

1312709 [2014] RRTA 215 (14 March 2014)

DECISION RECORD

RRT CASE NUMBER: 1312709
COUNTRY OF REFERENCE: Pakistan
TRIBUNAL MEMBER: Andrew Jacovides
DATE: 14 March 2014
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied to the Department of Immigration for the visa [in] December 2012 and the delegate refused to grant the visa [in] August 2013. The applicant applied for review of the decision [in] August 2013.

THE APPLICANT'S CLAIMS

Evidence to the Department

3. The applicant stated in his protection visa application that he was a citizen of Pakistan. He indicated he was born in Karachi on [date]; he was a Pakistani Muslim; he spoke Urdu and English; he had never married; he arrived in Australia [in] September 2011; he visited Pakistan from [September] 2012 until [October] 2012; he had [number] years of education; and he worked as a [occupation] in Pakistan from May 2007 until August 2011. The applicant stated that his father was deceased. He indicated that his mother [and siblings] were living in Pakistan. The applicant submitted a copy of his Pakistani passport; other documents relating to his identity; articles relating to terrorist activities and extremist violence in Pakistan; and articles relating to security conditions in Pakistan.
4. The applicant submitted a statement of claims which had been prepared by his migration agent. He began with an overview of human rights conditions in Pakistan and referred to terrorist incidents in Pakistan.
5. The applicant stated that his father was a [prominent] and strong supporter of the Muttahida Quami Movement (MQM) in Karachi. He stated that the family supported the group but after his father died, his siblings "lost interest" in it. The applicant stated that the 9/11 attack and the Iraq war dramatically changed the political climate in Pakistan, with "Pakistani Muslims" starting to support the Taleban, Al-Qaeda, and other militant groups. The applicant stated that after he finished his studies he began to visit the MQM office to meet his father's relatives and friends who worked for the organisation. He stated that while working for the [name] Company, as a [occupation], he befriended two colleagues, [Mr A] and [Mr B], who shared similar political views as him and they began to visit the MQM offices together. He stated that they gathered information from the MQM regarding the Karachi hideouts of militants and they used that information in their employment activities which involved the tracking of vehicles of prominent persons and NATO forces. The applicant stated that he and his friends came to know that the militants were involved in illegal activities, including the trafficking of drugs, and they were always "careful to monitor the NATO trucks and government official vehicles" when they passed the areas in Karachi where militants were active. He stated that they informed the "authorities accordingly". The applicant claimed that his two friends became very involved with the MQM and they were recruited by activists within the group to infiltrate terrorist organisations and to provide information about the activities of those organisations. He stated that he was given a similar offer, and promised that he would make "good money", but he declined the offer. The applicant stated that his friend [Mr B] was

harassing him to join the MQM militants and he became nervous and determined to leave the country. He stated that his brother reprimanded him for his involvement with the MQM:

My [brother] reprimanded me for involving in MQM politics as the time had [changed] and it was too dangerous to have dealings with MQM as many MQM members were targeted by the Taleban daily as the MQM was also involved in target killings.

6. The applicant claimed that he did not visit the MQM offices thereafter and he cut all ties with its members. He stated that in early 2011, his friend [Mr A] asked him and [Mr B] to meet him urgently and when they met he told them that “they had an offer from foreign agencies who had agreed to pay them good money if [they] worked for them”. The applicant was told that he and [Mr B] were expected to join the Tehrik-e-Taliban Pakistan (TTP) and inform on their activities. The applicant stated that he “became so nervous that [he] refused to work along with them”. He stated that his friends told him to stay away from them and never mention to anyone the conversation they had regarding the Taliban and foreign agencies. He stated that when he told his brother what had happened, his brother told him to leave the country immediately. The applicant stated that before he departed from Pakistan he learnt that [Mr A] had left the [name] Company and was working with “foreign agents and earning good money”, while [Mr B] was continuing to work for the company. He stated that [Mr B] told him to continue to work with him and he would earn good money quickly and would not have to “worry about anything in the future”. The applicant stated that he declined the offer and he fled the country when his Australian visa was granted.
7. The applicant stated that after he arrived in Australia he concentrated on his studies and “forgot about [Mr B] and [Mr A] completely”. He stated that he never wished to have any dealings with them as they were working for “foreign agencies and the TTP”. He stated that [Mr B] asked one of his brothers when he would be returning to Pakistan and his brother told him that the applicant was returning for [a family gathering] in September 2012. The applicant stated that he “reprimanded” his brother for giving the information to [Mr B]. He stated that his [brother] told him “not to worry as [Mr B] or [Mr A] had never visited them” after the applicant left the country. The applicant stated that he again “completely forgot” about [Mr B] and [Mr A] and he returned to Pakistan assuming that he was safe.
8. The applicant claimed that [in] October 2012, there was a terrorist attack near his home and soon after [Mr B] came to his house and demanded that the applicant go with him. He stated that he was taken in a van to a private residence where [Mr B] told him that the TTP were aware “as to [Mr A] and his involvement with foreign agencies in killing their militants” and “he feared for his life”. The applicant stated that [Mr B] told him that he was involved in a shooting, and other criminal activities, so he was planning to leave the country. He stated that [Mr B] spoke to him as a friend and asked him if he told anyone what he and [Mr A] were doing. The applicant stated that he denied telling anyone what they did. He claimed that while they were talking [Mr B] was told that the police were searching the area so he fled with his men fled and they forced the applicant to go with them. The applicant claimed that the police started shooting at them and [Mr B] drove faster and faster to avoid the police. He stated that [Mr B] let him out of the van and he was immediately detained by the police and taken to a police station. He stated that the police beat him and asked him questions about [Mr B]. He stated that the police discovered that the applicant had been involved with [Mr B] and [Mr A] at MQM. He stated that the police knew that they were involved in drug trafficking and other criminal activities. The applicant claimed that the police accused him of being involved in similar activities. He stated that he was also accused of being an MQM

militant and involved with [Mr B] in shooting incidents. The applicant claimed that he was held for three days until his “brother released” him by paying bribes. He stated that the police told him that he should “not be seen in Pakistan in the future and if they found [him] they would [send] him to prison permanently”. He stated he was told that [Mr B] and [Mr A] were working for the TTP and they would be killed when they were caught. The applicant claimed that the authorities told him that he was still a suspect. The applicant stated that he was released on the condition that he left the country and never returned. He claimed that after he left Pakistan his brother told him that [Mr A] had contacted his brother and told him that if the applicant returned to Pakistan he would be killed for providing information to the authorities regarding his and [Mr B]’s activities. He stated that it was then that he realised that he had to apply for a protection visa. He stated that he cannot return to Pakistan as he faced life-threatening harm from terrorists and the authorities.

9. The applicant referred to 38 articles which in his view supported his claims. The articles mostly dealt with terrorist activities in Pakistan between 2008 and 2012.
10. The applicant was interviewed by the delegate [in] April 2013. The Tribunal has listened to the interview. The applicant provided details regarding his family background. The delegate asked the applicant if he or any other member of his family was a member of the MQM or any other political, religious, or ethnic groups. He stated that they were not members of any such groups and they had never had any difficulties with the authorities in Pakistan. The applicant stated that after his father died no one in the family was interested in the MQM.
11. The applicant provided details regarding [Mr B] and [Mr A]. He stated that he started to become interested in politics during 2007. He stated that he assisted the MQM in the elections. He indicated that he was not a member of the MQM but a supporter. The applicant stated that he met [Mr B] and [Mr A] at the [name] Company.
12. The delegate discussed with the applicant the claims relating to [Mr B] and [Mr A]. The applicant stated that his brother told him that they were terrorists, doing what they did for the money. The delegate asked the applicant if he considered distancing himself from those persons after it became apparent to him what they were doing. The applicant stated that they worked together and sometimes they attended social activities outside work. He stated that they were his closest friends but he did not keep in touch with them after he left the country.
13. The applicant repeated his written claims relating to the contact he had with [Mr B] in 2012. He stated that he was arrested by the police, beaten, and detained for three days. He stated that he was accused of being involved in terrorist activities and drug trafficking. The delegate commented that the police were carrying out their duties as he was associating with known criminals. The delegate stated that the applicant’s ability to be released, and then to leave the country without any difficulties, did not support the applicant’s claim that the authorities genuinely believed that he was involved in those activities. The delegate stated that rather than releasing him they would have charged him. The applicant stated that they had no proof and his brother paid bribes to secure his release.
14. The delegate commented that the applicant applied for a protection visa the day after his student visa ceased. He was asked why he waited until then when it was apparent to him for some time that he needed protection. The applicant stated that he was intending to return to Pakistan when his student visa ceased, but when he was told by his family that he cannot return to Pakistan, because it was too dangerous to do so, he was compelled to apply for a

protection visa. The delegate asked the applicant if members of his family had experienced any “problems” in Pakistan and the applicant responded “not now”.

Evidence to the Tribunal

15. The Tribunal received a 70 page submission from the applicant’s new migration agent on 7 March 2014. The agent argued that the applicant faced persecution in Pakistan for reasons of race, as he was a *Mohajir*; political opinion, for holding and supporting the political ideologies of MQM(A), and for holding an imputed political opinion against the Taliban; and for his membership of a particular social group. The agent argued that “people who are considered as holding a view against Taliban’s religious ideologies” are being persecuted by the Taliban and they constituted a particular social group for Convention purposes; and “reports indicate that Islamic fundamentalist including Taliban adherents consider Mohajir as non-Pakistanis and harm them”.
16. The agent argued that the applicant will not have access to protection by the state and he cannot avoid the harm he anticipates by relocating within the country.
17. The agent referred to 33 articles from external sources which reported on the “persecution and ill treatment of Mohajirs and MQM(A) supporters and members”; 48 articles which dealt with persecution “against people whom the Taliban considers anti-Taliban”; and RRT decisions and *RRT Country Advice* reports, which in the agent’s view supported the applicant’s claims.
18. The agent argued that Mohajirs and supporters of MQM are being persecuted by their opponents and the government was unwilling to “take the strong action against perpetrators” which it should have taken. He argued that there was a strong surge of ethno-political violence in Karachi in recent years and the Taliban was active in Karachi. The agent referred to articles dealing with civil unrest and violence in Karachi and he argued that the state was not able to provide a secure environment for the persons being targeted. He referred to reports of Mohajir people being killed in Karachi in 2011; the violence between MQM members and their opponents; and the rise of religious extremists and sectarian violence in Pakistan. The agent argued that “the applicant belongs to the minority Mohajir ethnic group in Pakistan. The reports indicate that the Islamic fundamentalists and Taliban and the political opponents of the MQM continue to target Mohajir minority ethnic group in Pakistan” and on that basis “the applicant will face persecution in Pakistan” for reasons of race.
19. The agent went on to argue that the applicant faced persecution in Pakistan for “holding or perceived to be holding an alternative political opinion” and as the “applicant reports that he is a member and supporter of MQM(A)”, as are his family members, “the persecutors consider the applicant as holding a political opinion against the Pakistani government” and he “fears that the Pakistan security forces may suspect him as a sympathiser or a supporter of MQM(A)” and in “addition, TTP also targets MQM(A)” which made the applicant “a potential target of his feared persecutors”. The agent submitted that the applicant faced a real chance of being persecuted in Pakistan for these reasons.
20. The agent argued that the applicant faced a real chance of persecution in Pakistan for all the reasons provided. He argued that the harm he faced would be serious harm; that his fear was well-founded; and that he would not have access to state protection. The agent referred to two previous RRT decision and stated that they supported the applicant’s claim that he faced

persecution in Pakistan for reasons of race and political opinion. He stated that internal relocation would not provide the applicant with the safety he was seeking.

21. The agent argued that the applicant also “falls within the ambit” of the complementary protection criterion, as he faced torture in Pakistan for his race and political opinion. He provided the following summary of the applicant’s claims:

The applicant is a national of Pakistan;

The applicant is a Mohajir;

The applicant is a member and supporter of MQM(A);

The applicant is outside his country and in Australia;

His feared persecutors may consider the applicant as a person who promotes MQM(A) ideologies and holding a political view against Sunni Islamic fundamentalist including Taliban religious ideologies.

22. The applicant attended the hearing with his migration agent. An interpreter assisted. He stated that he anticipated harm in Pakistan from terrorists, extremists, and the authorities. He stated that he will be targeted for being a Mohajir and a person involved with the MQM(A). He claimed that the authorities issued a warrant for his arrest and when they could not find him they arrested two of his brothers. He stated that his brothers had to pay bribes to secure their release and they subsequently issued a statement, which was published in the press, that the family had disowned the applicant. The applicant submitted three documents: a *Search Warrant* issued [in] January 2014 by a court in Karachi; a *Warrant of Arrest* issued by the same court [in] October 2013; and a photograph of the applicant with four men. The applicant stated that the photograph was taken in 2010 and depicted him with senior members of the MQM. He stated that the warrants were issued against him by the Pakistan security forces because he was involved with the MQM.
23. The Tribunal commented that the applicant had previously indicated that he was not a member of the MQM and that he had distanced himself from the group when he learnt of their more militant/illegal activities. The applicant stated that this was correct but the authorities in Pakistan had embarked on a campaign against Mohajirs and MQM members and that was the reason they were targeting him now. The Tribunal discussed both issues with the applicant. He indicated that Mohajirs constituted up to 10 million persons in Karachi and about 800,000 to 1,000,000 people were involved with the MQM. The Tribunal commented that none of the information provided by the applicant, or accessed by the Tribunal from other sources, indicated that the authorities, terrorists, or anyone else, was commonly targeting those communities. It commented that a radical faction of the MQM, which was involved in political violence, had been targeted by political opponents and possibly the authorities; but ordinary Mohajirs and MQM supporters were not targeted. He was asked why it happened to him. The applicant stated that it was because he was previously involved with the group and his friends had become terrorists, criminals, and extremists, and the authorities suspected him of being involved with those persons. The applicant stated that he was suspected of having links to terrorists and that was the reason he was targeted. The applicant claimed that he was also at risk of harm by the Taliban because he had previously rejected their offer to join their cause.

24. The Tribunal asked the applicant why he was arrested and then released in 2012 if indeed the authorities have such an interest in him. The applicant stated that they had no evidence against him and his brother paid bribes to secure his release. He stated that now he was wanted by the “paramilitary” forces, which held a higher status than common police, and he would not be able to bribe his way out of detention this time. He was asked why the security forces had such an interest in him. The applicant stated that there was a campaign against the MQM and he was known to have been involved with the group previously and to be a Mohajir. The Tribunal commented that the information from external sources which he had submitted did not support his claim that such a campaign was in progress. The applicant’s agent stated that the campaign started in November 2012.
25. The Tribunal referred to a report by the Department of Foreign Affairs and Trade, *DFAT Country Information Report: Pakistan*, 29 November 2013, and commented that DFAT advised that MQM has been an influential and powerful group in Pakistani politics. It commented that DFAT found that some MQM members were subjected to violence in some areas of Karachi but other areas were relatively free from politically motivated terrorist and sectarian violence for MQM members. The Tribunal commented that DFAT advised that MQM members have been implicated in political violence against their opponents and that persons implicated with the armed wing of the group were involved in violence against opponents. It noted that DFAT advised that “many parts of Karachi remain securely controlled by the MQM”. The Tribunal commented that this and the information he submitted did not indicate to the Tribunal that the applicant was implicated in the armed wing of the party or in any other aspect of the party which would be of particular interest to the security forces or the Taliban in Pakistan. The applicant stated that he was previously involved with the group and he was linked to terrorists in Pakistan. He stated that it was for this reason that the authorities were pursuing him so aggressively. The Tribunal asked the applicant why they let him go in 2012 if he was a person of such interest. The applicant stated that the first time he was detained he could pay bribes and flee but now he would not have such an option.
26. The applicant stated that he was released in 2012 because the authorities had no evidence against him. The Tribunal commented that he was caught leaving the car of a known criminal and terrorist during a police chase. It commented that the authorities had the evidence they required to keep him in custody and possibly to charge him. The applicant stated that he told the authorities that he just worked with those men and he had no involvement with their terrorist/criminal activities. The Tribunal commented that despite the applicant’s claim that he was released because there was no evidence against him it appeared from his evidence that there was evidence which could have been used against him if indeed the authorities were seeking to detain him. The applicant stated that it was only the police and they accepted bribes. He stated that they let him go on the understanding that he would leave the country and never return.
27. The Tribunal referred to the applicant’s interview with the delegate. It commented that during that interview the applicant stated that no members of his family, including him, were members of the MQM, or any other political, religious, or ethnic groups, and that no one in the family had the same interest in the MQM as his father did. The Tribunal commented that in his most recent submission he was claiming to have been a member and supporter of the group to the extent that the authorities were seeking to harm him. The applicant stated that he was not a member of the group and he had no involvement with the group when his father died in [the 1990s]. He stated that later, around 2007 he assisted in the elections, and later he went to the MQM offices with his friends [Mr B] and [Mr A] who then went on to become

terrorists and criminals. The Tribunal commented that in his evidence he indicated that he had actively distanced himself from the group and cut all ties with its members. The applicant stated that this was correct. He stated that before he came to Australia he had ceased to participate in MQM activities or have any involvement with the group. The Tribunal asked the applicant why the authorities were now so interested in his previous and relatively minor involvement with the MQM. The applicant stated that he was linked to known terrorists and drug traffickers, and the police knew that he was involved with those persons and they went to the MQM offices, so they suspect him of being a terrorist and a criminal.

28. The Tribunal discussed with the applicant the provisions of s.424AA of the Act and asked him if he was seeking additional time to comment on or respond to the information provided to him regarding his evidence at the interview with the delegate. The applicant stated that he was not seeking additional time and he wanted to proceed.
29. The Tribunal commented that the DFAT report referred to above indicates that control-lists are kept at Pakistani airports to prevent persons of interest from leaving the country. He was asked how he was able to leave the country in 2012 if the security forces, which he called the paramilitaries, were trying to find him. The applicant stated that his brother paid bribes and the matter did not go beyond the police station where he was held.
30. The Tribunal commented that it had doubts as to whether the applicant's claims were credible. It commented that three factors led to the Tribunal's doubts regarding the credibility of the applicant's claims. The Tribunal stated that the first factor was the applicant's delay in applying for a protection visa. It commented that it would have been apparent to him in 2011, when he first arrived in Australia, that he had become a person of interest to terrorists, criminals, and possibly the police, before he left the country and that he faced serious and possibly life-threatening harm in Pakistan. He was asked why he did not apply for protection when he came to Australia. The applicant stated that he knew nothing about protection visas and he did not feel at risk of harm because his brother had told him that no-one had demonstrated any apparent interest in him. The Tribunal commented that it would consider the applicant's evidence in this regard but may it find that he did not apply for protection because he had no contact with terrorists, extremists, or criminals in Pakistan, and he did not require protection.
31. The Tribunal commented that the second factor which raised doubts for the Tribunal as to whether the applicant had provided a credible account of his circumstances was his decision to return to Pakistan in 2012. The Tribunal commented that even if no one had approached his family and made direct threats against him, it would have been apparent to him from what had happened previously that returning to Pakistan, to attend [a family gathering], was potentially a dangerous thing to do. The applicant stated that he thought he was safe. The Tribunal commented that it would consider his evidence regarding this issue but it may find that he returned to Pakistan in 2012 because he had no association with extremists and criminals in Pakistan. The applicant stated that his brother told him that it was safe for him to return.
32. The Tribunal commented that the nature of the applicant's claims raised further doubts for the Tribunal as to whether the claims were credible. It commented that it found it difficult to believe that terrorists, extremists, and criminals, would give the applicant so much information about their links to the TTP, foreign agencies, shootings, and other illegal activities, when he had apparently made it clear to them from the beginning that he did not want to be involved in such activities. The Tribunal commented that it found it difficult to

believe that such information would be given to him, to the extent that he had become a serious liability to those persons, for no apparent good reason. The Tribunal commented that extremists such as [Mr A] and [Mr B] would not, in the Tribunal's view, be so forthcoming in giving information to the applicant if he did not demonstrate any interest in joining them. It commented that these self-serving claims appear to have been contrived by the applicant to enhance the application. The applicant stated that he provided a truthful account of his circumstances.

33. The Tribunal commented that it would consider the issues raised above, and the applicant's responses, and will determine which claims it accepted. It commented that if the Tribunal does not accept as credible his claims that he is now a person of particular adverse interest to the authorities in Pakistan, it would then have to consider whether the documents he submitted relating to search and arrest warrants are genuine. The applicant indicated that they were genuine. The Tribunal noted that neither document indicated what offense the applicant had committed. The applicant stated that they wanted to detain him and then they would lay charges. The Tribunal referred the *DFAT Country Information Report: Pakistan*, and commented that DFAT has advised that false documents are available in Pakistan. It commented that it may not accept that the documents submitted are genuine. The Tribunal asked the applicant if he was implicated in any activities, other than those he had already described, which could have attracted the interest of the authorities in Pakistan. He stated that there were no other reasons.
34. The Tribunal noted that when the applicant provided his claims to the Department, the core claims related to his involvement with [Mr A] and [Mr B]. It commented that his claims to the Tribunal related more to his race, MQM involvement, and anti-Taliban stance. The applicant and his agent stated that the earlier claims were the main reason the applicant decided to apply for protection but his circumstances changed over time and additional claims had arisen. The agent commented that the Tribunal should consider the applicant's claims cumulatively.
35. The applicant stated that [Mr A] had contact his brother in Pakistan and told him that the applicant would be killed if he ever returned because he had told the police about his and [Mr B]'s illegal activities.

THE DELEGATE'S DECISION

36. The delegate was not satisfied that the applicant provided a credible account of his circumstances and was not satisfied that the applicant was at risk of serious or significant harm for any of the reasons provided.

THE TRIBUNAL'S FINDINGS

37. The issue in this case is whether the applicant will be face harm in Pakistan because he has attracted the adverse interest of terrorists, extremists, criminals, and the authorities. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
38. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other

‘complementary protection’ grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

Refugee criterion

39. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
40. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
41. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
42. The applicant claims to be a citizen of Pakistan. The Tribunal has considered the evidence he provided regarding his identity and nationality, including his Pakistani passport, and it accepts that the applicant is a citizen of Pakistan.
43. The applicant claims that he faces life-threatening harm from persons implicated in terrorist and criminal activities, including his former colleagues, [Mr A] and [Mr B], because he is suspected of having provided information to the authorities regarding those persons and their activities. The applicant claims that he faces persecution from the authorities in Pakistan for reasons of race, as a *Mohajir*; and his political opinion, for holding and supporting the political ideologies of MQM(A). He claims that he faces harm from the Taliban for his imputed political opinion against the Taliban. The applicant further claims that he faces persecution in Pakistan for “holding or perceived to be holding an alternative political opinion” and as the “applicant reports that he is a member and supporter of MQM(A)”, as are his family members, “the persecutors consider the applicant as holding a political opinion against the Pakistani government” and he “fears that the Pakistan security forces may suspect him as a sympathiser or a supporter of MQM(A)” and in addition the “TTP also targets MQM(A)” which has made the applicant “a potential target of his feared persecutors” in the Taliban. The applicant claims that he faces harm for his membership of a particular social group, with that group possibly being persons “who are considered as holding a view against Taliban’s religious ideologies”. He claims that he faced further harm from the Islamic fundamentalists including the Taliban for being a *Mohajir*. The applicant claims that he faces persecution in Pakistan, by the authorities and extremists, including the Taliban, for being a person who promotes MQM(A) ideologies and holding a political view against Sunni Islamic fundamentalists.
44. The Tribunal has considered all the evidence provided by the applicant in support of his claims and it is not satisfied that the applicant provided a credible account of his

circumstances. The Tribunal accepts that the applicant is a Mohajir and a supporter of the MQM(A)(or more commonly known as MQM). However, it is not satisfied that his other claims are credible.

45. The Tribunal does not consider it appropriate to take an overly stringent approach to questions of credibility but neither does it consider it appropriate to accept all claims uncritically.¹ The *Handbook on Procedures and Criteria for Determining Refugee Status*, suggests that it is “frequently necessary to give the applicant the benefit of the doubt... [but only after]... all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts”.²
46. In the present matter, the Tribunal has formed the view that the applicant has contrived all his claims relating to his targeting by terrorists, criminals, and the authorities in Pakistan. The Tribunal finds that the claims were contrived by the applicant in the belief that it would enable him to get a protection visa.
47. Several factors have contributed to the Tribunal’s view regarding the applicant’s credibility. First, the applicant’s delay in seeking protection. He claims to have fled from Pakistan in 2011, fearing that he had attracted the adverse interest of terrorists, extremists, and criminals. However, he did not apply for protection when he reached Australia or at any time before he returned to Pakistan in 2012. The applicant claims that he did not feel threatened at the time, because he assumed that his difficulties with the persons he feared had ended when he left the country, and he did not have information regarding protection visas. However, the Tribunal has formed the view that if indeed the applicant had been implicated in the activities he described, and terrorists, extremists, drug traffickers, and criminals, were either trying to recruit him, or threatening to harm him, and he fled the country to avoid the situation, it would have been apparent to the applicant that he needed protection in 2011, when he first came to Australia, and he could seek it in Australia. The Tribunal finds that the applicant did not apply for protection when he first arrived in Australia because he had no contact with terrorists, extremists, or criminals in Pakistan, and he was not at risk of harm from such persons. The Tribunal finds that the applicant’s claims relating to his contact with [Mr A] and [Mr B], and their alleged links to extremists, terrorists, and criminals, were claims contrived by the applicant to enhance his protection visa application.
48. A second factor which contributes to the Tribunal’s view regarding the applicant’s credibility is his decision to return to Pakistan in 2012. The applicant claims that he did not anticipate harm in Pakistan and he assumed that his difficulties with terrorists, extremists and criminals were over. He claims that his brother reassured him that it was safe for him to return to Pakistan. However, the Tribunal finds that if the applicant had encountered terrorists, extremists, and criminals in Pakistan, to the extent that he found it necessary to flee the country, it would have been apparent to him that returning to Pakistan involved an element of risk and that he should avoid it. The Tribunal finds that the applicant’s decision to return to Pakistan in 2012 greatly diminishes his claim that he came into contact with terrorists, extremists, and criminals in Pakistan, or that such persons were seeking to recruit him. The

¹ *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 per Beaumont J at 451; *Minister for Immigration and Ethnic Affairs v Guo & Anor* (1997) 191 CLR 559 at 596; *Prasad v Minister for Immigration and Ethnic Affairs* (1985) 6 FCR 155 at 169-70.

² United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1992, Geneva, paragraphs 203 and 204.

Tribunal has formed the view that the applicant returned to Pakistan because none of the difficulties he described, relating to [Mr A] and [Mr B], terrorists, extremists, and criminals, actually occurred. It finds that the applicant was able to return to Pakistan in 2012 because he had no contact with, or connections to, persons in Pakistan who had the potential to harm him. The Tribunal finds that the applicant's claim that he was a person of interest to terrorists, extremists and criminals in Pakistan was contrived by him to enhance the application.

49. The third reason the Tribunal is not satisfied that the applicant provided a credible account of his circumstances relates to the nature of the claims. The Tribunal does not accept that terrorists, extremists, and criminals in Pakistan, would demonstrate so much interest in recruiting the applicant, or in giving him information about their activities, if he had stated that he did not want to be involved in such activities. The applicant claims that he was given enough information to be a serious liability to them, to the extent that they now have to kill him. The Tribunal has formed the view that the applicant contrived these claims in the belief that it would enable him to get a protection visa. It does not accept as credible the applicant's claim that he is a person of interest to terrorists, extremists, and criminals, in Pakistan; or that such persons have threatened to kill him.
50. The Tribunal has considered the applicant's related claim that he became a person of interest to the authorities in Pakistan because of his links to [Mr A] and [Mr B]. However, in view of the above findings, that those claims were contrived by the applicant, the Tribunal does not accept as credible the applicant's claim that he became a person of interest to the authorities in Pakistan because of his involvement with those persons or any persons who were considered to be terrorists, extremists, and criminals. The Tribunal does not accept as credible the applicant's claim that he was detained by the authorities in Pakistan, during his 2012 visit, or that he paid bribes to secure his release or that he was forced to flee the country. It finds that the claims were contrived to enhance the application.
51. The Tribunal has considered the applicant's claim he has become a person of interest to the authorities and the Taliban in Pakistan because of his race and his association with the MQM. The applicant claims that his circumstances have changed since he made his first statement to the Department and these later claims only became apparent recently when the police went to his house seeking to detain him. However, in view of the Tribunal's earlier findings regarding the applicant's credibility, it has formed the view that these later claims are a further attempt by the applicant to enhance his application. The Tribunal is not satisfied by the information provided that the authorities in Karachi are targeting persons such as the applicant for their race or connections with the MQM; and it is not satisfied that the applicant's race or his limited involvement with the MQM would make the applicant a person of particular interest to the authorities in Pakistan. It finds that the claims were contrived and it does not accept as credible the applicant's claim that he has attracted the adverse interest of the authorities and the Taliban in Pakistan, or that he is at risk of harm by them, because of his ethnicity involvement with the MQM.
52. The Tribunal has considered the documents provided by the applicant at the hearing which he claims demonstrate that the authorities in Pakistan are seeking to detain and mistreat him. However, in view of the Tribunal's earlier findings regarding the credibility of the applicant's claims, it is not satisfied that the documents submitted are genuine or that the authorities in Pakistan are seeking to detain and harm the applicant. It finds that the documents were contrived to enhance the protection visa application.

53. The Tribunal has considered the applicant's claim that he is at risk of harm from the Taliban in Pakistan for various reasons, including his association with [Mr A] and [Mr B], his imputed political opinion, his actual political views, his involvement in politics, and his race. However, the Tribunal has formed the view that the Taliban have demonstrated no interest in the applicant previously and it finds that a similar situation will continue for him in future. The Tribunal finds that the applicant is not a person who has been, or will be, of particular interest to the Taliban or Islamic fundamentalists in Pakistan; and it does not accept that he is at risk of harm from those persons and groups for any of the reasons provided.
54. The Tribunal accepts that the applicant belongs to the Mohajir ethnic group and that he has had some involvement with the MQM(A) previously. The applicant claims that these reasons alone and cumulatively, with all his other claims, now place him at risk of persecution in Pakistan. However, after considering all the information provided in support of these claims, including the considerable information provided from external sources relating to conditions in Karachi and Pakistan, the Tribunal is not satisfied that there is a real chance that the applicant is at risk of harm by the authorities, the Taliban, political opponents, other ethnic groups, or anyone else in Pakistan for these reasons. The Tribunal finds that Mohajirs constitute a dominant ethnic group in Karachi and despite some violence against a few members of the community, most Mohajirs are not targeted by the authorities or extremists. Similarly, the Tribunal the applicant's involvement with the MQM or MQM(A) is not a matter which would be of particular interest to the authorities, extremists, or political opponents of the MQM, or anyone else who either supports or opposes the MQM. The information provided, and other information which was discussed with the applicant at the hearing, indicates to the Tribunal that supporters of the group can demonstrate their support freely and safely. The Tribunal noted advice in the *DFAT Country Information Report: Pakistan*, which indicated that some MQM members were subject to violence in some areas of Karachi. However, the Tribunal is satisfied that as the applicant has ceased to be active with the group, and his involvement with it was limited, he will not be at risk of harm from opponents of the group, the authorities, or anyone else in Pakistan. The Tribunal finds that the chance that the applicant will be subjected to persecution for his race and political opinion is remote.
55. Accordingly, the Tribunal is not satisfied that there is a real chance that the applicant will be subjected to persecution in Pakistan for reasons of race, religion, political opinion, his membership of the particular social groups provided, or any other Convention reason.

Complementary protection criterion

56. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia 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 applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
57. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or

inhuman treatment or punishment’, ‘degrading treatment or punishment’, and ‘torture’, are further defined in s.5(1) of the Act.

58. The Tribunal has considered whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan, there is a real risk that he will suffer significant harm under the complementary protection criterion. The Tribunal has already found, for the reasons provided, that many of the applicant’s claims lack credibility. It finds that as those claims have been rejected by the Tribunal there is need to consider them further in relation to complementary protection.
59. The Tribunal has accepted the applicant’s claim that he is a Mohajir and that previously he had some involvement with the MQM. The Tribunal is not satisfied by the evidence provided that there is a real risk that the applicant’s ethnicity, or his association with the MQM, will attract the adverse interest of any of the groups referred to by the applicant in his claims or that there is a real risk he will face significant harm in Pakistan for these reasons. The Tribunal has noted that a few members of the applicant’s ethnic group, and persons active with the MQM, have been implicated in violence and targeted by opponents and on some occasions the authorities. However, the Tribunal is satisfied that the applicant is not implicated in any activity relating to his ethnicity or his political views which will place him at risk of significant harm in Karachi or elsewhere in Pakistan.
60. Accordingly, the Tribunal finds that there is no real risk that the applicant will suffer significant harm in Pakistan under the complementary protection criterion.

CONCLUSIONS

61. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
62. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

DECISION

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

Andrew Jacovides
Member