



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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INDIA

IAA reference: IAA19/06977

Date and time of decision: 3 September 2019 14:41:00

M Anderton, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

*Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.*

## Background to the review

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### Visa application

1. The applicant claims to be an Indian Sikh citizen who arrived in Australia by boat in February 2013. On 29 September 2017 he applied for a Safe Haven Enterprise visa.
2. His claims revolved around fear of harm from the family of a Hindu girl with whom he had been in an intercaste relationship.
3. On 7 August 2019 a delegate for Minister for immigration refused to grant the visa because he was not satisfied the applicant was a refugee or faced a real risk of significant harm upon return to India.

### Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. No new information or submissions were received.

### Applicant's claims for protection

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6. The applicant's claims can be summarised as follows:
  - He is a Sikh from Haryana, India
  - According to his arrival interview (20 May 2013) a girl's brother, ([Mr A]), threatened him as he had brought disrepute on the girl ([Name]) by being with her. [Mr A] was a muscle man so there was no point in fighting him, so he let it go. He was threatened two and half to three months ago.
  - After he left India [Mr A] went to the applicant's home once and threatened his mother and said if he saw the applicant again he would cut him into pieces. The applicant made a mistake as if a boy talks to a girl the family does not like it gets blown out of proportion, so he left.
  - About eight or nine years ago after his father got drunk, he and his father were in skirmish with others from a rich village. The applicant's family were given compensation for their injuries and they reached a compromise to let it go. There has been no problem since.
  - According to his application, the applicant was in a relationship with a Hindu girl, but her family did not approve. The girl's family beat him and threatened to kill him if they saw him again. The family have a good business and are influential. As a result of the threat he had to escape the country.
  - The girl's family threatened him and his family. They have gone to his house looking to hurt or kill him. They smashed things in his house. They found him once and a big fight happened. The girl's family have harassed and started fights with his family. The applicant's family have moved to another village to avoid harm. If the applicant returns to India the girl's family will hunt him down and hurt or kill him.

- At his protection interview the applicant added that he last had contact with the girl around two years ago where she told him her brother was compelling her to marry but the conversation was cut short and he thought maybe the phone was broken or destroyed. His mother told him the day before the interview that the family still keep enquiring. He claimed two months ago the girl's brother threatened his brother at a bar that when the applicant returns he will beat him up and hurt him. He thinks the problem continues because the girl still loves him and wants to marry him.
- At the protection interview he said he was in the relationship for a year, and 15 days after the girl's brother found out about the relationship the applicant left India for [Country 1]. During that 15 days his mother told him they came and broke furniture.

## **Refugee assessment**

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7. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

### **Well-founded fear of persecution**

8. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
  - the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country
  - the persecution involves serious harm and systematic and discriminatory conduct
  - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
  - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
  - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
9. Based on the applicant's identity documents, I accept the applicant is an Indian national from Haryana and find the receiving country is India.
10. The applicant has consistently claimed that he was threatened due to his relationship with a Hindu girl.
11. While I accept that he may have been in an intercaste relationship with the girl and may have been threatened by the girl's brother, I consider, for the following reasons that the applicant has otherwise embellished and fabricated his claims.
12. For instance, in his arrival interview he claimed he was threatened and he did not fight or take the matter further. However later, in his application, he claimed there were fights and

he was beaten. At the arrival interview the applicant had mentioned a fight that occurred eight or nine years earlier after his father had got drunk with rich villagers, but he did not mention any fights or beatings from the girl's family. The drunken fight was resolved with compensation paid to the applicant's family for their injuries and no further trouble was encountered. Given the applicant mentioned such a fight ( which was not with the girl's family) I find it difficult to believe that he would not have also mentioned that he had been beaten or in fights with the girls family if true.

13. I have taken into account that the observations of the Federal Court in *MZZJO v MIBP* [2014] FCAFC 80 in respect of arrival interview omissions. However, in this case the interview was lengthy, it occurred three months after he arrived and he was able to provide detailed information on like matters such as another fight with other people, which occurred years earlier. It is difficult to believe that he would not mention a more recent fight or beating by the Hindu family, particularly given he claims his reason for departure was the threats made by the Hindu girl's family.
14. Further, while he claimed in his application that he was beaten and there were fights, the applicant's protection interview account provided little meaningful detail. For instance, when asked, the applicant said the girl's brother had a fight with him and threatened him and the brother came to the home and did a lot of drama.
15. Further, the applicant's time line of when the girl's brother found out about the relationship and when the applicant departed India was at odds with being beaten or in fights with the Hindu family. . The applicant claimed he left India 15 days after the girls' brother found out about the relationship. When asked what happened in that period, the applicant said he was not at home, but his mother told him that they came and broke the furniture. However this is a different account to his application which indicated that the threats to his family and damage to the family home occurred after he departed India. Further, he did not mention or account for any beating or fight that happened to him in that 15 day period. The applicant's account of fights or beatings was vague, lacked details and his timeline of the 15 day period did not account for, or mention, any claimed beating.
16. In the application, the applicant claimed that his family continued to receive threats and had to move to another village for their safety. However, the applicant's account and explanations were inconsistent and varied. At the beginning of the protection interview, the applicant was very clear that his mother continued to reside in the same family home that he had resided in, where the troubles had been. Later when the delegate put the inconsistency to the applicant, the applicant said the delegate had not asked him about his family. However, the delegate had elicited quite clear information at the outset about where the applicant's family lived and that his mother, the applicant's [brother], wife and child all lived in the same family home that the applicant had lived in. The delegate had double checked this residence information with the applicant at the outset very clearly and the applicant confirmed more than once that his mother lived in the same family home. As the applicant thought about the inconsistency further, he added that he moved house and it was going to be his new address but the delegate did not ask him. The applicant then changed his explanation and said it was his family who moved. The applicant then added another explanation that his mother visited the family home but also lived at a new house with the applicant's brother in the same village nearby. The delegate noted that in his application, the applicant had claimed they had moved to a different village. The applicant stated it was the same village but not too far away. The applicant's account and explanation of this inconsistency changed as he went such that I consider the applicant was making it up as he

went. I do not accept the applicant's mother or family moved house to for their safety or to avoid harm. I consider the applicant has fabricated this claim.

17. At the protection interview the applicant claimed he was in the relationship for a year before the family found out. When asked how the family came to know about the relationship, the applicant was evasive and did not answer the question. Rather he said the brother knew about it and it was expected that he would tell the cousins. The applicant did not explain how the brother found out the relationship. Further, the applicant provided little information about the relationship, how they met, the nature or nature of the relationship, which further reinforces my view that the applicant's involvement was minimal and ceased early.
18. Further, in his application he claimed the relationship was of two or three years duration, which is not consistent with protection interview account that he was in the relationship for one year and the family found out and he left 15 days later.
19. At the protection interview the applicant claimed that he had been in contact with the girl, two years ago. He stated she somehow got his number, texted him and asked to talk to him. The applicant claimed they had a conversation in which she asked how he was and he told her he was in Australia and she said her brother was compelling her to marry. Then the conversation was cut short and he thinks the phone was broken or destroyed. I consider the applicant's evidence about this was limited and his account of this contact was told in a piecemeal fashion and not as if from a lived experience.
20. The applicant said he had not had any contact with the girl or family since then. When asked about the last contact he had with the family, the applicant was evasive and did not respond directly to the question. He said they keep coming to the village, but did not specify when the last visit was. The delegate asked him a number of times. The applicant then added that he asked his mother the day before the protection interview and she said the family continued to enquire every now and then. The applicant provided no details about when this occurred or last occurred or nature of the visits. Further, when the delegate asked again about the last time the family was threatened, the applicant added another account that two months ago the girl's brother saw the applicant's brother in a bar and threatened that when he returned he would beat and hurt him. The applicant had not mentioned this earlier in the interview or in response to earlier questions about when his family was last threatened. Nor had he mentioned it at the outset of the interview when asked if there was anything to add or new information. While I accept that one may not recall all information at that outset and it may unfold in the interview, I find it difficult to believe that he would not mention such a recent encounter (two months ago) earlier in the interview or at least on initial questioning, particularly when asked about the timing of the last threat to the family. I consider this is another example of the applicant making up his account as he went.
21. When delegate concerns were put to the applicant that the girl's family would be interested in him so many years later, the applicant explained that the girl still loves him and wanted to marry him. However, on his evidence, the applicant had not had any contact with the girl for the last two years, so it is difficult to believe that he would know that, particularly given the effluxion of time and lack of contact. In response to delegate doubts about the applicant's claims, the applicant said his brother and mother do not live far away and they know from neighbours she is not married. I consider this was another example of the applicant making up new account in response to the delegate's concerns.
22. I do not accept the applicant was beaten or repeatedly threatened or that the family house was smashed or that the Hindu family is looking for him or threatened his family. I consider

while there may have been one threat to ensure the relationship did not continue or eventuate, I find the applicant ceased his relationship and let it go. I note in his arrival interview he acknowledged it was his mistake as boys talking to girls can be blown out of proportion by families who do not approve. He did not mention any beating or attacks on the house. Further, while he claimed the threat occurred two and a half to three months ago (ie in January or February 2013), the applicant was in [Country 1] or [Country then. Further, the reasons set out above, I consider the applicant's account has evolved, was vague, varied and that he was making up his account as he went. I consider the applicant has fabricated claims of continual threats, beatings, fights or attacks on the house or threats to the family.

23. I do not accept the family has any further interest in the applicant. It has been six years and the applicant's involvement was brief and ceased. I note he considered he was not in a relationship when he came to Australia either, which further reinforces my view that he was not in a relationship with a Hindu girl when he left India. I do not accept that the girl is still in love with him and wants to marry or that they have been in contact in recent years. I do not accept the applicant's brother or family have any interest in the applicant now or in the future.
24. Further, I do not accept that the applicant's family has been threatened or that they had to move to avoid harm. I consider the applicant has fabricated claims. I consider the applicant's claims at the protection interview about his family's recent encounters with the girl's family lack credibility and that he has added these claims to enhance his protection claims. I do not accept the girl's family has or will have any interest in the applicant.
25. I do not accept the applicant faces a real of chance of harm from girl's brother, family or anyone.
26. I am not satisfied the applicant has a well-founded fear of persecution from anyone for reason or combination of reasons in s.5J(1)(a), now or in the reasonably foreseeable future, if he returns to India.

#### **Refugee: conclusion**

27. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

#### **Complementary protection assessment**

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28. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

#### **Real risk of significant harm**

29. Under s.36(2A), a person will suffer 'significant harm' if:
  - the person will be arbitrarily deprived of his or her life
  - the death penalty will be carried out on the person

- the person will be subjected to torture
  - the person will be subjected to cruel or inhuman treatment or punishment, or
  - the person will be subjected to degrading treatment or punishment.
30. I have found that the applicant does not have a real chance of harm on any of bases. For the same reason and applying the authority in *MIAC v SZQRB* [2013] FCAFC 33, I am not satisfied the applicant faces a real risk of any harm, including significant harm on any of those bases if removed to India.

**Complementary protection: conclusion**

31. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

**Decision**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

## Applicable law

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### **Migration Act 1958**

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

**bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

**cruel or inhuman treatment or punishment** means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

**degrading treatment or punishment** means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

**receiving country**, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

**torture** means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.



Note: For the meaning of *well-founded fear of persecution*, see section 5J.

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
  - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - (b) conceal an innate or immutable characteristic of the person; or
  - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
    - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
    - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
    - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
    - (iv) conceal a physical, psychological or intellectual disability;
    - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
  - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - (b) the persecution must involve serious harm to the person; and
  - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

### 5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:

- (i) the first person has ever experienced; or
- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

#### **5L Membership of a particular social group other than family**

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
  - (i) the characteristic is an innate or immutable characteristic;
  - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
  - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

#### **5LA Effective protection measures**

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
  - (a) protection against persecution could be provided to the person by:
    - (i) the relevant State; or
    - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
  - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
  - (a) the person can access the protection; and
  - (b) the protection is durable; and
  - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

#### **36 Protection visas – criteria provided for by this Act**

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
  - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
  - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of 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 non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
  - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant; or
  - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (aa); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
  - (a) the non-citizen will be arbitrarily deprived of his or her life; or
  - (b) the death penalty will be carried out on the non-citizen; or
  - (c) the non-citizen will be subjected to torture; or
  - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
  - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
  - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
  - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

*Protection obligations*

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
  - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

*Determining nationality*

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.