



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

INDIA

IAA reference: IAA18/04683

Date and time of decision: 10 May 2018 09:20:00

Michelle Grau, Reviewer

Decision

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

Visa application

1. The referred applicant (the applicant) claims to be an Indian male from Ahmedabad, Gujarat, India. On 9 August 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV), Subclass 790. In essence, he claimed the family members of an ex-girlfriend harassed him and beat him twice as they did not approve of the relationship.
2. On 29 March 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate was not satisfied that the applicant had a profile that would indicate he would face a real chance of serious harm or a real risk of significant harm in India.

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. No new information was provided.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He is a Hindu male from Gujarat.
 - He was threatened by the family members of a girl with whom he was in love. They chased him to get rid of him as they did not approve as the girl was a higher caste. He was beaten twice.
 - He stopped seeing the girl but the family members kept threatening him as they feared the relationship might resume. During this time the applicant found an agent who promised to land him in Australia. He wanted to leave India to save his life.
 - He departed India and lived in hiding in [Country 1], [Country 2] and in his own country for some time but the torture had no end despite the fact he had stopped seeing her.
 - The family are rich and have big political connections. If he had sought police protection they would have easily bribed the police and had him arrested. If they know he has returned to India they will start torturing him. He is not able to relocate as it has become a question of their ego and the fact that he has managed to escape the county without being caught by them has angered them more.

Refugee assessment

6. 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

7. 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.
8. The applicant's claims revolved around his fear of harm from the family members of a girl ([Ms A]) from a different caste, with whom he was in love in India.
9. Having listened to the applicant's interview and for the reasons set out below, I do not accept the applicant faces any harm from the family members of the girl he was in love with.
10. Firstly, I consider the applicant's claims were vague, evasive and lacked details. The applicant had difficulty remembering when the relationship commenced, when it ended or how long it lasted. Initially the applicant could not remember when the relationship commenced as it had been a long time. After significant prompting by the delegate, the applicant acknowledged it commenced in 2004 when he was at a [course]. Initially the applicant claimed they were in a relationship for 5 years. Then he said it was for 6 or 7 years. I consider the applicant was not recounting true events but adding and changing his account to try to accord with his departure timeline.
11. Initially, he could not recall when he last had contact with the girl. After hesitation and prompting from the delegate the applicant said it was 6 – 8 months before coming to Australia in 2012. I consider it is difficult to believe that he had difficulty recalling his last contact with the girl, or had such difficulty recalling how long he was in the relationship or when it started or ended. This is particularly so given his claims centred around the relationship and it was the reason for his departure from India.
12. The applicant's account of harm and threats changed from being only slapped to being slapped, kicked and pushed, to having bruises and drawn blood. His account changed from being threatened 2 or 3 times to being threatened 3 or 4 times. Initially, it was the girl's brother who threatened him. However, later in the interview he added that the girl's father also made telephone threats twice.
13. His account of the threats was vague and lacked detail. The delegate had to prompt the applicant to provide specifics of where the assaults took place. The delegate continued to prompt him to provide evidence of what happened. Other than stating he was slapped, bad words and shouting were said, he was threatened and his bicycle tyre was punctured, the applicant provided no description of the claimed three or four assaults. There was no evidence

as to what he did in response, or his friends or any onlookers, or how the girl's brother knew which was the applicant's bicycle, what was said by the girl's brother, or how the altercation ended. There was no description of when the girl's father made the phone calls or what was said or how they father had his phone number.

14. Further, the applicant provided very little detail of the claimed relationship. His explanation of how the parents found out about the relationship was also vague and lacked details. While he claimed that someone saw them on the street and told the girl's parents, the applicant provided no details about whom this was or how they knew who he was.
15. Secondly, the applicant's claims about the timeline of the relationship and threats and his 2013 departure did not match up. I consider the applicant provided vague responses and avoided references to what years the events happened.
16. As discussed above, the applicant had difficulty recalling when the relationship commenced and ended or when the threats were made. After prompting by the delegate, it was established that he met and started a relationship with the girl when he was doing a [course] in 2004. He was uncertain about the length of the relationship, but said it was 5, 6 or 7 years. When he was asked how long they had been together when he was first threatened, the applicant did not answer the question. Instead he said the relationship continued for 1.5 years after the first threat. The applicant also stated the threats were over a period of 1 or two years. The applicant claimed six months after the relationship ended, the girl's brother came to his work and threatened him. As a result he decided to leave and left his job and went to [Country 1].
17. I consider the applicant's vague account did not match up with his April 2013 departure timeline. The applicant claimed the relationship commenced in 2004 and lasted '5, 6 or 7 years'. On that evidence, the relationship ended at its earliest in 2009 or its latest in 2011. However, the applicant did not depart India until April 2013, which is four to two years after the relationship ended. I consider he changed or added to his evidence (from 5, to 7 year relationship) to try to match up his claims with his 2013 departure time line.
18. Further, the applicant stated the threats continued for 1 to 2 years, and the last threat was 6 months after the relationship ended when he left his job and decided to leave. If the relationship was 7 years, then the last threat would have been in 2011 or early 2012 at best, well before the applicant left his job in April 2013 and departed India. If the relationship was 5 years, the last threat would have been in 2009 or early 2010, many years before he departed India.
19. I find the applicant's account of the relationship and threats did not match up with his 2013 departure. Whether the relationship was 5 or 7 years, if it existed at all, I consider the applicant departed India well after any claimed threats and many years after the end of the claimed end of the relationship.
20. Further, while the applicant claimed he was in hiding in India, his address details in the arrival interview and application showed he had lived at the same place since his birth. He confirmed at interview that he had lived at the same address with his parents since birth. Further, he continued to work at the same company from 2006 until his departure in 2013. I do not accept he was in hiding and consider he has fabricated this claim.
21. Thirdly, I consider the applicant was also not a credible witness in other respects. For instance at the protection interview he claimed the woman he had married in December 2016 in

Australia, he had met in Australia, not in India. However, the newspaper article about the wedding indicated they had met in India. When the delegate put the article to him the applicant stated his English was not so good and the reporter misunderstood. However, after the interview the applicant corrected his evidence and said he had met his now wife in India in January 2013. He claimed he was scared with the interpreter and upset, so gave the wrong answer.

22. However, having listened to the interview I do not consider the applicant was scared or upset. Further, the applicant was given an opportunity to correct his claim at interview, but did not. Rather, he confirmed that he met the wife in Australia and went onto to provide another explanation. However, I note the applicant often answered questions in English at the protection interview. Further, he had been working in Australia since 2013, so I consider he has some English. I consider the applicant has not told truth in his interview and when confronted he continued to deny he had met his now wife in India. I consider this is an example of the applicant not telling the truth. I consider the applicant was evasive, untruthful and changed his evidence about where he met his current wife to enhance his protection claims.
23. Further, the applicant denied at interview that he had previously applied for a visa to Australia. However, the evidence was that he was granted a [temporary visa] in May 2012. When put to him at the protection interview, the applicant continued to deny he had, saying he flew to [Country 1] and then to [Country 2] and went by boat to Australia and did whatever the agent told him. It may be that an agent applied for visa for him, but the applicant continued to deny he or the agent (on his behalf) had applied for the [temporary visa]. I consider this is another example of the applicant not telling the truth.
24. At interview the delegate asked the applicant about his "brothers and sisters" on Facebook (FB) pages. The applicant initially denied he knew the people. However, eventually it was established that the friends on his FB were his cousins. I do not place much weight on this as I accept his explanation that he refers to his cousins as siblings on Facebook as they are close. In any event, I do not consider the difference or entries on Facebook are relevant to the applicant's claims.
25. Fourthly, I find the applicant had met his current wife in India and that they married in Australia in 2016. Even if the applicant had a past relationship which was not approved of (which is not accepted), I do not accept that he faces any harm upon return as he is now married to someone else.
26. Having considered the applicant's claims overall, I find the applicant is not a credible witness. I consider the applicant's account was vague, lacked details, and times added to, such that I consider the applicant was not recounting true events. I consider he was also evasive and vague about the relationship and threats to try to match up with his 2013 departure. In addition to his evasiveness about the timing of the key events, I consider the applicant's account of the claimed relationship and threats and departure due to fear of harm did not match up to his 2013 departure. Further, I consider there were clear examples where the applicant had not told the truth about his relationship with his now wife or his previous application for a visa, such that it shows a propensity to be untruthful. I do not accept the applicant was in a relationship with the girl, [Ms A]. I do not accept the applicant was threatened or harmed by a girl's brother, father or her family. I do not accept he was in hiding or that he left his job or fled India due to fear.
27. Further, and in any event, I consider the applicant's claims are not related to any of the reasons set out in s5J.

28. I have had regard to all of the evidence before me and I have considered the applicant's claims individually and cumulatively, as well as considering the personal circumstances of the applicant. I am not satisfied the applicant faces a real chance of harm for the reasons claimed. I am not satisfied he has a well-founded fear of persecution from [Ms A]'s brother, father or family or 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

29. 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

30. 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

31. 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.

32. I have considered the applicant's circumstances whether he faces a real risk of significant harm upon return to India. I have not accepted his claims of fear of harm from the girl's brother, father, or family.

33. I have found that the applicant does not have a real chance of any harm on any of the bases claimed. For the same reasons, I am not satisfied the applicant will face a real risk of significant harm for those reasons if removed to India.

Complementary protection: conclusion

34. 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

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

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.