



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

**Decision and Reasons**

**Referred application**

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INDIA

IAA reference: IAA20/07921

Date and time of decision: 20 March 2020 12:12:00

M Currie, 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 referred applicant (the applicant) claims to be an Indian citizen and an adherent of the Sikh faith. He arrived in Australia in April 2013 and lodged an application for a Safe Haven Enterprise Visa (SHEV) in August 2017 based principally on claims that he would face harm due to his links with the Shiromani Akali Dal (Amritsar) political party in India. In February 2020, a delegate of the Minister for Immigration found that Australia did not owe protection obligations to the Applicant. On 24 February 2020, the applicant's matter was referred to the Immigration Assessment Authority (IAA).
2. My task is to consider the applicant's claims for protection afresh. As this is a *de novo* decision, I am not bound by any earlier findings by the delegate.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 17 March 2020, a migration agent sent two emails to the IAA on behalf of the applicant. The first email contained 23 attachments and the second email contained a further seven, bringing the total number to 30 attachments. However, several of the attachments provided in the two emails were duplicates which were provided twice in a single email or had been included in both emails, and many of the documents had been provided to the department previously and were included in the review material provided by the Secretary<sup>1</sup>. Of the thirty attachments in the two emails, only five had not been included in the review material or were not duplicates. These were:
  - A document titled '*Affidavit*', which was dated 10 July 2019 and is said to have been written by the applicant's mother. This document was not before the delegate. It is new information.
  - A document titled '*Medical Report*' which is dated [in] October 2012 which contains a summary of the findings of a cranial CT Scan which was conducted on the applicant's father at the [Hospital 1] in [Town 1]. This document was not before the delegate. It is new information.
  - A document titled '*Medical Report 2*' which is dated [in] October 2012 which contains a document which indicates that the applicant's father was admitted to the [Hospital 1] [in] October 2012 and was discharged [later in] October 2012 at the request of his family. This document was not before the delegate. It is new information.
  - A document titled '*Medical Bill*' which is dated [in] December 2012. This document indicates that the applicant's father was admitted to *the* [Hospital 1] [in] October 2012 and was discharged [later in] October 2012. The Medical Bill records the cost for a number of medical procedures which the applicant's father had undergone at the Hospital. This document was not before the delegate. It is new information.

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<sup>1</sup> Including several copies of his Birth Certificate and a translation for the Birth Certificate; copies of two letters written on behalf of the applicant; copies of multiple pages from his 2017 SHEV application, and a copy of his 3 page Statement of Claims' from his SHEV application.

- A Submission to the IAA which argued against the findings of the delegate. This submission largely restated the applicant's claims and cited relevant statutes from the Migration Act to argue that the applicant was owed protection in this country. To the extent that the Submission argued against the delegate's findings, I have considered it. I note that the Submission to the IAA contained a new claim; that the applicant and his family had been pressured into agreeing that the applicant's father's death had been '*natural*' and that the death had been recorded as '*natural cause*' on his father's death certificate, since the [Hospital 1] did not want to be involved in political issues (the applicant claims his father's death related to the political party at the heart of his claims). Furthermore, the submission asserts if the family did not agree to these arrangements, that the hospital would not allow them to remove his father's body from the premises. This claim was not before the delegate, it is new information. I note that the submission to the IAA referred to an 'attached' Death Certificate for the applicant's father. However, no Death Certificate was provided in either of the emails of 17 March 2020.
  - The Submission to the IAA also contained three internet hyperlinks to articles said to be relevant to the applicant's claims for protection. These hyperlinks were not before the delegate, they are new information. On 18 March 2020, the IAA wrote to the migration agent and advised that the IAA's '*Practice Direction for Applicants, Representatives and Authorised Recipients*' (the Practice Direction) which was provided to the migration agent on 24 February 2020 specifically indicated that '*hyperlinks to publicly available documents*' were not an acceptable way to submit new information to the IAA and that if the agent wanted this information considered it should be provided in a way that complies with the Practice Direction. In the same correspondence, the migration agent was also advised that the Death Certificate referred to in the Submission to the IAA had not been provided.
5. In response to the IAA's correspondence of 18 March 2020, the applicant's migration agent sent six emails to the IAA on 19 March 2020 which contained 20 attachments. All but two of these attachments were in the PDF file format, and upon examination, the majority of the PDF Files were found to contain a copy of a news article from *SBS online*, a news article from *India today*, and a series of articles from the *Sikh Press Association*. These articles had been the subject of the three initial hyperlinks sent to the IAA. A copy of a Death Certificate issued in the name of the applicant's father was also attached. None of this material was before the delegate. It is all new information.
  6. Turning first to the affidavit from the applicant's mother, I observe it is dated 10 July 2019. This document was written before the s.65 decision and prior to the applicant's Protection Visa Interview (held on 18 July 2019). It appears that the document was written specifically to accompany the applicant's SHEV application, however, as noted above, this document was not provided to the Department. I have reviewed the document and I note that it reiterates the applicant's claims that his father was a member of Shiromani Akali Dal (Amritsar) Party, that his father is had been killed, and that the applicant received threats in India. While on its face the Affidavit is supportive of the applicant's claims, I observe that the information in the document is vague, and provided in the broadest terms. It does not provide any specific independent corroborative information about his claims. I note that throughout his visa application process, the applicant has indicated that he maintains regular contact with his mother in India, so it is not apparent why he did not submit the Affidavit to the Department during his primary visa assessment process. No reason has been advanced by the applicant as to why this document was not provided earlier, or why it should be considered now. On the whole, given its broad terms, and the absence of any explanation, I am not satisfied that

there are exceptional circumstances to justify the submission of the affidavit. As s.473DD(a) is not met for this document, I must not consider it.

7. The new information submitted in the form of documents about the applicant's father's medical issues and subsequent death (*Medical Bill, Medical Report, Medical Report 2 and Death Certificate*) all contain credible personal information about the applicant's father which was not previously known by the Department and so s.473DD(b)(ii) is met for these documents. These documents all provide information about one of the applicant's central claims (his father's death). I am satisfied that there are exceptional circumstances to justify the consideration of the three medical documents and so these documents also meet s.473DD(a) and I have considered them.
8. The applicant's his new claim that his family was pressured by hospital staff to agree that his father died of 'natural causes' is not supported by any of the evidence he has provided to the Department, or the IAA. Contrary to the new information in the Submission to the IAA, the Death Certificate he has provided for his father does not record that his father's death was '*Natural*'. In fact, the Death Certificate contains no information about his father's cause of death. Furthermore, I note that the Death Certificate records that his father's Place of Death was [the] applicant's home village, rather than the [Hospital 1], which his located in [Town 1]. This is consistent with information recorded in the *Medical Bill*, which indicates that the applicant's father was discharged from the hospital, and *Medical Report 2*, which indicates that his father had been discharged "*against medical advice*" implying he was alive when discharged. It is not clear why the applicant's submission to the IAA has advanced claims that his father's death certificate records his death as '*natural*', and that he died in the hospital when in fact it does not. Furthermore, these documents suggest that the applicant's father did not die in Hospital as asserted, but rather returned to his village, against the advice of hospital staff, and subsequently died there.
9. The only other reference to his father dying of natural causes in the material before me is found in his 2013 Arrival & Induction Interview (the arrival Interview), which was conducted July 2013, around three months after he arrived in this country. During that interview, the applicant had informed Australian authorities that his father had died of natural causes. I note that in the Statement of Claims which accompanied his 2017 SHEV application, the applicant sought to correct some errors he had made in his arrival interview. In the 2017 Statement of Claims, he said that during the arrival interview he had provided an incorrect name for himself; incorrect dates of birth for himself, and his family; and provided incorrect details about travelling to Australia via [another country]. He said that he had provided the details in error since he was "*unwell and confused about the process*". The applicant offered a similar explanation for these "*contradictions*" in his 2020 Submission to the IAA.
10. It is clear from the applicant's efforts to correct the inaccurate information he provided in 2013 that he knew that errors in his arrival interview could cause him some problems. I note that when he identified corrections arising from his 2013 arrival interview in the Statement of Claims, he did not seek to correct his 2013 assertion that his father died of natural causes. Furthermore, I observe that the applicant has not provided an explanation for why he failed to mention that he and his family had been pressured to record his father's death as natural in 2013, or in his 2017 SHEV application or during his 2019 Protection Visa Interview. Even if these claims were true, it is not clear why the applicant would have failed to inform Australian authorities about this pressure when he arrived, or in his SHEV application or during his Protection Visa Interview, since he claims that he knew about the pressure exerted on his family for the entire time.

11. After careful consideration of these factors, I am not satisfied that the information about his family being pressured to record father's cause of death as natural could not have been provided to the Minister prior to the delegate's decision and so s.473DD(b)(ii) is not met for this information. Furthermore, I am not satisfied that this claim is credible personal information in the relevant sense, since I conclude that the information is simply not believable, and so s.473DD(b)(i) is not met for the new information. As neither limb of s.473DD(b) is met for this new information, I must not consider it. For the sake of completeness, I note that I am also not satisfied that there are any exceptional circumstances to justify consideration of the new information about being pressured to record his father's cause of death as natural.
12. Finally, I turn to the information provided from *SBS online*, *India Today*, and the *Sikh Press Association*. In the Submission to the IAA, it is asserted that these materials are offered because the delegate had questioned the genuineness of two letters provided by the applicant. These materials all relate to the arrest of Sikh activists in India, who have sought to promote the idea of an independent Khalistan as a homeland for the Sikh people. The question of whether the applicant would be a supporter of an independent Khalistan if he was returned to India was put to him during his 2019 Protection Visa Interview. During the interview, the applicant said that though he had links to a political party which was in favour of Khalistan (see below for more details), that he personally was not an activist and was would not participate in any overt activities in support of an independent Khalistan. In the circumstances, it is not clear that these articles have any bearing on my consideration of the applicant's profile in India. Furthermore, for reasons outlined below, I have found that the applicant has exaggerated his links to the political party in question in order to enhance his chances of obtaining a Protection Visa. In the circumstances I am not satisfied that there are any exceptional circumstances to justify considering the new information from *SBS online*, *India Today* or the *Sikh Press Association* and so I must not do so.

### **Applicant's claims for protection**

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13. The applicant's claims can be summarised as follows:
  - He is a citizen of India and an adherent of the Sikh faith. He was born in [year] and lived in [his home village] [in District 1], Punjab State, in northern India. He lived with his parents and his siblings. His father was [an occupation].
  - His father was a member and active supporter of the Shiromani Akali Dal (Amritsar) Party. Shiromani Akali Dal (Amritsar) is a Sikh Party with the principal political goal is the creation of an independent Sikh nation known as Khalistan, centred on the Punjab region. His uncle was also a member. His father and uncle were friendly with the local party chief. His father raised funds for the Party.
  - As a young child, he started attending Shiromani Akali Dal (Amritsar) Party (the Party) meetings, rallies and protests with his father. His father was a very active member and raised funds for the party. When he was around [age range] years old, he attended the first his first party demonstration in favour of an independent Khalistan and did so regularly thereafter for the time he lived in India. Around this time, he and his father were followed home from a demonstration by supporters of the rival Indian National Congress Party (the Congress Party) and were abused and threatened. Thereafter, the applicant and his father were regularly threatened by rival party members.
  - Sometime around 2010/11, approximately a year or two after he first attended demonstration, his father and he were returning home after a demonstration, when

they were followed by four men. The men started abusing them, and beat [them]. His father was hit in the head. He later died of his injuries.

- Despite the death of his father, the applicant continued to attend Party activities. Around the age of [age], he was followed home from a Party protest and was followed by another group of men. The men threatened him to stop supporting the Party. Afterwards the applicant and his mother were scared. His mother made arrangements for him to depart India and travel to Australia. He fled in 2013 due to the threats he received against his life because of his involvement in the Party. He travelled on a Genuine Indian Passport issued in his name.
- He claims he cannot return to India and fears that if he is forced to return, he will be killed. The Indian National Congress Party remains in power in Punjab, and they are using the Police to abuse and threaten Sikhs. They know the applicant is not in the country and will immediately arrest him upon return.
- He believes that the Indian Police are looking for him. Approximately once a month the Police attend his family home and threaten that they will kill him if he returns to India, they also threaten that they will 'finish' his family. Whenever there is significant activity by the Party in India, the Police attend his family home and make the same threats to his mother.
- He maintains communication with members of the Party by telephone two or three times a month. He discusses the activities of the Party, and sometimes shares political posts on his [social media] account. He continues to raise and send money to fund the Party. Members of the Party have advised him, and Indian newspapers confirm that there are a number of Party members who have been sent to jail and many more, who have served their term of imprisonment but not yet been released from jail. He fears that, if he is not killed, he would be imprisoned indefinitely if returned to India

### **Factual findings**

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14. During his Protection Visa process, the applicant provided a number of documents to the delegate. This has included a copy and translation of the applicant's Birth Certificate, indicating his date of birth, and a different name that that he provide when he first arrived in this country. He has also provided a copy of an AADHAAR Card which indicates that the applicant was born in [year] and that his supporting his revised name. In his SHEV application he indicated that the name he provided to Australian authorities when he first arrived was not his correct name but was merely an alias, and that his true name was as recorded in the Birth Certificate and the AADHAAR Card. The applicant has established his identity to my satisfaction. I accept that the applicant is a Indian citizen and an adherent of the Sikh religion, who was born in [year]. For the purposes of this decision, I find that India is his receiving country.

### **Shiromani Akali Dal (Amritsar), Police interest**

15. The applicant's central claims about his life in India all revolve around what he says are his personal and family links to the Party. He says his father and uncles were members of the Party. He says they knew the Chief of the Party and his father was a fundraiser for the Party. He says that from a young age that he started to attend Party activities with his father. He says he first attended a demonstration in favour of Khalistan with his father around the age of [age range]. This would have been around 2007 or 2008. He says that in the same year the

same year as he attended his first pro-Khalistan demonstration, he and his father were threatened and abused by members of the Congress Party.

16. The applicant says that thereafter he and his father regularly received threats. He says that two principal events happened to him in the years that followed which led to his departure from India.
  - In the first incident, the applicant claims that in his “*first year or two of attending protests*” he was harmed for the first time. He says that he and his father were followed home by a group of four men in a car. The men approached them and abused them and beat [them]. He says his father was hit in the [head], and subsequently died after a period of hospitalisation.
  - The second incident cited by the applicant occurred when he was [age] years old, after his father had died. He says that he was returning home from another Party Protest when he was followed by some men in a car. The men stopped him and threatened to kill him unless he stopped supporting the Party. The men had their faces covered and he could not identify them.
17. After the second incident, the applicant and his mother became scared for his safety. His mother started to arrange for him to depart India. She contacted an agent with this goal. The applicant departed India, around six or seven months after the second incident.
18. Country Information before me indicates that Punjab is a small but densely populated state in the north-west of India. It shares borders with Pakistan to the west, Jammu and Kashmir to the north, Himachal Pradesh to the east, Haryana to the south and southeast and Rajasthan to the south west. Most of the state consists of a fertile alluvial plain with several rivers and an extensive irrigation system<sup>2</sup>. Punjab is a relatively prosperous state by Indian standards, with annual per capita income of around USD 1,700 in 2014-15, compared with USD 1,290 for the country as a whole<sup>3</sup>
19. Sikhism is a monotheistic religion founded in the Punjab region in the 15<sup>th</sup> century<sup>4</sup>. Punjab is home to around three-quarters of India’s Sikh population, and is the only state where Sikhs make up a majority; around 16 million (58 per cent) are Sikhs<sup>5</sup>.
20. In 1947, the region known historically as the Punjab was split between the newly independent nations of Pakistan and India. This division led to the displacement of millions of people, as Sikhs and Hindus moved east into India and Muslims west into Pakistan. This event resulted in the deaths of many thousands of people. Following a Sikh campaign for a separate Punjabi-speaking state within India, the Indian state of Punjab was split in 1966 into the Hindi-speaking state of Haryana and the Punjabi-speaking, Sikh-majority state of Punjab<sup>6</sup>. Despite the creation of the state of Punjab, some groups continued to demand a sovereign Sikh state, known as ‘Khalistan’. Some pro-Khalistan groups advocated for armed struggle to achieve these aims<sup>7</sup>.

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<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), ‘DFAT Thematic Report Indian State of Punjab, 7 December 2016 CIS38A80122951

<sup>3</sup> DFAT, ‘DFAT Thematic Report Indian State of Punjab, 7 December 2016 CIS38A80122951

<sup>4</sup> DFAT, ‘DFAT Thematic Report Indian State of Punjab, 7 December 2016 CIS38A80122951

<sup>5</sup> DFAT, ‘DFAT Thematic Report Indian State of Punjab, 7 December 2016 CIS38A80122951

<sup>6</sup> DFAT, ‘DFAT Thematic Report Indian State of Punjab, 7 December 2016 CIS38A80122951

<sup>7</sup> DFAT, ‘DFAT Thematic Report Indian State of Punjab, 7 December 2016 CIS38A80122951

21. During an internal struggle within the Sikh community in 1982, a separatist faction moved into the Harmandir Sahib (Golden Temple) complex in Amritsar, the holiest site in Sikhism. In June 1984, the Indian army carried out an attack in an attempt to remove the separatists during which the Golden Temple itself was largely undamaged in the battle, but other buildings in the temple complex, were damaged extensively. The official death toll from the operation was 83 Indian army personnel and 492 activists, although unofficial estimates put the death toll as high as several thousand people. In retaliation for the operation, Prime Minister Indira Gandhi was assassinated by her Sikh bodyguards in her compound in New Delhi in October 1984. In the days that followed, the assassination, crowds seeking revenge attacked Sikh homes and businesses across the country. Approximately 3,000 people, mostly Sikhs, were killed in the violence<sup>8</sup>. The memory of these events is a source of tension in India, particularly for the members of the Sikh community. Nevertheless, DFAT assesses that Sikhs in Punjab have no higher risk of religious-based official or societal discrimination or violence than that faced by people from other religious groups<sup>9</sup>.
22. Over the course of the next decade, Indian security forces carried out further operations to suppress Sikh separatism, during which there were credible allegations of torture, extrajudicial killings and deaths in custody carried out by security forces, including in Punjab. Despite the allegations of wrongdoing, these operations, along with the successfully-held state elections in the 1990s and 2000s, helped to diminish support for armed struggle and separatism<sup>10</sup>.
23. Elections in Punjab are generally free and fair and vigorously contested; opposition parties are generally able to freely campaign and put forward their views. Opposition parties are often quoted at length in the media when they criticise government policy, and credible interlocutors (including academics and media representatives) told DFAT that they are comfortable that they can publicly criticise the government without fear of harassment or detention<sup>11</sup>. A coalition of two parties: Shiromani Akali Dal (SAD), the senior partner, and the Bharatiya Janata Party (BJP), the junior coalition partner ruled Punjab between 2007 and 2017. SAD is a primarily Sikh-based regional party that was actively involved in the movement to create a separate Punjabi-speaking state in northern India, a goal which was achieved in 1966 with the creation of the Sikh-majority Punjab State<sup>12</sup>. The Shiromani Akali Dal (Amritsar) Party to which the applicant and his father claim they belonged are one of a number of splinter factions of the SAD which have emerged over the years<sup>13</sup>. Reporting from the Immigration and Refugee Board of Canada indicates that that Shiromani Akali Dal (Amritsar) Party members in India are not, in general ill-treated by the Police, nor are they harassed for participating in party gatherings<sup>14</sup>. In 2016 DFAT assessed that India has a diverse political landscape, which represents different ethnic, religious, secular and political interests and that there are no constitutional, legal or other institutional restrictions preventing minorities from participating in politics. The assessment further adds that members of opposition political parties do not face official or societal discrimination.

<sup>8</sup> DFAT, 'DFAT Thematic Report Indian State of Punjab, 7 December 2016 CIS38A80122951

<sup>9</sup> DFAT, 'DFAT Thematic Report Indian State of Punjab, 7 December 2016 CIS38A80122951

<sup>10</sup> DFAT, 'DFAT Thematic Report Indian State of Punjab, 7 December 2016 CIS38A80122951

<sup>11</sup> DFAT, 'DFAT Thematic Report Indian State of Punjab, 7 December 2016 CIS38A80122951

<sup>12</sup> DFAT, 'DFAT Thematic Report Indian State of Punjab, 7 December 2016 CIS38A80122951

<sup>13</sup> Immigration and Refugee Board of Canada, 'IND102547.E: India: Whether members of the Akali Dal (Mann) / Akali Dal (Amritsar) party are harassed and arrested for participating in party gatherings, for publicly complaining about the treatment of Sikhs by Indian authorities', 15 April 2008, 20190212101114

<sup>14</sup> Immigration and Refugee Board of Canada, 'IND102547.E: India: Whether members of the Akali Dal (Mann) / Akali Dal (Amritsar) party are harassed and arrested for participating in party gatherings, for publicly complaining about the treatment of Sikhs by Indian authorities', 15 April 2008, 20190212101114



24. Punjab experienced high levels of violence and unrest during the 1980s and early 1990s, when armed secessionist groups clashed regularly with authorities. This period in the state's history, including the 1984 confrontation at the Golden Temple in Amritsar, is often invoked by some sections of the Sikh community in Punjab, as well as the Sikh diaspora, to claim that human rights violations were committed by state and central government authorities. Since the early- to mid-1990s, successive governments have taken a stronger stance on security issues, largely eliminating domestic pro-Khalistan terrorist groups within the state<sup>15</sup>. Despite the occurrence of some isolated incidents, DFAT assesses that the overall security situation in Punjab is generally calm and that the general population faces a very low risk of violence or property or other damage<sup>16</sup>.
25. As evidence of his claims, the applicant has provided two letters of support. The first is dated [in] July 2019 and is purportedly written by an advocate from [Town 1] who practices before the Punjab and Haryana High Court. The second letter is dated [later in] July 2019 and is written under the letterhead of the Party, and is signed by a person who purports to be a [specified office bearer] of the Party. On their face, these letters address the applicant and his claims for protection. However, the text of both letters is identical. That is to say, the applicant has submitted two identical letters, purportedly written by two different persons, on two different days. This would seem to be a highly unlikely coincidence. In light of this fact, I am not satisfied that the letters are genuinely written and independent accounts as they purport to be. Given their dubious provenance, I give these letters no weight at all as evidence of the applicant's claims. Furthermore, to my mind, the submission of these documents casts significant doubt on the credibility of the applicant, and I conclude that it demonstrates that he is prepared to enhance or exaggerate his claims where he believes he would benefit from doing so.
26. Beyond these letters, the applicant has not provided any further independent evidence of his claims. In his Protection Visa Interview, the applicant explained that as a young child he attended Party activities with his father, but as he grew up he himself became a supporter of the Party. He would attend rallies and hang posters and otherwise advocate on behalf of the Party. However, during the interview, he indicated that unlike his father and his uncle, he had never actually been a member of the Party, he was just a supporter.
27. I have real concerns about the applicant's evidence. I am prepared to accept that the applicant's father was a member of the Party. In light of the medical documents and the Death Certificate he has provided, I also accept that his father was hospitalised and died in October 2012. However, in the absence of any corroborative evidence, and the applicant's original assertion that his father died of natural causes, I am not prepared to accept that the applicant's father was killed in the way described or that he was friendly with the Party Chief. I am not satisfied that the applicant's father died due to an assault he suffered arising from his membership and support of the Party. I conclude the applicant invented these claims.
28. When asked about his reasons for supporting the Party after his father died, the applicant was vague. He has only provided very broad responses about his activities for the Party. Though he did claim that in Australia he was a fundraiser for the Party, as his father had been before him. He said his [brother] had also been harassed, but could not expand on this claim since he hardly spoke with him, and his brother, a reformed drug addict hardly ever lived in the family home. He says his uncle was genuine member of the Party, like his father, but he not provided any claim's to suggest his uncle faced any of the problems he himself has faced.

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<sup>15</sup> DFAT, 'DFAT Thematic Report Indian State of Punjab, 7 December 2016 CIS38A80122951

<sup>16</sup> DFAT, 'DFAT Thematic Report Indian State of Punjab, 7 December 2016 CIS38A80122951

29. On the whole, I did not find the applicant to be a credible witness. Having accepted that his father was a member of the Party, I am prepared to accept that the applicant himself attended many Party activities with his father in India when he was young. I am also willing to accept that he himself supported the Party after his father's death, at a low level in the form of attending rallies and hanging posters as he has described. However, I am not prepared to accept that the applicant suffered any problems associated with this activity along the lines he claims. The country information I have cited indicates that supporters of the Party, simply do not attract the kind of attention he says he did. He himself concedes he was not an actually a member of the Party, rather he was just a supporter. I do not accept that the applicant is telling the truth about the problems he faced. I conclude the applicant has exaggerated his claims about facing harassment and harm due to his support for the Party. In the absence of any corroborative evidence, I do not accept he maintains regular contact with Party members, or is a fundraiser for the Party, or that he posts Party materials on [social media], or that he was harassed and threatened in India due to his support for the Party. I do not accept that Party members have advised him not to return.
30. The applicant says his Party activities led to interest from the Indian Police. He says that this interest was because the Police were directed by the Congress Party and the BJP to harass him. That the police visited his home, but that he was hiding at the home of a relative. He says that despite knowing he is no longer in India the Police visit his family home monthly to threaten him and advise his family he should not return. However, I have already found that the applicant was not a member of the Party; that he was only a low-level supporter and concluded that he exaggerated his claims about the Party in order to improve his chances of obtaining a Protection Visa. I do not accept that he was ever of interest to the Police for any reason. I do not accept that the police ever visited his family home looking for him. I conclude that he has simply invented these aspects of his claims.

### **Refugee assessment**

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31. 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**

32. 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.
33. I have found that this applicant invented his central claims for protection. I do not accept that his father was killed due to his membership of the Party, or that the applicant himself was ever a member of the Party, or that he was ever of interest to the Police. Prior to his travel to Australia, the applicant lived in [his home] Village, in Punjab State with his family for his entire life. His mother and aunt still live in the family home in the village. I conclude that if returned to Australia the applicant would return and reside with his family in his village.
  34. He would be returning to Punjab State as a Sikh who is a supporter of the Party. The applicant says that he would face harm in the form of kidnapping, torture, and death due to his political support for the Party.
  35. Country information I have cited above indicates that he would be returning to a State where Sikh's are the majority ethnicity and where his family currently resides. Country information indicates that while separatist political activities have led to problems in the past, and that tensions do increase during election periods, serious separatists activities has not occurred for many years and that opposition party supporters who have engaged in low level activities such as the applicant do not suffer from the kind of violence, threats and intimidation he claims.
  36. I do not accept that this applicant was or would be a member of the Party upon return. I do not accept that he has or would fundraise for the party or would be imputed as a Khalistan activist. I do not accept that he was or would ever promote or publish Khalistan literature or materials on [social media] or via any other medium.
  37. I am not satisfied that this applicant would face a real chance of any harm arising from any of his claims or personal circumstances, or any combination of these factors. I am not satisfied he would face persecution, discrimination or any other problem. He does not have a well-founded fear of persecution.

#### **Refugee: conclusion**

38. 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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39. 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**

40. 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.
41. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
42. I have found that the applicant would not face a real chance of harm for any of the reasons he has claimed. As 'real chance' and 'real risk' have been found to meet the same standard, it follows that he would not face a real risk of significant harm from any of these reasons. I am not satisfied he would face a real risk of significant harm for any other reason.

**Complementary protection: conclusion**

43. 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.