr D] detailing injuries sustained by him, and a document purporting to be an agreement between him and [Mr E] [in] August 2011, negotiated by village officials, to drop a dispute and related charges between them. These were provided by the applicant at the hearing, and after the hearing, in response to the Tribunal's section 424A letter. Given that they were both dated August 2011, there appears to the Tribunal no reason why the applicant could not have provided these documents prior to mid-2012, and (as above) it does not accept her explanation that she did not believe it was necessary for her to do so to support her case. Moreover, even if the Tribunal gives the benefit of the doubt to the applicant and finds that [Mr D] is the applicant's brother and these documents were genuinely issued to him or in relation to him, the Tribunal finds that they do not indicate anything more than the fact that the applicant's brother was involved in a dispute, in relation to which he appears to have been attacked, and which was settled by agreement. There is nothing in the medical report to indicate the context in which the applicant's brother sustained his injuries. Nor is there any indication in the agreement document as to what the dispute between the applicant's brother and a person called [Mr E] was about. Given the Tribunal's significant concerns about the applicant's credibility already expressed above, the Tribunal does not accept that the applicant's brother was attacked in relation to an outstanding loan owed by his father or that the agreement or dispute between [Mr D and Mr E] related to such a loan dispute. While the Tribunal accepts that the applicant's brother may have subsequently left India to become a [Occupation 4] in Malaysia, it does not accept that this was because of harm feared due to a loan dispute involving his father. Nor does it accept that the applicant would face any risk of harm due to her brother's dispute with [Mr E] in 2011.
84. The Tribunal notes that the applicant has also provided other documentary evidence in support of her claims at the hearing, being an undated newspaper photograph with an untranslated article purportedly showing her father with local police, as well as affidavits from her parents and grandfather stating that they had received threats themselves and against the applicant from the lender in connection with a loan taken out by the applicant's father to pay for her study. The Tribunal gives no weight to the newspaper article and photograph as it considers that it has negligible probative value in supporting the applicant's claims that her father reported threats made by the lender to the police. Further, it regards the affidavits provided by the applicant's parents and grandfather to be self-serving in their contents and timing and it does not accept that the contents are genuine. It also regards their claims about having taken out a loan and then having difficulty paying it back to be implausible in light of the applicant's evidence that her father was able to travel twice to Australia and contribute funds to both her wedding and to her brother's various educational courses.
85. Similarly, the Tribunal finds that the evidence of the applicant's husband at the hearing regarding threats made against his wife and her family, is outweighed by its concerns about the applicant's credibility, as it considers that the applicant's husband had no independent knowledge of such incidents himself but was reliant on his wife and her family for this information. As stated above, the Tribunal does not accept the evidence given by the applicant or her family members regarding the existence of the loan or the threats made by the lender.
86. Given all of the above concerns, the Tribunal rejects the applicant's claim that she would face serious harm if she now returned to India. Specifically, due to its findings about the applicant's credibility, the Tribunal does not accept that:

- the applicant's father took out a loan to fund the applicant's educational costs that he was subsequently unable to repay;
- she or any other member of the family have been threatened or harmed by the lender;
- that the dispute in which the applicant's brother was involved in August 2011 had any connection with such a loan dispute or would result in any risk of harm for the applicant; or
- that the applicant's brother left India in 2011 due to a loan dispute.

87. Accordingly, the Tribunal does not accept that the applicant would face a real chance of serious harm due to her involvement in a loan dispute in India either now or in the foreseeable future. No other reasons were advanced by her as to why she would be at risk if she returned to India.
88. The Tribunal notes that, in response to its query about whether she felt she and her husband could relocate within India to avoid the harm she claimed to fear, the applicant raised the issue of employment quotas that discriminated against Sikhs. The Tribunal finds that, even if this is the case, such employment quotas do not amount to 'significant economic hardship that threatens [a] person's capacity to subsist', 'denial of access to basic services, where the denial threatens [a] person's capacity to subsist' and/or 'denial of capacity to earn a livelihood of any kind, where the denial threatens [a] person's capacity to subsist', as set out in subparagraphs 91R(2)(d)-(f) of the Act in relation to the non-exhaustive list of the types and levels of harm that would meet the serious harm test. While these forms of economic harm are not exhaustive, the Tribunal considers that 'serious harm' involves something similar, and something greater than employment quotas in a particular employment sector. Similarly, the Tribunal is not satisfied that such quotas constitute 'significant harm' as that term is defined in relation to complementary protection in s.36(2A). They clearly do not involve the death penalty, arbitrary deprivation of life or torture and the Tribunal does not accept that such quotas are at a level that would constitute cruel or inhuman or degrading treatment or punishment.
89. The Tribunal further finds that it is therefore unnecessary for it to consider whether state protection would be available to the applicant, or whether it would be withheld, or denied, for a Convention reason.
90. Given the above, the Tribunal is not satisfied, for the purposes of s.91R of the Act, that in the event that the applicant returns to India, she faces a real chance of serious harm capable of amounting to persecution for a Convention reason now or in the foreseeable future. The Tribunal finds that the applicant does not have a well-founded fear of persecution if she returned to India either now or in the foreseeable future.
91. Having found that the applicant is not a refugee, the Tribunal considered her claims against the complementary protection criteria. For the reasons set out above in paragraphs 78 to 87 above, the Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to India, there is a real risk that she will suffer significant harm. It considers the basis and forms of harm feared by the applicant to be fabricated, rather than real.

CONCLUSIONS

92. 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).
93. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).
94. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

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