

AT AUCKLAND

Appellants:	GP (India)
Before:	S A Aitchison (Member)
Counsel for the Appellants:	S Lamain
Counsel for the Respondent:	No Appearance
Dates of Hearing:	25 February 2019, 4 & 5 March 2019
Date of Decision:	5 April 2019

DECISION

[1] These are appeals against decisions of a refugee and protection officer declining to grant refugee status or protected person status to the appellants, who are citizens of India.

INTRODUCTION

[2] The appellants are a family, comprising two male maternal cousins and the wife and daughter of one of the cousins. Because the daughter is aged eight years and a minor, her mother acted as her responsible adult at the hearing in accordance with section 375 of the Immigration Act 2009 (the Act).

[3] The appellants claim to be at risk of serious harm from members of the Sree Narayana Dharma Paripalana Yogam (SNDP) (a social movement of the Hindu Ezhava caste in Kerala, founded by Sree Narayana Guru) and Hindu extremist groups affiliated with the SNDP and the leading Bharatiya Janata Party (BJP), including the Rashriya Swayamsevak Sangh (RSS), who are motivated to harm them because the two cousins exposed corruption amongst officers in the

SNDP and lodged a criminal case against them. They also fear serious harm from such groups on account of their conversion to Christianity.

[4] The primary issues for the Tribunal are whether the appellants have a well-founded fear of being persecuted and whether they can avoid harm by relocating to another state in India.

[5] Given that the same claim is relied upon in respect of all limbs of the appeals, it is appropriate to record it first.

THE APPELLANTS' CASE

[6] The account which follows is a summary of the evidence given by the appellants in support of all the appellants at the appeal hearing. The evidence is assessed later.

Evidence of AA ("the first cousin")

Family background

[7] The first cousin was born in X town, Kerala, India, in the mid-1950s. He was the only child of his parents, both of whom are now deceased. He is of Indian ethnicity and was raised as a Hindu. He is married and has a daughter who is now in her mid-30s.

Employment in the SNDP

[8] In 1973, after completing his secondary school education, the first cousin began working as a lab technician in a hospital which was run by the SNDP. He continued in this employment until 1979, when he was appointed as a branch secretary for the SNDP unit in W village. In this role, the first cousin was responsible for distributing finances and support to a variety of community projects. He maintained a register of these contributions and delivered this register each week to the accountant located in the SNDP head office in a pilgrimage centre.

[9] In 1994, the first cousin became a core member of the SNDP and remained in that position until 1999. He worked in the head office, assisting the finance officer, BB, who was the son of the SNDP's general secretary. His role involved

checking income and expenditure statements sent from units and branches around Kerala. Approximately 15 to 20 other persons were employed in the head office, including an accountant, distribution secretaries and core members.

[10] The SNDP operated as a nationwide organisation, and comprised a leadership team of a president, national secretary (CC), a finance secretary and a charitable secretary. Each state had a collective of branches, comprised of units. The SNDP was a large organisation, of which many institutions, such as schools, colleges and hospitals, formed a part. The SNDP had its own political party, the Bharath Dharma Jana Sana (BDJS), and had links to the BJP through common membership.

[11] In his role in the head office, the first cousin began to notice discrepancies in the income and expenditure statements presented from various SNDP branches. He became concerned about the embezzlement of charity funds by leading members and their falsifying of accounts. He raised these concerns with the accountant, the finance officer, and several distribution managers. He also raised his concerns at half-yearly head office meetings. He was told to mind his own business and was offered bribes to stay quiet. The warnings and threats intensified over time and, by late 1998, his life was being threatened.

[12] In 1999, the first cousin resigned from his employment with the SNDP. He engaged a lawyer, DD, and, together with four other SNDP branch secretaries, lodged criminal proceedings against leading members of the SNDP, including the general secretary, the finance officer, accountant and several distribution secretaries. The first cousin provided his lawyer with copies of incriminating financial records which he had taken from the head office for use in the court proceedings. The evidence he provided indicated financial misappropriation amounting to approximately Rs203 crores (Rs2,030,000,000, or approximately NZ\$43 million).

[13] Fearing for his safety, the first cousin moved to live at his mother's home, also located in Kerala.

The SNDP court proceedings

[14] Notices of court proceedings were soon sent to the accused and the first cousin also spoke to media about the allegations of corruption, including to a local television station and a newspaper. Prior to his resignation, the first cousin

informed the second cousin about the corruption and criminal case that he had lodged.

[15] The second cousin joined these proceedings in 2002 after he resigned from his employment in the SNDP. He engaged the same lawyer as the first cousin and he, too, provided financial records as evidence of corruption to support the proceedings.

[16] The first cousin appeared in court, accompanied by friends on two occasions. However, owing to his fears, he did not attend any further court appearances. The accused also did not attend court and the proceedings were repeatedly adjourned.

Attack on family home

[17] Several months after the notice of criminal proceedings was issued, the first cousin and his mother became victims of an attack by a group of *goondas* (thugs), hired by the SNDP. Armed with metal bars and wooden sticks, they broke into the mother's home. The first cousin attempted to escape out the back door, but he was seized and beaten by the group. While being struck on the ground, he noticed that the house was on fire, and that his mother was still inside. His cries alerted the neighbours, who arrived at the scene. However, his mother could not be rescued, and she died in the fire. The first cousin was taken by neighbours to a remote area in Y city, approximately 60 kilometres from his home, where he received Ayurvedic treatment at a practitioner's home. He remained there for some four months, receiving herbal, oil and massage treatments. Through such treatments, his paralysis down one side was cured. While recovering in Y city, the first cousin was visited by a Christian teacher, EE, who taught at XYZ school near the first cousin's home, and who offered him comfort and support.

[18] The first cousin reported the matter to the police and he subsequently filed a criminal case against the SNDP in the X town Municipal Court. However, this case was later dismissed in 2005 owing to a lack of evidence. The first cousin was summonsed to attend court on a number of occasions but did not attend owing to fears for his safety. In 2005, he re-filed the case in the Z town Municipal Court. However, the case was again dismissed in 2008. He then appealed to the Section Court in Z town, which dismissed the case in 2011 owing to evidential insufficiency.

Refuge at the ABC centre

[19] Following his recovery in Y city, EE invited the first cousin to seek refuge at the ABC centre, a Roman Catholic centre in V village, U town, approximately 150 to 200 kilometres from his home. The first cousin began working there as a driver, and he remained there for five years. His wife and daughter lived separately from him at their home address and EE relayed messages between them.

[20] The first cousin's interest in Christianity grew, and he attended prayer meetings and counselling sessions with the fathers at the centre. He appreciated that idolatry did not pervade Christianity, as in Hinduism, and he was comforted by Christ's promises. He valued the sense of unity he experienced in the Catholic faith and the practical and spiritual assistance provided by church leaders. He fully embraced Christianity and considered that he would do so until his death.

Baptism

[21] In 2005, the first cousin began attending church¹ in T district. He was baptised in this church by Father FF on 16 July 2005, together with the second cousin and two other former members of the SNDP.

Attack on 24 December 2006

[22] On 24 December 2006, the first cousin was attacked by a group of approximately 10 Hindu fundamentalists while singing Christmas carols in a Christian procession on the main road in S town. The first cousin was leading the procession, holding a cross. The group struck the cross with their rods and, in doing so, broke the thumb on the first cousin's left hand. They shouted at him, telling him that Hindus should not carry crosses. They beat other Christians and also threw a petrol bomb into the procession. This exploded, burning the first cousin's left leg. The first cousin became unconscious.

[23] The first cousin was taken to a local hospital by a friend and received medical treatment there for a month. This friend also reported the attack on the appellant at the local police station, and a First Information Report (FIR) was produced.

[24] After his release from hospital, the first cousin moved to R city, Tamil Nadu, and began working at church² there, under the guidance of Father FF.

Attack in July 2008

[25] In July 2008, the first cousin was attacked by a group of approximately six to seven men dressed in khaki shirts and caps, while erecting a banner for church2 in the town centre, along with other church members. The first cousin could tell by the men's dress that they were members of the RSS and BJP. The first cousin was at the top of a ladder, erecting the banner, when he was stuck by rods and fell to the ground. The group accused him of converting to Christianity. Hearing the commotion, a group of nearby shopkeepers arrived and dispersed the group.

Attack on 12 August 2008

[26] On 12 August 2008, the first cousin joined other Christians, including the second cousin, in attending a service at church2 to celebrate the completion of a church refurbishment project. He travelled in a van with nine others, which formed a four-car procession travelling towards the event. Members of the RSS stopped the vehicles on the roadside and smashed the windows of the vehicles with batons. The first cousin, together with others in his vehicle, managed to escape. They reported the incident at the local police station.

[27] Concerned for the first cousin's safety, Father FF contacted some associates in Q city, P state, and arranged for the first cousin to relocate there and be employed in a hotel kitchen. However, throughout his time there, he continued to be harassed by Hindu extremists and, on one occasion, while transporting meat, he was attacked by a Hindu group, who struck him with canes and accused him of carrying meat in front of a Hindu temple.

[28] Following this incident, one of the Fathers assisted the first cousin to relocate to Delhi and to work in an affiliated hotel there. The first cousin attended a church while working there. He remained there until 2013.

The first cousin's wife's and daughter's conversion to Christianity

[29] In 2012, the first cousin's wife and daughter converted to Christianity and were baptised. They had been living separate from the first cousin since he came under attack from Hindu extremists in 1999. EE relayed information between the couple.

Corruption proceedings dismissed

[30] In 2012, the first cousin learned that the X town Municipal Court had dismissed the criminal proceedings which he had lodged against SNDP members. On 21 September 2012, he received a letter from the SNDP, announcing his excommunication from the organisation. A friend and neighbour of the first cousin received this letter on his behalf and provided it to him.

Travel to Papua New Guinea

[31] Father FF arranged for the first and second cousin to travel to Port Moresby, Papua New Guinea (PNG), in order to seek refuge from Hindu extremist groups. They arrived in PNG on 24 February 2013 and were hosted at the church³. They performed charity work for a Missionary congregation, a congregation established by Mother Teresa. They also lodged a claim for refugee status there on the basis of their fear of Hindu extremist groups and members of the SNDP. However, the PNG government lacked expertise in dealing with such claims, and after a long process, the first cousin withdrew his claim and returned to India in August 2015. Initially, he stayed in O town for a few months.

[32] In November 2014, the first cousin learned from the second cousin that he had received a telephone call from EE informing him that the second cousin's wife and daughter had been attacked in their own home by a Hindu extremist group who were looking for the first cousin.

Travel to the United States

[33] In June 2016, the first cousin accompanied Father FF to the United States of America where the latter was to undergo heart surgery. He then escorted him back to India in September 2016. Upon return, the first cousin moved to N city, M town, Tamil Nadu, and worked as a labourer in a rice merchant's shop.

Attack in October/November 2016

[34] In 2016, while working in the rice merchant's shop, the first cousin was attacked by co-workers, who were associated with the RSS and the BJP. They had noticed that, whilst he had a Hindu name, he wore a crucifix and rosary. The first cousin would often hand out rosaries in the street. His co-workers told him that they would not work with a Christian. He managed to escape the store, immediately got on a train, and travelled to Chennai.

Arrangements to travel to New Zealand

[35] Father FF suggested that the first and second cousin travel to New Zealand and seek refugee status. He arranged for their visa applications and airline tickets through an agent in Chennai. On 26 May 2017, the first cousin was issued with a visitor visa and he arrived in New Zealand on 26 August 2017, together with the second cousin and his wife and daughter. The first cousin's wife and children remained behind in a remote area in L village, Kerala, and were cared for by EE.

Living circumstances and practice of Christianity in New Zealand

[36] The first cousin lodged an application for refugee and protection status with the Refugee Status Branch (RSB) on 13 September 2017.

[37] Since his arrival in New Zealand, the first cousin has attended several Catholic churches. He initially attended a church in K town, where a Malayalam priest officiated, and later attended a church in J town.

[38] The first cousin has maintained contact with EE since his arrival in New Zealand. He has told the first cousin that members of the RSS and SNDP have continued to ask about his whereabouts and have also made inquiries about him from Father FF.

[39] The first cousin fears returning to Kerala in India where he will be readily located by members of the SNDP and Hindu extremist groups, including some members of the family of the second cousin and his wife, who belong to these groups. He also considers that it would not be safe to live elsewhere in India as he would be located by such persons through his identity card, amongst other means. He will maintain his Catholic faith and continue to express his faith publicly as he did prior to leaving the country. He will not be able to live safely with his family in India.

Evidence of GG ("the second cousin")*Family background*

[40] The second cousin was born in the early 1970s in I village, H state, India. He is of Indian ethnicity and was raised as a Hindu. Both of his parents are now deceased, and his brother, who is handicapped, now lives in a care home.

[41] The second cousin's nephew, HH, is a member of the SNDP, BJP and RSS. He is also a member of the *Panchayat* in G town, H state. The second cousin also has two paternal relatives, JJ and KK, who are members of the RSS and live in F city, H state.

Education, employment and involvement in SNDP

[42] The second cousin completed year 10 of his secondary school education and then became employed in carpentry and trade work. In 1991, he joined the SNDP as a trainee, and undertook manual trade jobs in carpentry, painting and plumbing. In 1997, he became a core member of the SNDP, working in the charities division in Z town and X town, and helped to distribute food and to fundraise for the poor.

[43] The SNDP is a large organisation with the Yogam (leadership) at the head. The organisation is divided into branches comprised of units, which operate throughout Kerala state. The headquarters for the organisation is based in Kollam. There is also an office in E town, where the organisation's founding guru was buried.

[44] The second cousin was employed in the X town branch, and the first cousin was employed in the finance department in the W village branch. The first cousin resigned from his employment in the SNDP in 1999, when he exposed corruption amongst leading members. The first cousin then lodged court proceedings against four members of the SNDP.

[45] While working in the charities division of his unit, the second cousin also became aware of corruption amongst SNDP members. He became aware of a double accounting system, misrepresenting expenditure. Despite being aware of such corruption, he kept working in the unit until forced to resign in 2002, as SNDP members, who had themselves been charged with corruption, cast blame on other members in the charities division, including the second cousin. The second cousin collected relevant financial reports, demonstrating corrupt practices and provided these to the same lawyer whom the first cousin had engaged. In doing so, he joined the criminal proceedings against the SNDP.

[46] The second cousin was summoned to appear in the court proceedings and attended court on three occasions. On the first occasion, he was cross-examined by lawyers representing SNDP members. On the latter two court attendances, the

accused did not appear, and the proceedings were adjourned. The second cousin did not attend any other appearances as he was concerned about his safety.

Support from Catholic church

[47] In 2002, without employment or an income, the second cousin approached a priest at a local F town church, who offered him some property maintenance and repair work. As a child, he had relied on support from the church, which had provided him with food and other assistance.

[48] The second cousin began attending church 4 in F town. He helped EE with charity work and became increasingly interested in Christianity. He became an assistant at the church and accompanied the priests, including Father LL, to Mass and to other services in various locations. He later began attending church1 in T district.

[49] At the same time, the second cousin knew that the first cousin was seeking refuge in the ABC centre in V village, assisting the Fathers there.

Baptism

[50] On 16 July 2005, the second cousin was baptised into the Catholic faith at church1 by Father FF. He was joined in the baptism by the first cousin and two other former members of the SNDP.

Attack on 7 April 2006

[51] Over the period of one year, the second cousin was involved in a church project to erect a cross in a market place in F town. On 7 April 2006, the formal ceremony for raising the cross was performed. Many Fathers and Bishops attended, and prayers were offered. When the second cousin was packing up after the event with some other church members, approximately 10 members of the RSS appeared and broke the glass surrounding the cross that had just been erected. They shouted to the second cousin that whoever believed in Christianity should endure hardship. They struck at him when he was attempting to put the thurible and other holy items away. He was struck with a wooden rod across his ribcage and one RSS member also shot him in the right calf with a small, locally made, pistol. He also suffered two broken ribs from the attack. Several church assistants escorted him to hospital where he remained for a month and a half,

receiving treatment. A friend of his who arrived at the scene also reported the attack to the local police.

[52] The second cousin was unable to identify any of the RSS members who attacked them as they wore saffron covers over their faces. However, he believed that two of his relatives, JJ and KK, were involved in the attack, as he had seen them during the inauguration ceremony and knew of their hostility towards him.

[53] After his release from hospital, several of the Catholic Fathers, who feared for the second cousin's safety, sent him to Bangalore. He stayed in several places there and attended church⁵. He was employed in farming for the church. On one occasion, when taking milk to the Fathers, he was accosted by some men who took the milk from him and told him that it belonged in a Hindu temple, not with the Fathers.

[54] The second cousin remained in Bangalore for four years. He continued to be harassed by local Hindus, who would pull on his clothing and take church notices from his hand when he was on his way to Mass.

Attack on 9 August 2007

[55] On 9 August 2007, the second cousin travelled from Bangalore to visit his father, as he had learned that he had been hospitalised with a serious condition. On his way to the hospital, he spoke to his father, who asked him to bring a particular drink tonic with him, which he knew he could source from a well-known local store in D city. While he was getting the tonic at the junction, several persons stopped the taxi he was travelling in. They opened the taxi door and dragged him out. They pushed him into the gutter and repeatedly hit him on his back. A police vehicle arrived, and the men absconded. The policemen took the second cousin to a local hospital. On reflection, the second cousin believed that the men were associated with his family and had learned of his return to visit his sick father. The second cousin's father passed away on 10 August 2007.

Attack on 12 August 2008

[56] The second cousin attended a church function at T district church in August 2008. He was travelling in the lead vehicle in a convoy of four, when members of the RSS and Shiv Sena attacked the vehicles, breaking the windows. He managed to escape the scene and reported the matter to a local police station.

Marriage

[57] The second cousin married his wife in a civil ceremony on 8 July 2009. His mother, brother and some friends attended. His wife's family did not attend because they did not approve of his status as a Christian. During the period of their courtship, the second cousin told his wife that he was a Christian, although he did not tell her that he was experiencing difficulties because of this. The couple's daughter was born on 14 May 2010.

[58] The second cousin's wife's sister's husband, MM, and a distant cousin of the wife, NN, are also members of the SNDP, RSS and BJP.

Stay in Tamil Nadu

[59] In 2010, the second cousin went to Puliyara, Tamil Nadu, hoping that he would be safe there. He worked in a construction business and stayed in two to three different places while living there. He also spent brief periods in Chennai, performing construction work. During his employment in Puliyara, he was repeatedly harassed by co-workers. His carpentry work included making wooden crosses, and Hindu co-workers mocked him, telling him to "carry your cross". He kept quiet and did not retaliate.

[60] In 2012, the second cousin went to Delhi where he worked in a hotel. He attended a convent during his stay there. He would stand on the street and give rosaries to people, in order to witness his faith. When he did so, he was pushed by passers-by.

Attack on 24 January 2012

[61] On 23 January 2012, the second cousin's mother suffered a heart attack. The following day, the second cousin went to visit her. When he left her to get a copy of a scan report for her, he was attacked in the street by three men who he identified as members of the RSS owing to their dress. They struck him in the face with bars and knocked out six of his front teeth. He was taken to a dentist and underwent intensive dental surgery. He later reported the attack at the local police station.

Dismissal of SNDP case and letter of excommunication

[62] In 2012, the second cousin learned of X town Municipal Court's decision to dismiss the corruption case he had joined against the SNDP. In September 2012, his mother received a letter from the SNDP, excommunicating him from membership.

Baptism of the second cousin's wife

[63] The second cousin's wife and daughter continued to live separately from him at their family home and also, at times, with his mother. In 2012, the second cousin's wife converted to Christianity and was baptised at church¹ in T district.

Living in PNG

[64] Owing to concerns for their safety, Father FF arranged for the first and second cousin to travel to Port Moresby, PNG with the intention of applying for asylum there. Accordingly, they travelled to PNG on 24 February 2013. However, the PNG government did not have the expertise to process their claims efficiently, and he later withdrew it and returned to India on 14 December 2015. While in PNG, the first and second cousin lived at the Catholic Church of St Joseph's and performed charity work for a Missionary congregation, a congregation established by Mother Teresa.

Attack on wife in family home

[65] While living in PNG, the second cousin received a telephone call from EE who told him that his wife and daughter had been attacked in their family home in C town on 9 November 2014. The second cousin telephoned his mother, who told him about the attack and the fact that his wife was in the local hospital. He later spoke to her when she returned home and was told that members of the RSS, BJP and SNDP had come to the home and demanded to know his whereabouts. They had pulled his wife's hair and pushed her, causing her to fall and become unconscious. Their daughter was also struck and she fell and cut her lip.

[66] The second cousin later learned from a neighbour, that the wife's relative, NN, although wearing a head covering, was present during attack on wife in home.

Return to India on 14 December 2015

[67] Upon his return to India on 14 December 2015, the second cousin lived in Mumbai and worked in various hotels. He again became involved in church activities and attended church⁶. While attending a street prayer meeting, members of the Shiv Sena, bearing flags, stopped their proceeding. The second cousin escaped unharmed.

Attack in 2017

[68] In 2017, when attending a street mass in Mumbai, the second cousin was attacked again by Hindu extremists who objected to a Christian service being held there. He managed to escape without being harmed.

Living circumstances and practice of Christianity in New Zealand

[69] Father FF arranged for the first and second cousin to travel to New Zealand to seek refuge. On 26 August 2017, the second cousin arrived in New Zealand with his wife and the first cousin. They lodged refugee and protection claims on 13 September 2017.

[70] The second cousin learned that his mother had passed away on 28 October 2018. In December 2018, the second cousin suffered a heart attack and was admitted to hospital for several days.

[71] Since arriving in New Zealand, the second cousin has had contact with Father FF, who is currently in Chennai and is experiencing ill-health. He has also had contact with EE. His last contact was at Christmas time in December 2018, and he learned of sustained interest in him from SNDP and RSS members, including his relatives, who continued to ask about his whereabouts.

[72] The second cousin has regularly attended Catholic church services in New Zealand together with his wife and the first cousin. He initially attended services in K town and now attends a Catholic church in J town. He attends Sunday evening Mass.

[73] The second cousin considers that he will maintain his strong Christian faith should he return to India. He will be actively and publicly involved in Catholic church activities, as he has been in the past. He considers that he will not be able to safely practice his faith anywhere in India.

[74] The second cousin is aware that criminal proceedings have recently been lodged against the general secretary of the SNDP, Vellappally Nateson, his son Thushar Vellappally, and others, concerning large-scale financial misappropriation.

Evidence of OO (“the wife”)

[75] The wife was born in the late 1980s in X town, H state, India. She is of Indian ethnicity and was raised a Hindu. She has one sister.

[76] The wife has a cousin, NN, who is a member of the RSS. She heard that he was involved in the attack on her home in November 2014. Her sister’s husband, MM, also belongs to the SNDP.

[77] The wife completed a degree at Kerala University in 2007. She married the second cousin on 6 July 2009. Her family did not support her marriage to a Christian. She has not had contact with her family since this time. Although she knew that her husband was a Christian before she married him, she did not appreciate the problems he had experienced until after their marriage. She learned that he had lodged a court case against the SNDP and had been pursued by some of its members because of this. She also learned that he had been pursued and attacked by Hindu fundamentalists, including members of the RSS and BJP.

[78] Owing to constant attacks on the second cousin, the wife has been unable to live with him for the majority of their marriage. After their marriage, the couple lived together for 15 days before the second cousin moved to Bangalore. He would return on occasions to see her. The second cousin remained in Bangalore for four years, helping the church with labour work. He then moved to Tamil Nadu and performed further labour work. The wife has lived with the second cousin’s mother at times, and for periods on her own in B village. She has also been supported by EE.

[79] After their marriage, the wife began to read the bible and started to attend church⁷. She grew in her Christian commitment and was baptised into the Catholic faith at church⁷ on 10 May 2012.

[80] The wife learned of an attack on the second cousin in 2012, after he had returned to visit his sick mother at the hospital. On his way to collect a hospital scan for her, he was attacked by members of the RSS and BJP, who “smashed his face”. He lost teeth and was admitted to a dental college for treatment. The

wife considered that the attack may have been planned by family who belonged to the RSS, as family visiting the mother in hospital had learned that the second cousin was returning to visit his mother.

[81] In 2013, the second cousin travelled to PNG, where he applied for asylum. He returned to India in December 2015.

[82] On the evening of 9 November 2014, while the second cousin was in PNG, a group of men arrived at the family home in C town and demanded to know the second cousin's whereabouts. The wife was sleeping when the men first arrived at her address, and she awoke when she heard the door being kicked open. The men attacked her by pulling her hair and they pushed her up against a wall. Her daughter was also struck and fell down and cut her lip. The wife hit her head against the wall and fell unconscious. She was in shock and dazed. The men also broke furniture and lighting in the house. When the neighbours arrived, the men fled. The neighbours took the wife and the daughter to the local hospital, where the wife remained receiving treatment for five days.

[83] EE visited the wife in hospital and contacted the second cousin to tell him about the attack. The second cousin called the wife and discussed the incident with her. After her release from hospital, the wife reported the matter to the local police station, and then took her daughter to live in ZZ town.

[84] The wife travelled with her daughter and the first and second cousin to New Zealand on 26 August 2017. They have been regularly attending church services here. They initially attended a church in K town and now attend a church in J town.

[85] The wife and daughter will continue to practice the Catholic faith and attend church should they return to India. However, the wife fears for her and her daughter's safety should they do so. They have been victims of a physical attack in the past and she fears the same in the future. She also fears that they will not be able to live together as a family as cohabiting with the first cousin will heighten the risk to her and their daughter. The couple have not had more children as they never felt safe to do so.

[86] The wife considers that "BJP goons" are increasing in number and present a real threat to Christians throughout the country. EE informed the appellants in December 2018 that RSS and SNDP members continue to ask about the whereabouts of the first and second cousin.

Material and Submissions Received

[87] On 14 February 2019, counsel filed updated statements for the three adult appellants (12 February 2019), in addition to a medical certificate (9 November 2014) from a hospital, A city and a discharge card (16 November 2014) for her from the medical board, a hospital, A city.

[88] On 19 February 2019, counsel provided opening submissions and country information.

[89] During the hearing, the Tribunal provided the appellants and counsel with further country information.

[90] On 21 March 2019, counsel provided medical information for the appellants, including a medical note (11 March 2019) for the first cousin, copies of medical notes (11 March 2019) for the second cousin, and photographs of the first and second cousin's scarring and injuries.

ASSESSMENT

[91] Under section 198 of the Immigration Act 2009, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellant as:

- (a) a refugee under the 1951 *Convention Relating to the Status of Refugees* ("the Refugee Convention") (section 129); and
- (b) a protected person under the 1984 *Convention Against Torture* (section 130); and
- (c) a protected person under the 1966 *International Covenant on Civil and Political Rights* ("the ICCPR") (section 131).

[92] In determining whether the appellants are refugees or protected persons, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellants' accounts.

Credibility

[93] The Tribunal accepts the appellants' evidence as credible.

[94] The appellants gave detailed evidence to the Tribunal over three days. Their evidence before the RSB and the Tribunal was internally consistent and consistent with one another's account. The central tenets of their claim were also consistent with known country information, including on the organisational structure and activities of the SNDP and the operation of extremist Hindu groups; for an overview see Sree Narayana Gurudevan *About SNDP Yogam* at www.gurudevan.net, and Jagathguru Sree Narayana Gurudevan *Organisational Structure of SNDP Yogam* at www.gurudevan.info.

[95] The appellants provided documentary evidence to corroborate the numerous attacks and injuries sustained on them, including FIRs and medical reports. The first and second cousin also provided medical reports and photographs from Dr Sahar Bahnam, a general practitioner in New Zealand, who examined them and recorded scarring, bone fractures and deformities on their bodies, which correlate, in particular, with the more serious attacks against the two cousins, in particular the attacks on the first cousin on 24 December 2006 and on the second cousin on 7 April 2006. Concerning the latter attack and ensuing injury, the general practitioner expresses the opinion that a 8 to 9 cm scar below the second cousin's knee on his right leg and, on the lateral side, a 2 cm scar, may have been caused by a bullet injury, as claimed.

[96] The Tribunal has held some reservation that the first and second cousin were unable to produce any evidence of the court proceedings which they say that they lodged against the SNDP. In this regard, counsel advised that he had contacted the lawyer who lodged the court proceedings who had undertaken to take steps to acquire a copy of the final court judgment. However, at the time of issuing this decision, no copy of that judgement had been received.

[97] The Tribunal is conscious of the effluxion of time, in that such proceedings are said to have been initiated in 1999, some 20 years ago, and of the fact that the proceedings were heard in a lower, municipal court. While copies of supreme court judgments and some district court judgements are available online, municipal court judgments are not; see, for example, *The Judgment Information System* at 164.100.79.153/judis/. The fact that the appellants say that they were in hiding at the time that the final judgment was issued and did not obtain a copy of the judgment must also be taken into account.

[98] The Tribunal referred the appellants to recent media reports of criminal proceedings lodged against the SNDP general secretary, which were indicative of

widespread publicity on the issue, and asked why no similar media reports could be produced for the historical proceedings; see “SNDP Yogam General Secretary Vellappally Natesan, Son Thushar Vellappally Booked in Micro Finance Scam” *The New Indian Express* (19 May 2018) at www.newindianexpress.com; “Kerala Police Register FIR Against Vellappally, Son Thushar in Micro-Finance Scam” (19 May 2018) *The News Minute* at www.thenewsminute.com; and “Vigilance Probe Against Vellappally Natesan” *The New Indian Express* (24 November 2012). The appellants responded that the current proceedings had been launched by a high-profile opposition party member and the scale and sophistication of the corruption was incomparable to the proceedings they had initiated a long time ago.

[99] Having regard to all of the above, the Tribunal is satisfied that the inability of the appellants to provide corroborating evidence of the criminal proceedings cannot be attributed to any lack of credibility on their part.

[100] The Tribunal draws no negative inference from the fact that the first and second cousin withdrew their refugee status claims in PNG, owing to the delays and lack of certainty with those proceedings. Further, it is satisfied that the second cousin was committed to the welfare of Father FF whom he accompanied to the United States for heart surgery and, despite his fears and experiences of serious harm in India, followed through with his responsibilities towards him, instead of applying for refugee status there.

Facts as Found

[101] The first cousin, in his early 60s and of Indian ethnicity, was raised as a Hindu in Kerala state, India. He was baptised into the Catholic faith in 2004. His wife and daughter, also converts to the Catholic faith, currently live in a remote area of L village, Kerala, where they are cared for by the Catholic church.

[102] The second cousin, in his late 40s and of Indian ethnicity, was raised as a Hindu in Kerala state. He was baptised into the Catholic faith in 2004. His wife, aged 31 years, and daughter, aged 8 years, are also of Indian ethnicity and are converts to the Catholic faith.

[103] The second cousin has three relatives who are members of the SNDP, BJP and RSS. One of his cousins is also a member of the local *Panchayat*. His wife’s sister’s husband and a distant cousin are also members of the SNDP, RSS and BJP.

[104] The first and second cousin worked for the SNDP and launched criminal proceeding against its leading members for corruption and financial misappropriation. The first cousin launched these proceedings in 1999 and the second cousin joined them in 2002. The proceedings were dismissed, effectively for want of prosecution, in 2012.

[105] As detailed above, the first and second cousin have been harassed and attacked on repeated occasions in Kerala while engaged in employment and church activities by members of Hindu extremist groups, including the RSS, in Kerala. The first and second cousin lived in various locations and in other states in India, in an attempt to evade harm from such groups. For the first cousin, such locations have included Tamil Nadu, Karnakata, Delhi and Chennai. For the second cousin, such locations have included Bangalore, Tamil Nadu and Mumbai. The first cousin also lived in PNG from February 2013 to August 2015 and the second cousin from February 2013 to December 2015. They both made claims for refugee status there, which they subsequently withdrew.

[106] On 9 November 2014, while the second cousin was abroad in PNG, the wife and daughter were attacked by a group of Hindu extremists in their own home, who sought the whereabouts of the second cousin. The wife was knocked unconscious and was hospitalised for five days. The daughter was knocked to the ground and incurred a facial injury.

[107] The appellants arrived in New Zealand on 26 August 2017 and lodged claims for refugee and protection status on 13 September 2017. The appellants have been regularly attending a Catholic church in New Zealand.

[108] In December 2018, the appellants learned from EE that members of Hindu extremist groups and SNDP members still continue to inquire about their whereabouts in Kerala state.

The Refugee Convention

[109] Section 129(1) of the Act provides that:

“A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.”

[110] Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

“... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.”

[111] In terms of *Refugee Appeal No 70074* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

Assessment of the Claim to Refugee Status

[112] For the purposes of refugee determination, “being persecuted” requires serious harm arising from the sustained or systemic violation of internationally recognised human rights, demonstrative of a failure of state protection; see *DS (Iran)* [2016] NZIPT 800788 at [114]–[130] and [177]–[183].

[113] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379, where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective; see *Refugee Appeal No 76044* (11 September 2008) at [57].

Objectively, on the facts as found, is there a real chance of the appellants being persecuted if returned to India?

[114] It is helpful to begin with an overview of country sources on the operation of the Hindu extremist groups which the appellants fear in India, and the treatment of religious minorities, in particular, of Hindu converts to Christianity.

[115] The RSS was founded in 1925 by Keshav Hedgewar and rose from the rival Hindu nationalist movement known as Sangh Parivar (“family of organisations”), contemporaneously with the socialist Congress movement, in agitation against British rule. The Sangh Parivar proclaims an ideology of Hindutva, or “Hindu-ness”, which has three pillars – common nation, race and culture – and forms the

basis of an exclusionary national narrative focused on the rights of Hindus. The views and activities of these groups range across a spectrum. For the more extreme Hindutva groups, such as the RSS, the Bajrang Dal and the Vishnu Hindu Parishad (VHP – the World Hindu Council), this includes propaganda, virulent hate campaigns and violence against religious minorities; see P Marshall *Hinduism and Terror* Hudson Institute (1 June 2004) (the “Marshall Report”).

[116] Marshall explains that the RSS has grown into a large paramilitary organisation, with separate specialist organisations, including political, social and educational wings. He states, at p4:

“The RSS is now a major paramilitary organization with millions of members. Its educational wing, the Vidya Bharati, has some twenty thousand educational institutes, with one hundred thousand teachers and two million students. The Vidya Bharati schools distribute booklets containing a map of India that encompasses not only Pakistan and Bangladesh but also the entire region of Bhutan, Nepal, Tibet, and parts of Myanmar, all under the heading “Punya Bhoomi Bharat,’ the ‘Indian Holy Land’. The RSS also has separate organizations for tribal peoples, intellectuals, teachers, slum dwellers, leprosy patients, cooperatives, consumers, newspapers, industrialists, Sikhs, ex-servicemen, overseas Indians, and an organization for religion and proselytization, as well as trade unions, student and economic organizations, and a women’s chapter.”

[117] The dissemination of Hindu extremist propaganda is systematic and widespread amongst leading figures and proponents of the RSS, who castigate the Muslim and Christian faiths. In January 2003, the head of the RSS described the Jesuits in India as the “Pope’s soldiers”, alleging that they had taken an oath to use “violence and barbaric means to decimate all those who don’t follow the Roman Catholic religion”. The RSS alleges that conversions to Christianity are being conducted by “force, fraud, and inducement” and accuses Christian missionaries of converting Hindus by offering money, medical help and education; see the Marshall Report at p5.

[118] Owing to its extremist propaganda, activities and the orchestration of communal violence, the RSS has either been banned or it lurks on the margins of Indian society; E Griswold “The Violent Toll of Hindu Nationalism in India” *The New Yorker* (5 March 2019); Encyclopaedia Britannica *Rashtriya Swayamsevak Sangh* at www.britannica.com; R Joshi “The Hindu Hardline RSS Who See Modi as Their Own” *BBC News* (22 October 2014). However, the group has gained increasing prominence since the appointment of Prime Minister Narendra Modi in the 2014 national elections, a life-long adherent to Hindutva and member of the RSS; M Safi “Christmas Violence and Arrests Shake Indian Christians” *The Guardian* (24 December 2017); G Singh “Christians Under Constant Attack in

Modi's India" (23 December 2017) at www.straight.com. Whilst elected on a platform of business promotion and economic growth, amongst talks about secularism and unity, the background reality is that the Prime Minister leads a centre right BJP party with strong ties to the RSS, VHP and Bajrang Dal, and which functions as the Sangh Parivar's political wing, upholding Hindu values and a conservative agenda; "Indian Christians Faced Almost as Many Attacks in First Half of 2017 as all of 2016" *World Watch Monitor* (8 August 2017).

[119] Many commentators note that, since this election, the RSS and other extremist Hindu groups have been legitimised and have grown exponentially more powerful. Dr M Ahmar writes in "End of Secularism" *South Asia* (January 2019), at p21, that the BJP and other Hindu communal groups are realising a valuable opportunity to reclaim what they describe as the "Hindu glory" which existed before the Muslim invasion and conquest of the bulk of the Indian sub-continent. He states, at p22, that:

"The transformation of secular India as a Hindu state has been going some time. Even Congress governments, which were termed as secular, failed to prevent communal riots in post-partition India and gave space to the right-wing Hindu nationalist groups such as Jang Sang, RSS, Shiv Sena, Sangpariwar and Bajrang Dal.... Consequently, it is correct to say that the process of 'Hinduization' of India began during the era of the congress and reached its peak when the former Chief Minister of Gujarat, Narendra Modi who was responsible for the bloodbath of Muslims in the communal riots of February 2002, became the Prime Minister of India."

[120] Notwithstanding constitutional protections for religious freedom and laws within the Indian Penal Code 1860 and the Code of Criminal Procedure 1973 which express protections against communal violence and guarantees life and security for all citizens, country reports indicate that respect and security for religious minorities, including Christians, has deteriorated over the past four years since Prime Minister Modi and his BJP party were elected in May 2014, promoting a Hindu-nationalist agenda.

[121] According to the Marshall Report, at the national level the BJP advances the ideology of Hindutva through propaganda, the manipulation of cultural institutions, the undermining of laws that protect religious minorities, and the minimising or excusing of Hindu extremist violence. The Marshall Report explains, at p5, that:

"The BJP appoints school officials who alter textbooks and curricula to emphasize Hinduism; they also require that Hindu texts be taught in all schools. Moreover, it has appointed Sangh Parivar adherents to key positions in autonomous bodies such as the Prasar Bharati, which controls the official media, the National Film

Development Corporation, the Indian Council of Historical Research, and the National Book Trust.

BJP lawmakers have also attempted to restrict minority religious groups' international contacts and to reduce their rights to build places of worship. It works to pass anti-conversion laws and to alter the personal laws that govern marriage, adoptions, and inheritance.... With BJP support, laws have recently been adopted in Tamil Nadu and Gujarat states that restrict the ability of Hindus to change their religion, and proposals for national restrictions have been made...."

[122] With an increasingly exclusionary conception of religious national identity espoused by the ruling BJP government, other constitutional provisions and laws have been implemented to legitimize violence and discrimination against religious minorities. These include the use of Article 48 of the Constitution of India, entitled "Organisation of Agriculture and Animal Husbandry", mandating India's states to "take steps for... prohibiting the slaughter of cows and calves and other milch and draught cattle", and also India's Freedom of Religion Acts, commonly known as "anti-conversion laws"; see *A Narrowing Space: Violence and Discrimination Against India's Religious Minorities* Minority Rights Group International and the Center for Study of Society and Secularism (June 2017) at p12 (the "MRGI Report").

[123] Anti-cow slaughter legislation and vigilantism have become an increasingly common feature of communal violence since the election of the BJP government in 2014. A recent escalation of political rhetoric and legislation against cow slaughter has been accompanied by a spate of targeted attacks across the country. *Ghar wapsi* (home coming) campaigns have been conducted by Hindu extremists who engage in mass conversions of religious minorities to Hinduism, and *gau rakshaks* (cow protectors) deliberately target Muslim cattle traders, dairy farmers and others. Accusations of cow slaughter or beef consumption have incited mob violence; the MRGI Report at p20.

[124] Notably, the BJP has made efforts to introduce country-wide anti-conversion laws and, at present, seven states have these laws in place, including Gujarat, Arunachal Pradesh, Rajasthan, Madhya Pradesh, Himachal Pradesh, Odisha and Chhattisgarh. The content of such laws infringes upon an individual's right to convert, favours Hinduism over minority religions, and represents a significant challenge to Indian secularism. While they specifically prohibit conversions where fraud, force or inducement are involved, in practice the legislation has been used by Hindu extremists to discourage or prevent conversion from Hinduism to other religions, particularly Islam and Christianity. Allegations of forced conversions have frequently been levelled against Christians and often

accompany targeted attacks against them. As will be seen from further discussion below, they have also emboldened Hindu nationalists to engage in violence against minorities; see the MRGI Report at p20.

[125] The Marshall Report explains that the BJP policies of Hindutva and conversion coincide with increasingly violent attacks by Hindu militants on religious minorities. Reported attacks by Hindu nationalist groups against Christians – who comprise some 2.3 percent of the population and form a majority in four states in the Northeast, with the largest Christian populations being in Kerala and Tamil Nadu – include religiously motivated killings, assaults, riots, discrimination, vandalism, and actions restricting the right of individuals to practice their religious beliefs and proselytize. The United States Department of State *2017 Report on International Religious Freedom: India* (29 May 2018) at p2 (the “2017 IRF Report”) records that:

“Members of civil society and religious minorities stated that under the current government, religious minority communities felt increasingly vulnerable due to Hindu nationalist groups engaging in violence against non-Hindu individuals and their places of worship....”

[126] The United States Commission on International Religious Freedom *Annual Report 2018* (25 April 2018) (the “2018 USCIRF Report”) at p162 records a worsening of conditions for religious minorities, stating that:

“In 2017, religious freedom conditions continued a downward trend in India. India’s history as a multicultural and multireligious society remained threatened by an increasingly exclusionary conception of national identity based on religion. During the year, Hindu-nationalist groups sought to ‘Saffronize’ India through violence, intimidation, and harassment against non-Hindus and Hindu Dalits. Both public and private actors pursued this effort.

Approximately one-third of state governments enforced anti-conversion and/or anti-cow slaughter laws against non-Hindus, and mobs engaged in violence against Muslims or Dalits whose families have been engaged in the dairy, leather, or beef trades for generations, and against Christians for proselytizing.

...

The worsening conditions for religious freedom largely impacted 10 states (Uttar Pradesh, Andhra Pradesh, Bihar, Chhattisgarh, Gujarat, Odisha, Karnataka, Madhya Pradesh, Maharashtra, and Rajasthan); the 19 remaining states remained relatively open and free for religious minorities.”

[127] Reporting on deteriorating conditions for religious minorities over the past decade, Minority Rights Group International states that violence against Christians reached particularly high levels in 2008 and 2009, and again in 2015, following the national elections. They report that communal violence has remained at consistently high levels in the past five years. Official data shows more than 700

outbreaks of communal violence occurred in 2016 alone, with 86 killed and 2,321 injured; the MRGI Report at p2. According to figures compiled by local partners of international nongovernment organisation Open Doors, during the first six months of 2017, Christians were harassed, threatened, or attacked for their faith in 410 reported incidents, compared with 441 incidents in all of 2016. Incidents included assaults on missionaries and attacks on churches and private property; the 2017 IRF Report at p2. According to the 2018 USCIRF Report at p163, in 2017:

“[T]he Indian government’s criminal data collection agency, the National Crime Records Bureau, reported that communal violence increased significantly during 2016. Further, just after the reporting period, Union Minister for Home Affairs Hansraj Ahir reported to parliament that 111 people were murdered and 2,384 injured in 822 communal clashes during 2017 (as compared to 86 people killed and 2,321 injured in 703 incidents the previous year)....”

[128] Such acts of communal violence typically occur during religious festivals and processions. Throughout 2016, the Centre for Study of Society and Secularism (a non-profit organization working in different states of India), documented 20 incidents of communal violence that took place during religious festivals through media reports and fact-finding. Indeed, some of the most volatile moments in India’s recent history have centred around the construction or destruction of places of worship, and communal activities such as processions and vandalism. Religious minorities are especially vulnerable to the threat of communal violence in such settings, and the reality is that many incidents go unreported; the MRGI Report at p17.

[129] The news article “Violence Against Christians Ratchets Up in Southern India” *Christian Headlines* (9 October 2018) reports levels of violence against Christians in southern India, including in Kerala state in 2017 and 2018, stating that:

“... The southern states of Karnataka, Telangana, Andhra Pradesh, Tamil Nadu and Kerala saw at least 60 cases of persecution of Christians in the first nine months of 2018, compared with 36 such attacks in the first nine months of 2017, according to religious freedom advocacy group Alliance Defending Freedom (ADF)-India.”

[130] A consistent thread throughout the above country reports is that the authorities have failed to promptly or credibly investigate attacks against religious minorities, and the Prime Minister’s responses can best be described as mealy-mouthed, calling for harmony, but rarely directly criticising the excesses. The 2017 IRF Report states at p1 that:

“Representatives of religious minority communities stated that, while the national government sometimes spoke out against incidents of violence, local political

leaders often did not, and at times made public remarks individuals could interpret as condoning violence.”

[131] The 2018 USCIRF Report states at p162 that:

“At the federal level, Prime Minister Narendra Modi has made statements decrying mob violence, but members of his own political party have affiliations with Hindu extremist groups and many have used discriminatory language about religious minorities. Despite Indian government statistics indicating that communal violence has increased sharply over the past two years, the Modi Administration has not addressed the problem.”

[132] In similar terms, Human Rights Watch’s *World Report 2018: India* (18 January 2018), summarises these concerns:

“Vigilante violence aimed at religious minorities, marginalized communities, and critics of the government—often carried out by groups claiming to support the ruling Bharatiya Janata Party (BJP)—became an increasing threat in India in 2017. The government failed to promptly or credibly investigate the attacks, while many senior BJP leaders publicly promoted Hindu supremacy and ultra-nationalism, which encouraged further violence. Dissent was labeled anti-national, and activists, journalists, and academics were targeted for their views, chilling free expression. Foreign funding regulations were used to target nongovernmental organizations (NGOs) critical of government actions or policies.”

[133] Human Rights Watch also reports in *India: Unchecked Attacks on Religious Minorities – Reform Laws Choking Freedom of Expression* (18 January 2018) that:

“The Indian government failed to stop or credibly investigate vigilante attacks against minority religious communities during 2017.... Many senior leaders of the ruling Bharatiya Janata Party (BJP) publicly promoted Hindu supremacy and ultra-nationalism at the expense of fundamental rights for all Indians....

‘Indian authorities have proven themselves unwilling to protect minority religious communities and other vulnerable groups from frequent attack’ said Meenakshi Ganguly, South Asia director at Human Rights Watch. ‘There needs to be a serious effort to prevent future attacks and to prosecute all those responsible for the violence.’”

Application to the Facts

[134] The first and second cousins fear serious harm at the hands of extremist Hindu groups, such as the RSS, who are affiliated with the BJP government, amongst other Hindu groups, such as the SNDP. They fear harm owing to their profile as Christian converts and former complainants in proceedings against corrupt members of the SNDP. The wife and daughter of the second cousin fear serious harm from members of such groups as Christians and as family members of the second cousin. The Tribunal will address each of their predicaments in turn.

The first cousin

[135] The first cousin has been a practising Catholic for some 15 years. He has grown in his Christian experience and faith, in close association with Fathers who have fostered his spiritual development and supported his day-to-day subsistence needs. He has a strong Christian faith and is committed to serving the Catholic church in private and public practice. He manifests his beliefs in his dress, by wearing a crucifix and often carrying a rosary, and he has taken a leading part in Catholic religious festivals and processions.

[136] Members of the SNDP have acted in cohort with other Hindu extremist organisations, such as the RSS, to attack and intimidate the first cousin on repeated occasions in Kerala state, and his mother was killed in the first attack on him by such groups in 2000. Links between the SNDP and extremist Hindu groups such as the RSS are well-known; see “SNDP Has Become Custodian of Agenda of RSS: KKPC President Sudheeran” *The Economic Times* (16 September 2015); “New Party Formed by SNDP Recruiting Agency for BJP, RSS: Chandy” *Business Standard* (6 December 2015).

[137] For more than a decade, the first cousin has been the target of such groups owing to his public manifestation of his Catholic faith and involvement in criminal proceedings against corrupt SNDP members. He has been the victim of repeated attacks while publicly engaged in church activities and worship, including when attending Christian processions, commemorations and festivals. He has sustained serious injuries as a consequence.

[138] The first cousin has been forced to live in hiding, spending many years outside Kerala state, in an attempt to avoid such attacks. Such attacks nevertheless continued up until his departure from India. The more serious attacks have taken place in Kerala, but a pattern of harassment has continued while he was living in other states such as Karnataka and Tamil Nadu.

[139] The Tribunal finds that there is a real chance that the sustained pattern of attacks against the first cousin, which have comprised harassment, beatings, amongst more serious injuries (from gunshots and bomb explosions), will be repeated should he return to Kerala, in breach of his rights to be free from cruel, inhuman or degrading treatment or punishment and to manifest his religion as contained in Articles 7 and 18 of the ICCPR. The risk of serious harm is heightened by the first cousin’s active and public manifestation of his beliefs and is exacerbated in the current Hindu nationalist climate. It is well-known that,

proximate to elections, right-wing groups frequently invoke anti-minority sentiments, through hate speech or specific campaigns, including violence against religious minorities. The April–May 2019 elections will no doubt see a resurgence of such activity.

The second cousin

[140] The second cousin has been a practising Catholic for some 15 years. His faith has been fostered through close association with Fathers and he is committed to serving the Catholic church in private and public practice. He overtly demonstrates his Catholic faith through wearing a crucifix and carrying a rosary, and he is an active participant in Catholic religious festivals and processions.

[141] Members of the SNDP have acted in cohort with other Hindu extremist organisations, such as the RSS and Shiv Sena, to attack and intimidate the second cousin on repeated occasions in Kerala. For more than a decade, he has continued to be a target of such groups owing to his public manifestation of his Catholic faith and involvement in proceedings against corrupt members of the SNDP. He has been the victim of repeated attacks while publicly engaged in church activities and worship, including when attending Christian processions, commemorations and festivals. He has sustained serious injuries as a consequence. He has been forced to live in hiding, spending many years outside Kerala state, in an attempt to avoid such attacks. Such attacks nevertheless continued up until his departure from India. In 2014, his wife and daughter were also attacked in their own home by members of an extremist Hindu group, who were seeking to learn the second cousin's whereabouts.

[142] The more serious attacks against the second cousin have taken place in Kerala; however, a pattern of harassment has continued while the second cousin has been living in other states such as Bangalore, Tamil Nadu and Delhi. Extended family members who belong to Hindu extremist groups have evidently also been connected to these incidents and mistreatment, as may be extrapolated from the timing and proximity of such attacks, when the second cousin has been returning back to Kerala from other states to visit sick family members.

[143] The Tribunal finds that there is a real chance that the sustained pattern of attacks against the second cousin, which have comprised harassment, beatings, amongst more serious injuries, including significant dental damage, will be repeated upon his return to Kerala in breach of his right to be free from cruel,

inhuman or degrading treatment or punishment and to manifest his religion as contained in Articles 7 and 18 of the ICCPR. The risk of such serious harm is exacerbated in the current climate, leading up to, and following, the national elections, as communal violence linked with political processes, such as elections is well known.

The wife and daughter

[144] Together with the second cousin, the wife and daughter, aged eight years, comprise a family unit. Over the past decade, they have effectively been family members separated through flight, as the family did not consider it safe to live together. Notably, when the second cousin first lodged court proceedings against the SNDP, his mother was killed in an attack on him in the family home. In order to reduce the risk of harm to the wife and daughter, they have lived separately.

[145] Multiple risks are inherent for persons fleeing from persecution, one of which is the very real risk of separation from their families. There are myriad provisions that elaborate the right to family life in international human rights law, including Article 16(3) of the Universal Declaration of Human Rights (UDHR) which provides that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the state”. Article 17 of the ICCPR incorporates the right in the form of a prohibition against arbitrary or unlawful interference with one’s family. Article 23 of the ICCPR has near identical wording to the UDHR and Article 24 addresses the protection of the right of the child, as such, or as a member of a family. Article 10 of the 1966 *International Covenant on Economic, Social and Cultural Rights*, broadly conceived, specifies that the widest possible protection and assistance should be accorded to the family. Notably, the inclusion of “assistance” in the right, accords positive obligations on states in respect of family unity.

[146] Notwithstanding their enforced separation in order to reduce the risk of harm to the wife and daughter, in 2014 they became victims of an attack in their home by members of Hindu extremist groups who were looking for the second cousin. The wife was knocked unconscious and hospitalised for five days. The daughter was also knocked to the ground and suffered a cut lip.

[147] In light of the above, the Tribunal finds that there is a real chance that, upon return to India, the wife and daughter will experience serious harm, through breaches of their right to be free from cruel, inhuman or degrading treatment in

violation of Article 7 of the ICCPR, or in violation of their right to family unity as contained in Articles 17, 23 and 24 of the ICCPR, through being forced to avoid or reduce the risk of serious harm to them by living separately from the second cousin, their husband and father.

Is there a Convention reason for the persecution?

[148] The appellants' predicament is being contributed to by their religion and membership of a particular group, namely, the family. The second principal issue is also answered in the affirmative.

Internal Protection Alternative (IPA)

[149] The protection afforded by the Refugee Convention is not available to the appellants if meaningful protection is available to them in another part of the country. In this case, other metropolitan cities in states other than Kerala are relevant to the assessment.

[150] The approach to the IPA was articulated in *Refugee Appeal No 76044* (11 September 2008) where the contours of what constituted 'meaningful' domestic protection under an IPA analysis were mapped. The Refugee Status Appeals Authority stated, at [178], that the following criteria were to be applied:

- “(a) That the proposed internal protection alternative is accessible to the individual. This requires that the access be practical, safe and legal.
- (b) That in the proposed site of internal protection there is no risk of being persecuted for a Convention reason.
- (c) That in the proposed site of internal protection there are no new risks of being persecuted or of being exposed to other forms of serious harm or of refoulement.
- (d) That in the proposed site of internal protection basic norms of civil, political and socio-economic rights will be provided by the State. In this inquiry reference is to be made to the human rights standards suggested by the Refugee Convention itself.”

[151] The first and second cousins have been targeted by members of the SNDP and Hindu extremist groups, such as the RSS and Shiv Sena, owing to their equally bold manner in exposing corruption and in manifesting their religious beliefs. They have been subjected to harassment and attacks in a number of states to where they have fled, including in Karnataka, Tamil Nadu and Bombay.

[152] The organisations they fear, such as the RSS are active and prevalent throughout India and attacks against Christians occur throughout India. The Tribunal is satisfied, given their strong Catholic commitment, that they will continue to manifest their beliefs in a public and forthright manner, wherever they may live in India, giving rise to a risk of serious harm at the hands of extremist Hindu groups in violation of their right to be free from cruel, inhuman or degrading treatment or punishment in violation of Article 7 of the ICCPR. Further, they cannot be expected to forego their basic right to freedom of religion under Article 18 of the ICCPR.

[153] Whilst the second cousin's wife and daughter, also Christian converts, do not publicly manifest their faith in the same manner, they are at risk of cruel, inhuman and degrading treatment or punishment in violation of Article 7 of the ICCPR should they live with the second cousin, or conversely, they are at risk of serious harm through the inability to live with the second cousin through fear of serious harm, in violation of their right to family unity, as contained in Articles 17, 23 and 24 of the ICCPR.

[154] The Tribunal is satisfied that, while the appellants would be able to safely travel to a large metropolitan city outside their home state, this will not reduce the risk to them below the real chance level. Accordingly, the Tribunal finds that no meaningful internal protection alternative exists for these particular appellants.

Conclusion on Claim to Refugee Status

[155] For the above reasons, the appellants are each entitled to be recognised as refugees under section 129 of the Act.

The Convention Against Torture

[156] Section 130(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.”

[157] Because the appellants have been recognised as refugees, they are entitled to the protection of New Zealand from *refoulement* to India. The recognition of the appellants as refugees means that they cannot be deported from New Zealand to India; see Article 33 of the Refugee Convention and sections

129(2) and 164 of the Act. The exception to section 129, which is set out in section 164(3) of the Act, does not apply. Therefore, there are no substantial grounds for believing the appellants would be in danger of being subjected to torture in India.

The ICCPR

[158] Section 131(1) of the Act provides that:

“(1) A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

...

(6) In this section, cruel treatment means cruel, inhuman, or degrading treatment or punishment.”

[159] Again, because the appellants are recognised as refugees, they are entitled to the protection of New Zealand from *refoulement* to India. For the reasons already given in relation to the claim under section 130 of the Act, there is no prospect of the appellants being deported from this country. Therefore, there are no substantial grounds for believing that they are in danger of being subjected to arbitrary deprivation of life or to cruel, inhuman or degrading treatment or punishment in India. Accordingly, the appellants are not persons who require recognition as protected persons under the ICCPR.

CONCLUSION

[160] For the foregoing reasons, the Tribunal finds that the appellants:

- (a) are refugees within the meaning of the Refugee Convention;
- (b) are not protected persons within the meaning of the *Convention Against Torture*;
- (c) are not protected persons within the meaning of the *Covenant on Civil and Political Rights*.

[161] The appeals are allowed.

Order as to Depersonalised Research Copy

[162] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellants' and their families' names and any particulars likely to lead to their identification.

"S A Aitchison"

S A Aitchison
Member

Certified to be the Research
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S A Aitchison
Member